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# RESTITUTION OF HOLOCAUST ASSETS

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Restitution of Holocaust Assets, Serial No. 106-44,  
February 9, 10, 2000 (Hearings)

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BEFORE THE

## COMMITTEE ON BANKING AND FINANCIAL SERVICES

### U.S. HOUSE OF REPRESENTATIVES

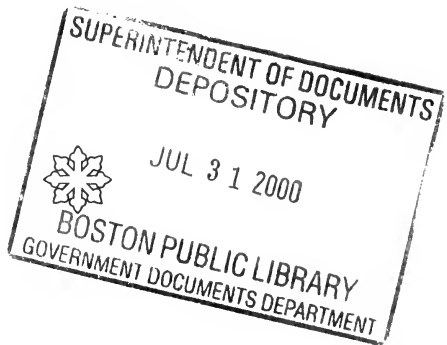
ONE HUNDRED SIXTH CONGRESS

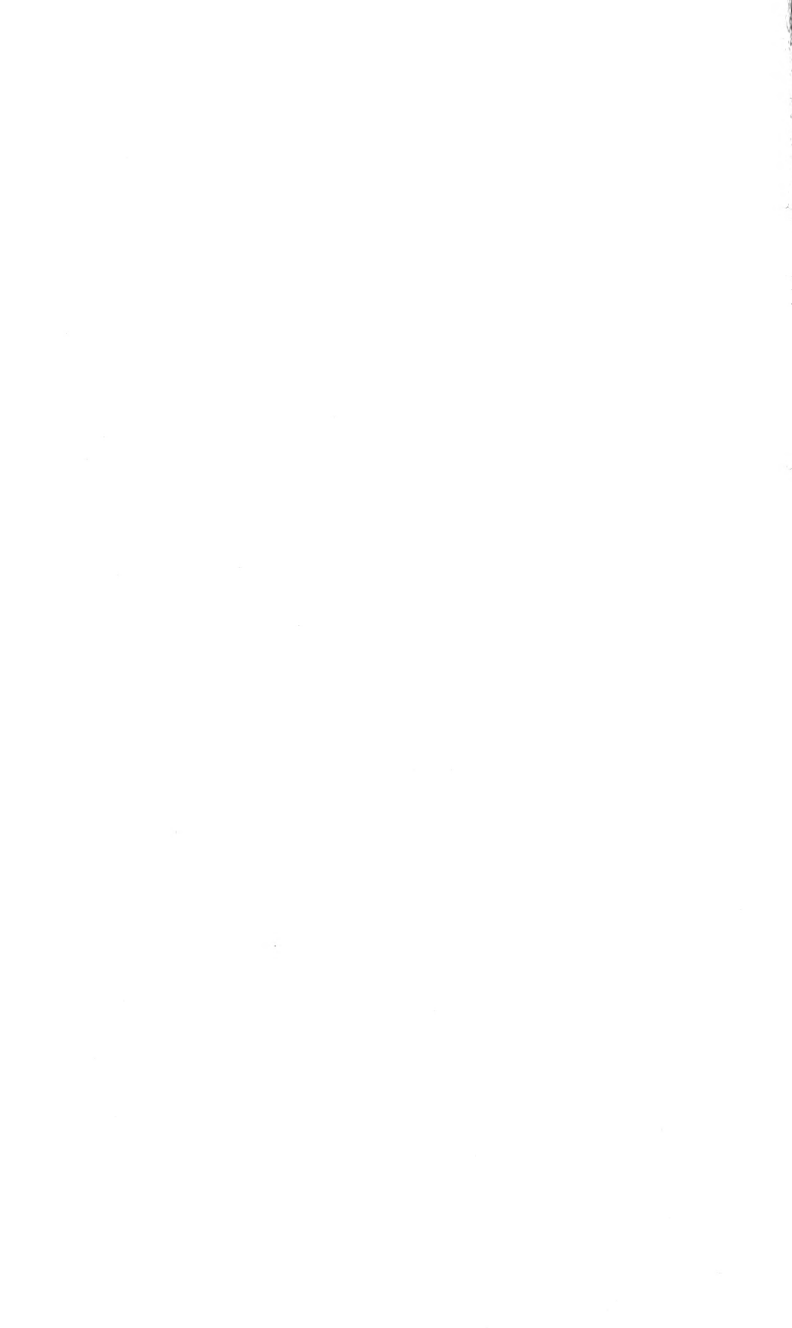
SECOND SESSION

—————  
FEBRUARY 9, 10, 2000  
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Printed for the use of the Committee on Banking and Financial Services

**Serial No. 106-44**





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## HEARINGS BEFORE THE COMMITTEE ON BANKING AND FINANCIAL SERVICES U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTH CONGRESS SECOND SESSION

—————  
FEBRUARY 9, 10, 2000  
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Printed for the use of the Committee on Banking and Financial Services

**Serial No. 106-44**



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# RESTITUTION OF HOLOCAUST ASSETS

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WEDNESDAY, FEBRUARY 9, 2000

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON BANKING AND FINANCIAL SERVICES,  
*Washington, DC.*

The committee met, pursuant to call, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. James A. Leach, [chairman of the committee], presiding.

Present: Chairman Leach; Representatives Lazio, Royce, Ose, LaFalce, Frank, Waters, C. Maloney of New York, Bentsen, J. Maloney of Connecticut, Sherman, Inslee, Schakowsky and Moore.

Chairman LEACH. The hearing will come to order.

Let me note first to the witnesses that the Congress is not in session today due to the funeral of the former Speaker Carl Albert, and many Members are in attendance, and for that reason not as many as would otherwise be the case will be attending this hearing.

This hearing and tomorrow's hearings are a continuation of the committee's review of efforts of the United States and countries abroad to establish greater accounting and accountability for economic aspects of history's most heinous crime, and belatedly provide a measure of comfort to its victims and their families.

We began a little over three years ago with an historical look into the role of Swiss banks, including the Central Bank, in the Nazi war effort. Soon the investigation, propelled by self-generated moral imperatives, was expanded to include the role of other neutral countries, then allies, and not least the United States itself.

Historical inquiries such as these into the nature of the evil and how to behave in the face of evil are not normally the subject of congressional hearings. In this case, however, these questions were central to our own moral duties as legislators and public officials to learn from the past so such horrors will never again happen. As a Princeton theologian told this committee, "The map, with the help of which we try to orient ourselves as human beings trying to live good and decent lives, is a map with Auschwitz on it."

It has been the goal of this committee and the Executive Branch to conclude these proceedings by the end of the 20th Century. This deadline has not been precisely met, but hopefully the resolution of most of the economic issues is close at hand.

As I look back through the hearings of this committee on this subject and the more than one-hundred witnesses from more than a dozen countries who have appeared here over the past three years, I am struck by the magnitude of the undertaking. After an

unconscionable, stumbling start, Switzerland, where this inquiry began, has reacted by submitting itself to the most profound and perhaps brutal act of national introspection in its history.

The Volcker and Bergier Commissions, which studied the country's behavior in World War II deserve praise for the rigor of their work.

More than a dozen other countries, including the United States, have formed similar commissions, and two large international conferences in London and Washington have been devoted to wartime gold transfer and restitution of Holocaust-era assets respectively.

After a hiatus of fifty years, the mass theft aspects of the Holocaust, those aspects which partly precipitated the chambers of murder at camps like Auschwitz and Buchenwald, have assumed their rightful place at the forefront of our collective conscience.

Even more important, perhaps, several national foundations have been formed and funded, and money has at last begun to flow to Holocaust victims. And we are in the last stages of two large settlements with Switzerland and Germany which promise financial redress to still more victims.

The monetary compensation to Holocaust victims, however, should not obscure the fact that in the end the funds are but a symbol of moral restitution. In a stirring address at the opening of the Washington Conference, Elie Wiesel noted, "Usually, anti-Semites say about us Jews that we speak about lofty things, but we mean money. Just the opposite. Here we speak about money, but we think of other things."

And so today and tomorrow we will speak about bank accounts and insurance policies, forced labor and uncompensated work, as well as stolen art works, and how to reconstitute those things to those who lost them and to their families. We want to return what has been stolen to its rightful owners. We are here because we want to provide needy survivors with medical care and homes for their old age. But above all, we are here because we remember and we are convinced that crimes which occur without subsequent accountability are crimes which too easily may be replicated.

It is more than a little ironic that as we strive to bring closure to this darkest chapter of the 20th Century, the specter of intolerance and racism is rising again over a country which has been at the forefront of science, economics and art. Austria, the land of Mozart, but also the birthplace of Hitler, appears in recent weeks to have chosen through the ballot box to turn xenophobically nationalistic. The European Union's strong reaction to Joerg Haider and his cohorts suggests that civilized Europeans are committed to seeing that history does not repeat itself. But it also indicates that without a continued commitment to conscience and memory, the threat of mindless extremism will not die.

This committee's goal in this series of hearings was to bring these issues to the public's attention and to demonstrate for all to see that we in the American people's House will not forget.

At this point I would like to turn to Mr. LaFalce.

[The prepared statement of Hon. James A. Leach can be found on page 146 in the appendix.]

Mr. LAFALCE. Thank you very much, Mr. Chairman.

Mr. Chairman, I want to thank you very much for the leadership that you have shown on this issue and for your continued dedication to ensuring that we do all that is humanly possible to obtain compensation for these egregious injustices of the past.

I think the issue before us is one of great public policy importance, great historical significance. As policymakers, we must take very seriously our responsibility to right the wrongs of the past and to provide restitution to the extent possible, to the maximum amount possible to Holocaust victims unjustly stripped of their hard-earned assets. It would be unconscionable if we were to ever lose sight of the horrors perpetrated by the Nazi regime.

The recent events in Europe underscore our moral responsibility to preserve the memory of the Holocaust in our collective consciousness. Sentiments that should concern all democratic governments and all their citizenry are still being expressed today. The most recent example comes from Austria, not simply from a layperson, a citizen, but from the party leader of an extreme right-wing anti-immigrant party that has become part of a coalition government who has expressed sympathies with nazism. To ease the European Union's concerns, the United States' concern, and other countries' concerns about this development, the ruling coalition did issue a statement intended to reassure the world that the new government does not subscribe to Nazi beliefs. However, shortly after the statement's release, it was reported that the Freedom Party's leader invalidated the intent and spirit of that statement by indicating that it was an affront to Austria to have to issue such a statement.

The United States has appropriately called its Ambassador back for consultation, while citizens all over Europe, including Austria, have taken to the streets to express their outrage and distaste.

Mr. Chairman, I raise this troubling development only to emphasize how important these hearings are. We are honored to have Treasury Deputy Secretary Stuart Eizenstat with us today, who, along with his partner in Germany, Otto Count Lambsdorff, have played an important role in mediating a resolution to the enforced slave labor claims of Holocaust victims. I join in the Chairman's welcome of both of you to our committee and look forward to your testimony today.

[The prepared statement of Hon. John J. LaFalce can be found on page 151 in the appendix.]

Chairman LEACH. Thank you.

Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman. I want to thank you for scheduling these two days of hearings on the Holocaust issues, including the slave labor, Swiss bank accounts, insurance claims and stolen art objects. I am very pleased to see Deputy Secretary Stuart Eizenstat before the committee again, and I want to extend to him on behalf of my constituents our gratitude for his efforts and those of Paul Volcker on these issues. I have been closely monitoring the progress of Secretary Eizenstat's negotiations and the work of the Volcker Commission, and I look forward to reading the testimony of all of those who will be testifying today.

Mr. Chairman, I would like to bring to the attention of the committee my bill, H.R. 3105, the Holocaust Education Act, that I introduced in October along with Appropriations Committee Chair-

man Bill Young. The bill will provide grants through the Department of Education to Holocaust organizations for teacher training and to provide materials to schools and communities that increase Holocaust education.

Thank you again, Mr. Chairman, I look forward to the testimony. Chairman LEACH. Thank you.

Mr. Bentsen.

Mr. BENTSEN. I will ask unanimous consent that my statement be inserted in the record.

Chairman LEACH. Without objection, so ordered.

Mr. BENTSEN. I believe this is the sixth hearing that the committee has held on this issue, and I am glad to see Secretary Eizenstat here, who has worked a great deal on this in his current position and at State prior to coming to Treasury. And I am eager to hear from Mr. Lambsdorff on behalf of the German government's and industry's involvement in this.

I would just say that I want to associate myself with the Chairman's remarks as well as Mr. LaFalce's remarks that I think this hearing today should send a very important message to Europe where the U.S. stands with respect to the situation in Austria, and I commend the Chairman for making that point very clear, and I yield back the balance of my time.

[The prepared statement of Hon. Kenneth E. Bentsen can be found on page 148 in the appendix.]

Chairman LEACH. Thank you.

Mr. Inslee.

Mr. INSLEE. Nothing, Mr. Chairman.

Chairman LEACH. Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. I would like to make a short statement.

I first want to thank you and commend you for convening this hearing and on your continuing leadership on this important issue, Mr. Chairman. You understand the importance of commemorating the Holocaust and in seeking to provide, when possible, some small measure of restitution for those who have suffered this tragic period in our history. Members of Congress have a responsibility to address this issue fairly and completely for our constituents, for those who perished at the hands of the Nazi regime and those who were able to survive, and for humanity.

My district, which includes Skokie, Illinois, and many Holocaust survivors and families of victims of the Holocaust, are watching us today. We are profoundly aware of victims and survivors of the Holocaust who were robbed of much more than art, insurance policies, bank accounts, property and other material and financial assets. Millions lost their lives. Countless others were brutalized, were enslaved, raped, deprived of the opportunity to observe their religion. Additionally, those who lived to tell the gruesome tales of the Holocaust era from a firsthand perspective were robbed of their childhood and livelihood and had their family history and indeed their whole world stripped away.

We cannot attempt to repay them for the suffering and the loss, but what we can do is honor the Holocaust victims and survivors by never allowing our children to forget what happened and by denouncing in the strongest of terms rhetoric and behavior that is

tainted with the reminiscence of the Nazi era. This necessity is unfortunately made all the more evident by recent developments in the government of Austria and elsewhere.

Finally, we must make every effort to provide as much financial and material restitution for those to whom it is entitled in as timely a manner as possible.

I want to thank the distinguished individuals who are here to testify before us today and to commend them and the many organizations working for justice in the name of those who have suffered as a result of the Holocaust. We have witnessed some progress with the Holocaust restitution issues as well as some obstacles. I appreciate the opportunity to discuss the current details of negotiations and the status of efforts to return assets to the rightful recipients. I am honored to be here with all of you today and look forward to your testimony.

Thank you, Mr. Chairman.

Chairman LEACH. Thank you very much.

I will now turn to our panel, which is composed of the Honorable Stuart Eizenstat, who is Deputy Secretary of the Department of the Treasury and is the leading Administration spokesperson on this issue and certainly an individual to which this committee is deeply in debt.

Our second speaker will be Otto Count Lambsdorff, who is the Special Representative of the German Chancellor for the Foundation "Remembrance, Responsibility, and the Future", who has devoted most of his recent life to this particular endeavor.

We will begin with Secretary Eizenstat.

**STATEMENT OF HON. STUART EIZENSTAT,  
DEPUTY SECRETARY, DEPARTMENT OF THE TREASURY**

Mr. EIZENSTAT. Mr. Chairman, I want to thank you and Members of this committee for holding this latest in a series of hearings. Your steady focus on Holocaust-related issues has helped elevate them in the moral conscience of the world, and the work of individual Members of this committee has given important support to our Government's actions in this area.

I have a very detailed statement which I would ask be put in the record and a separate statement on Austria and a communal property report.

Chairman LEACH. Without objection, so ordered.

Mr. EIZENSTAT. There are many issues here: art, insurance, communal property, Swiss bank settlements, Holocaust education. For purposes of my oral statement, permit me to focus on the German talks, Austria and the insurance issues.

I want to thank you for inviting my longtime friend and colleague, Count Lambsdorff, to join me on this panel. Count Lambsdorff is a dedicated friend of the United States, and of the U.S.-German relationship, and he has done much during his distinguished career to strengthen the relationship between our two great countries. In his current capacity as the Special Representative, he sits with me as co-Chairman of the German Foundation Initiative negotiations aimed at providing a measure of justice to forced and slave laborers and others who suffered at the hands of German companies during the Nazi era. It is evidence of the Ger-

man government's seriousness of purpose and sense of moral obligation that Chancellor Schröder has chosen a man of the Count's public stature and eminence to represent his country in these talks, and he has earned our full trust and the full backing of the German government and German industry.

I turn to the current negotiations on slave and forced labor and related issues. They are focused on the establishment and funding of the new German entity to be called the "Foundation for Remembrance, Responsibility and the Future." It will be the mechanism through which those who suffered as slave and forced laborers and those who suffered at the hands of German companies during the Nazi era can receive dignified payments.

Since your hearing last September, German industry and government agreed to raise their combined contribution to the foundation's capitalization to 10 billion German D mark, half from German industry and half from the German government. This was announced on December 17 in Berlin.

May I say that if one is looking for an international profile in courage, it would be Chancellor Schröder, who, in the midst of cutting 30 billion deutsche marks out of his budget in an austerity program, has contributed 5 billion deutsche marks on the public side to this initiative to make it possible. All the parties to these negotiations, the government of Belarus, the Czech Republic, Poland, Russia, Ukraine and the State of Israel, the Conference on Jewish Material Claims Against Germany, and the lawyers for the victims have accepted the 10 billion deutsche mark offer as the capped amount for the German Foundation and the sum that will resolve the lawsuits in the U.S. courts.

We couldn't have reached the agreement without the personal involvement and leadership of President Clinton and the Chancellor as well as senior officials in the U.S. and German governments, and without the attention that you and the committee have focused on this issue, Mr. Chairman.

A special thanks needs to go to the German President, President Rau. He has been a consistent voice stressing the moral aspects of this issue. He said on December 17, "I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering, and for the injustices done to them to be named injustices." He said, "I pay tribute to all who were subjected to slave and forced labor under German rule and, in the name of the German people, beg forgiveness."

This extraordinary statement provides assurance that the last word on this issue will not be money, but will be memory and moral accountability. Given the significance of his statement, I would appreciate being allowed to include the full statement in the record of today's hearing.

[The information can be found on page 185 in the appendix.]

Despite the critical importance of what was agreed to in Berlin on December 17, final settlement requires subsequent agreement on a number of still difficult and contentious issues, including equitable allocation of the 10 billion DM among various groups and classes of claimants, and still difficult issues about the substance of the legislation that the Bundestag will pass to bring into operation the German Foundation.



Count Lambsdorff and I agree that it is very important that what we call the "victim side" be actively engaged in finding the compromises necessary to ensure that all elements of the Foundation are appropriately funded. There will be, Mr. Chairman and Members of the committee, the following windows or doors within 10 million deutsche mark figure: one for slave labor; one for forced labor; one for insurance; one for banking; one for other injustices like medical experimentation; Kinderheim, children who were forcibly taken with their parents into forced labor; and then, importantly, a Future Fund for projects of tolerance and for social benefits for heirs of deceased forced and slave laborers.

I have proposed in this difficult allocation process a set of general principles: that slave and forced labor should have the highest priority in allocating Foundation payments, and that payments should include an inclusive category for personal injury and other cases, including, but not limited to, medical experimentation, Kinderheim cases and other personal injury cases involving German companies; that allocation be made for aryanized property claims against German companies; that there be an insurance section as well; that allocation shall be made for the Future Fund for the projects of tolerance, taking into account the heirs of forced labor; and that administrative expenses and legal fees should be paid from interest on the deposited funds from the German side.

The German Foundation will be established under German law. This is to be welcomed for two reasons: first, because it is the vehicle through which the German government will appropriate their half of the 10 billion deutsche marks, the other half coming from German companies; and second, because it will subject the Foundation to well-established oversight and accountability requirements that charitable organizations in Germany must meet, and these are every bit as stringent and transparent as those for charitable foundations in the United States have to meet.

I would tell the committee, frankly, that embodying the results of our nine-month negotiation in the draft legislation is sensitive, difficult and daunting. To add weight to the German government's commitment to deal fairly with all of the parties to the negotiation, at the last plenary we had just a few weeks ago in Washington, the German government delegation included representatives of five major Bundestag parties, all of whom traveled to Washington and took a helpful part in the discussion. I believe that the German government, and these members of the German parliament, fully recognize the importance of submitting draft legislation to the Bundestag that reflects the commitments and understandings reached during the negotiations and those necessary to bring legal peace which the German companies seek.

We are working to ensure that the Foundation's coverage is so broad that the U.S. will be able to file statements of interest in U.S. courts in all cases brought against German companies arising out of the Nazi era. This statement of interest, indicating that the German Foundation should be the exclusive remedy for all future claims and that the dismissal of these cases is in the foreign policy interest of the United States, is a central element in achieving the legal peace the German companies seek and deserve.

There has been a good deal of expectation about who will benefit. Let me emphasize a few points. This does not cover every single person wronged during the Nazi era, but it will cover those who worked for companies, German private companies, SS companies, the German government, like railway and other parastatals. And importantly, it will include those who worked for companies that no longer exist.

This is not simply a negotiation. If it were, we could have finished it much earlier. For the sixteen companies who are subject to the jurisdiction of the U.S. court, paying their employees would mean dealing with only a few thousand workers. We are talking about paying upward of perhaps one million people, and what has been, I think, such an important moral step by the German industry and by the German government is that they are willing to pay hundreds of thousands, hundreds and hundreds of thousands of workers of companies that no longer exist, that are defunct, SS companies, or companies that may exist but aren't subject to the jurisdiction of a U.S. court.

Americans citizens will qualify as much as those in any other country, and their applications will be processed by organizations in the United States so that travel to Germany will not be required.

In an important ruling that is part of our budget, we have allocated \$73 million over ten years in the budget just submitted. The President has decided that American taxpayers who receive benefits under this German program, including property as well as other compensation, will not have to pay any tax, and this will call for a clear statutory exemption which we will ask Congress to pass for Holocaust-related payments.

No racial, ethnic or religious group will get favorable treatment. A slave or forced laborer is a victim, whether he or she is Czech, Pole, Jew, Romani or any other nationality or religion. But it has been agreed that those who were slave laborers—the intention of which was to exterminate them through labor—as opposed to forced laborers, who were viewed as an asset of the German economy and indeed permitted such a huge standing army because they supplanted the Germans who fought on the front, that the slave laborers would be paid more, and rightly so, than forced laborers. But all should be paid dignified amounts.

Let me turn now to Austria. The entry of the far right Freedom Party into a coalition government with one of Austria's mainstream parties, the conservative People's Party, has caused great concern both here and in Europe. The fact that the statements of leaders of the Freedom Party have in the past failed to condemn intolerance and extremism and have attempted to explain away the Holocaust, understandably creates great concern here and in Europe. However, in the preamble to the coalition agreement signed by both parties, the new government has promised to uphold tolerance and human rights and to condemn discrimination.

We and our friends will be watching Austria closely to ensure that the government lives up to the preamble of the coalition agreement, and in so doing we will look at what the new government does as well as what it says. One important benchmark in this regard is how the new government will deal with unresolved Holo-

caust issues. In this regard I am pleased to report two positive developments.

First, this very day Austrian Chancellor Schuessel said, in light of the interim report of the Austrian Historians Commission, he plans to seek prompt compensation for former forced laborers. In addition, he announced the appointment of the former head of the Austrian Central Bank, Maria Schaumeier, as the head of a new office which will address forced and slave labor compensation, and she will be an interlocutor with me and my colleagues.

Second, our first discussions with Austrian officials in the last few days on proposals to address Holocaust issues were very positive. Secretary Albright and our Ambassador in Vienna discussed our concerns with the new government, and I have had discussions with Austrian leaders and officials on this matter. In Washington on February 7, I met with Ambassador Moser, Austria's Ambassador. During our meeting, we had an extensive conference call with senior foreign ministry officials in Vienna. We discussed the new government's commitments to tolerance and to addressing the difficult and painful questions about Austria's Nazi past.

I am pleased to note that my discussions have been reassuring. Austrian officials have since transmitted to me a position paper that provides a road map for addressing Holocaust-related issues over the next several months, and I would like that position paper to be part of this hearing record.

Chairman LEACH. Without objection.

[The information can be found on page 186 in the appendix.]

Mr. EIZENSTAT. In summary, the Austrian government says it will support—and this was the announcement today—open access to archives and Federal agencies and advocate a similar policy among non-governmental entities; that Austria's Historians Commission will continue to submit interim reports on all aspects of Holocaust-related issues. In this regard the government has taken note of the interest of survivor organizations for the adoption of interim measures that will benefit aging victims, particularly those who live in difficult financial circumstances in Austria. The Austrian government will encourage Austrian insurance companies to participate in the work of the International Commission on Holocaust-Era Insurance Claims chaired by former Secretary of State Eagleburger. In this regard the Austrian government looks forward to the results of the research effort that Austrian insurance companies are conducting into complex historical and legal questions.

The Austrian authorities will seek to improve the practical application of the 1998 art restitution law and encourage similar restitution steps among local and regional government bodies.

And finally, the position paper refers to the Chancellor's commitment regarding forced labor compensation and the appointment of a Special Representative to lead the Austrian team in talks and negotiations with other parties. The commitments outlined in the position paper constitute a good basis for the government to begin to address Holocaust-related issues and to confront its Nazi past. I plan to have follow-up discussions with Austrian officials shortly, and I will work closely with the Austrian government and survivor groups on this critical issue and look forward to keeping this committee in very close touch in terms of our progress.

The Holocaust is a compilation of crimes, and we have approached the issue on many fronts. These include art recovery, a subject on which you, Mr. Chairman, have taken an especially active role; recovering on insurance policies; recovering communal property for emerging religious communities, Jewish and non-Jewish, in central Europe. And I have a detailed report which I will submit with my testimony today on the difficult Swiss bank settlement that now, a year-and-a-half after an agreement, not one nickel has yet been spent for victims, and Holocaust education.

All of these would be worthy of separate hearings, but permit me to close by dealing with the insurance issue. You will be hearing from former Secretary Eagleburger on the progress of the International Commission on Holocaust-Era Insurance Claims later, but let me say the following: The U.S. Government has strongly supported this effort. The International Commission is expected to announce the launch of its full-scale claims and outreach program this very month. The ICHEIC claims process will use relaxed standards of proof in dealing with outstanding claims, and will ensure the opening of companies' files, the cross-checking of names of Holocaust victims, and further research into European archives to find names of potential insurance claimants. They have already tested their claims process on a fast-track procedure for existing claims.

Count Lambsdorff and I are working on the very difficult issue of how to mesh the process we are negotiating with the insurance efforts of ICHEIC under Secretary Eagleburger. Details of this important linkage are still being negotiated, but we expect that the German Foundation will recognize the International Commission as the exclusive mechanism for resolving insurance claims. The German Foundation on which Count Lambsdorff and I have worked will have a humanitarian insurance fund, which should be passed through to the International Commission for its humanitarian fund.

The U.S. Government has supported the International Insurance Commission since it began, and we believe it should be considered the exclusive remedy for resolving insurance claims from the World War II era. There is a MOU that was signed by five ICHEIC member companies, including one German company, Allianz. Those companies are cooperating with the Commission, and they deserve the "safe haven" from sanctions, subpoenas and hearings that the MOU guarantees them.

Proposed sanctions could undermine the work of ICHEIC. We strongly encourage all insurers that issued policies during the Holocaust era, that is all of those in Germany, all of those in Austria and in the Netherlands, including Aegon, to join the International Commission and to participate fully in its claims, outreach and humanitarian programs. ICHEIC is the best and most expeditious vehicle for resolving insurance claims from this period, and membership in the Commission provides the very real and, we think, only way of insuring that valid claims are paid and resolving international moral and humanitarian responsibilities. Payments made by anyone who joins ICHEIC or previous payments to international claimants would be credited so that double payments would not be required.

Mr. Chairman, thank you again. I know that even my brief summary of this is lengthy, but this is an extremely involved issue, and I can't tell you again how much I appreciate your leadership, nor can I have adequate words in our language to express my trust, confidence and appreciation for Count Otto Lambsdorff's really heroic efforts.

[The prepared statement of Hon. Stuart E. Eizenstat can be found on page 159 in the appendix.]

Chairman LEACH. Thank you, Mr. Secretary.  
Dr. Lambsdorff.

**STATEMENT OF DR. OTTO GRAF LAMBSDORFF, SPECIAL REPRESENTATIVE OF THE GERMAN CHANCELLOR FOR THE FOUNDATION "REMBRANCE, RESPONSIBILITY, AND THE FUTURE"**

Mr. LAMBSDORFF. Thank you, Mr. Chairman, Mr. LaFalce and other Members of this committee. I am honored to testify today before your distinguished committee on the Foundation "Remembrance, Responsibility and the Future" and related issues in the presence of a longtime friend of mine, Deputy Secretary Stuart Eizenstat. Mr. Eizenstat and I have worked together in mutual trust and confidence in the past, and now we are linked in such a way, Mr. Chairman, in his current capacity, that we are often taken for twins despite our obvious physical differences.

So to make sure there is no confusion from the start, allow me a few words to introduce myself. My name is Otto Graf Lambsdorff. I was born in 1926, so I am old enough to have witnessed the horrors of World War II and to have suffered physical damage from it. I lived through some of the events we are talking about today.

I served as Federal Minister of Economics for seven years and was a member of the German Bundestag, our national parliament, for more than a quarter of a century, from 1972 to 1998. I consider it my good fortune that I have been able to make promoting German-U.S. relations one of my major lifetime endeavors.

Last August, Chancellor Schröder asked me, a member of the Free Democratic opposition party, to become his Special Representative for the Foundation "Remembrance, Responsibility and the Future." I readily accepted, but I admit that at that time I was not fully aware of the complexity and difficulty of the challenge that lay ahead. Now I have good reason to believe that we are nearing a conclusion. I am confident that the first payments will reach their recipients within the course of this year.

Mr. Chairman, in an exchange of letters dated December 13 and 14, 1999, President Clinton and Chancellor Schröder expressed the understanding that a German foundation would be set up to "allow a successful and just solution for former forced and slave laborers and others who suffered at the hands of German banks, insurance companies, and other German companies during the Nazi era."

The letter from President Clinton concludes: "it will allow our countries to enter the new millennium together, determined to protect the inviolability of human dignity." Chancellor Schröder responded that "the agreement concerning the Federal Foundation constitutes above all a significant sign of humanitarian belief and

responsibility for the victims of Nazi persecution at the end of this century."

Some days later, on December 17, the agreement was verbally confirmed in the presence of U.S. Secretary of State Madeline Albright and German Foreign Minister Joschka Fischer by delegations from Israel, Belarus, the Czech Republic, Poland, Russia and Ukraine, as well as by the Claims Conference and groups of American plaintiff lawyers.

Immediately following that meeting, German President Johannes Rau took another significant step: He invited the participants of the seventh plenary meeting, including many survivors, to his Bellevue Castle residence. On behalf of the German people, President Rau solemnly asked for forgiveness. He declared that the victims' "sorrow will be acknowledged as sorrow and the injustice that was done to them will be called injustice."

The German people and German business and industry bear a special moral and historical obligation. I stress the word "moral" because I disagree with class action lawyers on the question of legal obligations. No amount of money could ever compensate for Nazi atrocities or for the cruel suffering of the principal victims of Nazi persecution. There can never be moral closure to the darkest chapter of German history.

But it is also fair to point out that the vast majority of recipients of payments from the Foundation "Remembrance, Responsibility, and the Future" have previously received public German compensation in some form or other, the only larger exception being victims of forced labor who did not return to their native countries after the War, but emigrated to third countries, in particular the United States.

Since its founding in 1949, the Federal Republic of Germany has tried to live up to its responsibility. As the first German Chancellor, Konrad Adenauer, said forty years ago: "Unspeakable crimes have been committed, and they demand restitution, both moral and material."

Mr. Chairman, let me briefly outline Germany's restitution and compensation programs as unprecedented in history as were the German crimes. They built on and expanded programs initiated by the Allied powers in Germany after the War.

In 1952, the Luxembourg Agreement between the Federal Republic of Germany, the State of Israel and the Jewish Claims Conference brought 3 billion deutsche marks, an enormous amount of money at that time, to the State of Israel and 450 million marks to the Claims Conference.

The Federal compensation law of 1956 is the cornerstone of German compensation to victims of racial, political and religious persecution. Over four million claims have been submitted under this legislation, which provides for monthly pensions as well as extensive health benefits for injuries suffered as a result of persecution. Today, over 100,000 survivors continue to receive monthly pensions averaging \$600 U.S. dollars. Most of the \$600 million annually provided under this law goes to residents of Israel and the United States.

Under the 1957 Federal Restitution Law, property remaining in Germany that had belonged to victims of racial and political perse-

cution was return to its former owners, and, in cases where owners had perished, to heirs or successor organizations, specifically the Jewish Claims Conference. For objects that no longer existed and thus could not be returned, compensation and indemnification were paid. In addition, global agreements with the Claims Conference were intended to cover Jewish property of unknown or uncertain origin.

In 1989, the fall of the Berlin Wall opened up the possibility of extending restitution and compensation rights to the residents of the former East Germany. I wish to remind you that the East German Communist state had lived with the myth of its own innocence and capitalist responsibility for Nazism. Let me stress that there is almost no victim's property in Germany which was not, or could not have been, reclaimed or compensated. And Germany is, as far as I know, the only country in the world which accepted the Jewish Claims Conference as the collective successor organization for heirless property.

In the early 1990's, it was the fall of the Iron Curtain that made possible the establishment of "Reconciliation Foundations" in Belarus, Poland, the Russian Federation, Ukraine and a similar institution in the Czech Republic, endowed with German funds totaling 1.8 billion German marks. Within the last decade, these foundations have paid an average of \$600 per capita to more than 1.5 million people. Most of the recipients were victims of forced labor.

The overwhelming majority of the German people support this German compensation policy which I have described.

Let me now turn back to my main subject, the Foundation "Remembrance, Responsibility, and the Future," to be equally funded by the German government and private enterprises.

Now that, as stated in the understanding of Berlin on December 17, 1999, a capped capital amount of 10 billion marks has been established for the Foundation, we have proceeded to the implementation phase. I take it as a positive sign that not one of our partners in the discussion cast a shadow of doubt on this agreement during our last plenary meeting in Washington at the end of last week, and Secretary Eizenstat just confirmed it once again.

Now, details need to be worked out, compromises have to be found, comprehensive legislation needs to be finalized and passed by the German Bundestag, since half of the funds are being made available by the German government with taxpayers' money.

Although the German Cabinet had already approved the Foundation bill in principle, it has postponed a final decision until March 1. This will enable the German government to take into consideration suggestions by German members of parliament and comments offered by our partners during the recent Washington plenary meeting as well as those it anticipates will come out of the forthcoming Berlin plenary meeting on February 17.

Some may ask why we cannot wait with the legislative process until all of the details, especially the question of allocation, have been wrapped up. The answer is that survivors and their organizations expect speedy payments and are understandably growing impatient with the process. This impatience is also shared by the German public. But let me assure you that members of all of the political parties have agreed to be open to amending the text of the leg-

isolation as we proceed with our discussion. That also applies to the question of fund allocation, once agreement has been reached.

Let me explain the principles of allocation within the Foundation. First, the largest part of the 10 billion mark endowment is intended for direct payments to victims, especially to former slave and forced laborers, most of whom live in Central and Eastern Europe. The German government feels that this amount earmarked for victims of slave and forced labor as well as for victims of certain other personal injuries, medical tests, the Kinderheim cases, and so forth, should be 7.7 billion marks. Former slave laborers who were interned in concentration camps shall receive up to 15,000 German marks; former forced laborers up to 5,000 German marks.

Here, I might add that what makes the Foundation fundamentally different from earlier individual efforts is that it also provides for payments to those who worked in enterprises that no longer exist—Deputy Secretary Eizenstat described that; those who were employed in the vast public sector of Hitler's Germany; and finally, those who worked for companies with no U.S. presence and would therefore be unable to pursue their claims in U.S. courts.

Second, we must ensure that sufficient funds are set aside to compensate for property, mostly discussed under the aryanization aspect. It is understood that most of these funds will be used by the Claims Conference for social and humanitarian projects. We propose to set aside 1 billion marks for property claims, including insurance and bank issues.

On the property side, we have to establish a claims process to cover the few remaining cases not yet addressed under German restitution laws, principally German property belonging to Jewish victims living in Eastern Europe. On the insurance side, some more thought has to be devoted to the way in which the International Commission on Holocaust Insurance Claims, chaired by my friend Secretary Lawrence Eagleburger, and the Foundation will interlink. It was, however, agreed in the presidential letter that the Foundation shall also cover insurance claims.

The third component, which is very important to German enterprises, the German government and the German public is the Future Fund, for which we also propose to set aside 1 billion marks. This part of the Foundation was contested by those who believe that all the funds should go directly to survivors. We are, and will remain, focused on preserving the values that we share with the American people. By doing so, we will also foster transatlantic relations and lay the foundations for future European and American generations to come. When the survivors have passed away, their memory and their legacy can be kept alive with projects financed by the interest that has accrued on the Future Fund's capital. The government of Israel as well as the Claims Conference have expressed their strong interest in this Future Fund.

Finally, 300 million marks are earmarked for administration costs, including lawyers' fees.

The allocation among the principal partners of our negotiations, who represent the vast majority of former slave and forced laborers, is a daunting task. This especially applies to the compensation intended for forced labor. The German government and political parties agree to follow suggestions made by legitimate representa-



tives of the victims, provided that sufficient reserves are set aside for forced laborers and other victims not represented in the talks.

Under the welcome auspices of the Polish and Czech governments, discussions are underway to come to a solution. The initial tentative results were not acceptable, because the proposed amounts would have dwarfed the Future Fund and the Property Fund and been made available at the expense of certain victims' groups. Nevertheless, the ideas and suggestions of participating Eastern and Central European countries are worth considering and discussing. It is therefore vital that all parties participate in the process of finding a mutually satisfactory solution to the allocation question, and I underline all parties.

I have said on several occasions and will repeat it today that the best possible solution to be found for the distribution of the funds will be the one that is agreed to by all parties and leaves them all equally "mildly dissatisfied." There can be no winners or losers. All the parties involved in the negotiations must develop a strong sense of fairness and a willingness to compromise. Otherwise, we will fail to reach the main objective of this endeavor, which is to heal wounds, to correct injustice left unremedied for too long, and to promote good relations with the partner governments.

Finally, Mr. Chairman, a word of legal closure. Let me again quote from President Clinton's letter of December 13: "The unprecedented steps the United States Government is willing to take underscore the desire both countries share in obtaining all-embracing and enduring legal peace."

From the very beginning of our talks, legal peace was accepted as a legitimate interest of German enterprises. The reason for this is that they cannot be asked to pay twice for the same historic acts—both into the Foundation and before the U.S. courts. We have agreed on what comes closest to legal peace under the U.S. legal system, and that is, Statements of Interest filed by the U.S. Government in support of German enterprises based on an executive agreement between Germany and the United States. In its Statement of Interest, the U.S. Government is prepared to declare that the Foundation should be regarded as the exclusive remedy for all claims against German companies arising out of the Nazi era and that both countries desire all-embracing and enduring legal peace to advance their foreign policy interests.

The U.S. Government is prepared to file these statements in all cases, both consensual and non-consensual, provided the claimant at least theoretically has access to the Foundation. This is where there are still problems to be resolved. The German government understandably wants to exclude property claims that are not based on racial persecution. To reopen a European reparation debate fifty-five years after the War could only have disastrous results for all nations involved.

Secretary Eizenstat proposed some wording for the executive agreement to exclude this possibility, which we still have to analyze. We also want to exclude property claims where the objects in question have not been transferred to Germany. Finally, property which has been or could have been the subject of compensation claims under German law has to be excluded, because Germany

does not want to reopen compensation procedures which have functioned for almost half a century now.

Mr. Chairman, believe me, I wish I had greater funds available for distribution, but 10 billion marks is what we got and what was agreed upon by all of the participating parties after long and arduous negotiations. It is a final step in the successful history of German compensation worth many times that amount. Together with my respected colleague Stuart Eizenstat, I shall continue over the next few weeks to try to arrive at solutions regarding allocation. The proposed allocations I have explained to you are not meant to be binding.

The German government made an extraordinary political gesture with respect to the victims when it decided to look at the bill once more after our next round of discussions in Berlin and to incorporate their suggestions. The best way for the Foundation to function is on a basis to which all the victims' groups can agree, and it is exactly that formula for which Secretary Eizenstat and I are striving.

Mr. Chairman, we are really trying to do our best and come to a fair solution, which is not going to be easy, and the two of us know that very well. I have the full confidence that together with Secretary Eizenstat we will create an atmosphere of readiness to compromise and of readiness to accept solutions as fair as possible, and I would like to once again express my gratitude that your committee has taken an active interest in these endeavors. That is helpful. And once again, thank you very much for your attention.

[The prepared statement of Dr. Otto Graf Lambsdorff can be found on page 188 in the appendix.]

Chairman LEACH. Thank you, Dr. Lambsdorff.

It is not the norm for officials of foreign governments to testify before committees. The fact that you have chosen to do is appreciated very much by the committee, and your government's cooperation in this regard is also very much appreciated.

I would like to make two brief comments before beginning. One, because Secretary Eizenstat referenced the country of Austria, although the item I am going to mention is principally the subject of tomorrow's hearing, I think it is of importance to note that within this last week, a North Carolina museum voluntarily has agreed to return a painting to an Austrian family, and I raise this for two reasons. One, the painting is an extraordinary painting by Lucas Cranach, the Elder, entitled "Madonna, Child and a Landscape." It is being returned without legal action of any nature being brought against the museum, but based upon documentation that has been presented to the museum.

Second, it underscores the United States' accountability in certain of these issues. And so as we as a country are somewhat presumptuously looking at other countries, we are also taking accountability of our own, and I think that is something that this committee ought to stress, as we also should stress our deep respect for the North Carolina Museum of Art which made this decision voluntarily.

Mr. EIZENSTAT. I mentioned that very issue in my prepared remarks, and I attribute a significant part of the reasons for that extraordinary action to the high principles that we agreed to at our

Washington conference in December 1998, which you chaired that portion of and which you so mightily contributed to. So you ought to feel a personal sense of satisfaction.

Chairman LEACH. Thank you.

The second issue I wanted to raise just briefly, and again it is principally the issue of tomorrow's hearing, but because, Secretary Eizenstat, you raised it, the issue of insurance and what companies should or should not participate.

I share your strong belief that all companies of the countries that you have indicated should participate. One of the companies, the one that you have mentioned, has a unique concern that I wonder if you want to comment on, and it is a concern based upon level of participation. You have indicated that prior compensation should certainly be considered, and that is common sense, but they argue that the Commission has indicated to them that they will be apportioned accountability based upon their share of the American market which was garnered after World War II, and that they believe their share should be based upon their share of the market in Europe in the occupied territories and relative to claims.

I just wonder if you would care to opine on that subject or whether you think that is a controlling issue that is left up to the Commission? I will only say that this particular company's concern is that the other insurance companies on the Commission will have a vested interest in a formula that disadvantages them, that is this company to the advantage of their companies, and they could be confronted with literally half the obligations even though their market share at a particular time was less than 5 percent.

Now, I do not know if that is a credible concern, and I am just wondering if you would care to opine on that.

Mr. EIZENSTAT. I have met with the Prime Minister of the Netherlands during the Stockholm conference and with the representatives of Aegon, and this is a concern that they expressed.

I want to make it very clear that the U.S. Government feels that Aegon should participate in the International Commission.

Chairman LEACH. And the committee shares that concern.

Mr. EIZENSTAT. Number two, the concerns which they have expressed ought to be a matter for negotiation with Chairman Eagleburger and the key representatives of the Commission so that they can come in in ways that are mutually satisfactory and not disadvantageous.

Chairman LEACH. Fair enough.

Let me then turn to several of the subjects that are preeminent in this testimony today. One relates to the negotiations which have occurred between our Government and the German government, and then the translation of some of these negotiations into statute, and then the timing of which payments may become available.

Dr. Lambsdorff, can you give us assurances on a time period when you think these payments will be made available? And finally, have you reached decisions based upon the allocation of resources versus various categories of claimants?

Mr. LAMBSDORFF. Mr. Chairman, I am not in a situation to give assurances when the first payments can be made. I can only say that we work and we hope for and expect the first payments can be made in the course of this year. Why can't I give you a more

certain answer? First, the German legislation has to be finished. Members of Parliament, as Deputy Secretary Eizenstat has mentioned, they have been here. They want to shorten the process as much as possible, and they hope that this bill will be passed before the summer recess. That means at the end of June at the latest.

However, we have to look to the fact that in two cases, you will need some time. The first one is that you have to have a notification period because there are classes, as we know, and how long will that take. You know in the Swiss bank case, it has taken a long time. And because we do not know how many applicants will be there, it will be very difficult to pay out money and then finally find out we have paid out too early and too much.

The second thing is that we need some time to give to applicants to apply to the Foundation, and the Foundation has to be set up. The Foundation needs a board of trustees and management and things like that.

I do hope very much once again that all of us do what all of us do feel is necessary, and we come to payments, perhaps part of the overall amount in advance as soon as possible, because the average age of the survivors is close to 80, and as we were told in one of our plenary meetings, 10 percent of these survivors die annually. To avoid any misunderstanding, this would not mean that we could save money just by a demographic factor. That would be a very ugly development, because we have said from the start, from the beginning of this Foundation, February 1999, every survivor who dies, his heirs will be entitled to a compensation payment. So we have ruled out the possibility of saving money just by using time.

Mr. EIZENSTAT. I would add just one final point. I think all of the Members of this committee will appreciate the fact that Bundestag is, like Congress, an independent legislative body with its on prerogatives. The importance of having had on a regular basis five representatives of all of the major parties and factions is that this is an unusual piece of legislation because the legislation is, in fact, incorporating agreements that are necessary to also achieve legal closure in lawsuits.

Count Lambsdorff has noted in our context that it would do precious little good to go through the whole legislative process and then find that the statute was deficient because it didn't have a broad enough scope to permit the U.S. Government to use its Statements of Interest in all cases, and this is one of the issues that is most difficult to negotiate and that is most critical from our standpoint to make sure that the Bundestag understands and includes in its legislation. So its scope has to be such, as the Count said in his opening remarks, that there is at least a theoretical possibility of every potential claimant having recovery, and that then gives us the chance, the opportunity, to file Statements of Interest in all potential cases.

Chairman LEACH. Thank you. I have more questions, but I think it is fairer to the panel to move to Mr. LaFalce.

Mr. LaFalce.

Mr. LAFALCE. Thank you very much.

First of all, I want to join the Chairman in his remarks in giving special thanks to you, Count Lambsdorff, in coming before our com-

mittee to testify. It is very gracious of both you and your government.

Let me pick up where the Chairman left off, Mr. Eizenstat. The primary focus has been with respect to legislation that needs to be enacted by our counterpart, the German Bundestag. Then you were underscoring the necessity of their actions being broad enough so as to make meaningful the Executive Branch's filing of a Statement of Interest. But let's look at the flip side of that coin. To what extent is congressional action either necessary or desirable to bring legal closure, and to what extent is the simple filing of a Statement of Interest by the Executive Branch of Government adequate in and of itself to bring legal closure? To what extent would this be binding on a potential claimant in a United States court, assuming that the court would not rule that this was a political question as opposed to a justiciable legal question?

Mr. EIZENSTAT. First of all, I would say, Mr. LaFalce, that we do not believe that congressional legislation is essential at this point. We think it would potentially further delay the process, and we are very anxious not to repeat the mistakes of the Swiss settlement, which was agreed to in August of 1998 and there is still no payout. We want this process to be done as an administrative process and for the cases to be dismissed and payments to commence.

With respect to the filing of the Statement of Interest, the best we can say is that the German companies and the German government are satisfied that they get sufficient security from our filing such a statement. Even though there may not be any guarantee that a court will dismiss a case, German companies and the German government are willing to agree to this solution. So this has been one of the most difficult issues. We have had law professors from Harvard and elsewhere working on this. It is the most unusual situation because the German companies decided, for their own reasons, that they did not want a traditional class action settlement, and, quite frankly, seeing how long a class action settlement in the Swiss case has taken, one can understand at least some part of the reason for that. So they feel sufficient security, and if they do, we do.

We have worked very hard on this, and we think that the courts will listen to the position of the U.S. Government in this case, particularly under extraordinary circumstance. I can't underscore this enough, the people covered are far broader, infinitely broader, than any lawsuit in the United States or any collection of lawsuits in the United States could possibly bring. And the reason is very simple. If there were 3,000 lawsuits filed in the United States, they could only subject to jurisdiction those German companies who, number one, employed slave and forced labor; and, number two, still exist; and, number three, do business in the United States sufficient to subject them to court jurisdiction.

There are only sixteen of those companies who have been sued in all of these some fifty cases. If you took all of the former slave and forced laborers of those sixteen companies still surviving, it would number in the few thousands. This process, this Foundation will cover not only hundreds of thousands, but perhaps over a million people, and therefore we have felt that it is more than a good tradeoff to be willing to file these Statements of Interest because

it covers so many more people than could ever have access to any potential recovery through many years of litigation.

Mr. LAFALCE. Mr. Eizenstat, I know that the Statement of Interest would include far, far many more people. I am just not sure myself what the legal validity of the filing of a Statement of Interest is. I really just don't know. I am not making an allegation one way or the other. I suppose if it is good enough for those who might have a suit brought against it, maybe we ought not raise the question.

Mr. EIZENSTAT. It is a perfectly valid question, and it is one which has been a prime issue on our agenda. Suffice it to say that the Statement of Interest, we think, is sufficiently strong that the German side believes that it will be adequate.

Mr. LAFALCE. See, I am dealing with some cases involving Indian property claims that I thought were settled 200 years ago, 150 years ago, 100 years ago, 50 years ago, and so forth. All of a sudden we find they are not settled. It comes up again, so let me go to a different train of thought, and that is the adequacy of the settlement.

I remember meeting with the German ambassador to the United States, late September or very early October, and with the Chairman of the Deutschbank, and so forth, and at that time they were both saying that the latest offer would be the final offer. It is my recollection that you were a little dissatisfied with what you perceived to be the final offer.

Go back to September, and what was your position at that time, and what was the position that was articulated, and then what is the final position which has been agreed upon?

Mr. EIZENSTAT. The original numbers that were discussed with me a year ago privately—and subsequently made public—were around 1.5 billion deutsche marks. That then went to 4 and to 6 and then to 8 and then to the final figure, 10 billion deutsche marks.

Mr. LAFALCE. Going back to September/early October, what was the demand offer at that time, and what was the final resolution?

Mr. EIZENSTAT. The original offer by the plaintiffs' attorneys was \$28 billion, which would be over 50 billion deutsche marks. That was the initial offer. That went down then to 25 billion deutsche marks, and then to a range of 10 to 15, and ultimately to acceptance of the 10 billion deutsche marks that the German side offered.

Mr. LAFALCE. Were we always using deutsche marks as the language as opposed to dollars?

Mr. EIZENSTAT. Yes, except the first plaintiffs' offer was expressed in dollars, but after that all of the other offers were in deutsche marks.

Mr. LAFALCE. I thank you.

Chairman LEACH. Thank you.

Mr. Lazio.

Mr. LAZIO. Thank you, Mr. Chairman. Let me begin by thanking you for your continued focus on this issue. I think you have done as much as any Member in the public arena to help focus congressional attention on the issue of justice and fairness for those Holocaust victims who are still alive and their heirs.

And I also want to thank Secretary Eizenstat, who has been a phenomenal representative for our Government in helping to negotiate and helping to inspire us to take the moral high ground on this very important issue. He has been an exceptional help on the Holocaust Assets Commission, which I had the pleasure of sitting on.

I would like to ask a couple of brief questions. First of all, if I might, let me ask you, Secretary Eizenstat, what happens if the legal peace which you have negotiated frustrates those plaintiffs who are not qualifying under the Commission standards and the Foundation standards? What happens if some qualify and some do not; what happens to those plaintiffs?

Mr. EIZENSTAT. First of all, we hope that the scope of the foundation, Congressman, would be broad enough so that all those who were injured by German companies in the categories that we have talked about, slave and forced labor, insurance, property, medical experiments would have a theoretical opportunity to recover. Standards of proof will be relaxed, and so there ought to be a very, very significant percentage who will qualify. There may be some who will be turned down because they don't qualify at all. If they wish to bring suit they can bring suit. We would then file our Statement of Interest, and it would be up to a court to decide.

Mr. LAZIO. Would that last class of individuals which you reference include the victims who died before February 16 of last year?

Mr. EIZENSTAT. Heirs are to be covered in a general way through the Future Fund. That is, there will be social programs like educational scholarships and the like for heirs, number one.

Number two, heirs will be able to recover on the property side. If there is a real insurance policy, and they are a beneficiary or potential beneficiary or if, there is a piece of real property, they will be able to recover. So it is the heirs of slave and forced laborers who would go through the Future Fund, but would not get direct compensation.

As Count Lambsdorff said, for all eligible claimants who die after February of 1999, their heirs would be able to fully recover for them because that is what the initiative announced.

Mr. LAZIO. Let me ask Count Lambsdorff, and I very much appreciate your testimony, my question has to do with the timing of the corporate contributions to those corporations which are participating with the Foundation, this initiative of 5 billion deutsche marks. It seems to me that the timing of it is quite important, because the earlier we have the money, the more interest that will accrue, and the more money, therefore, the Foundation will have to cover administrative costs and potentially legal costs. So is there a time line that has been agreed upon?

Mr. LAMBSDORFF. Yes. The German Ministry has said that they will collect this 5 million deutsche marks latest the end of April.

Mr. EIZENSTAT. May I just say that we are very hopeful that will be reached and that could then be put in an interest-bearing account so that it earned interest, and that interest could be used to pay administrative expenses and negotiated legal fees.

Mr. LAZIO. Let me just ask about the unpaid insurance claims. Aegon, which now owns Transamerica, has been reluctant or has

refused to join ICHEIC, and I am wondering if you can give us some feedback as to why they are refusing and what else beyond the boycott, which I guess has been announced, we should be thinking about to try to broaden the scope of those people who are participating?

It seems like from what I am hearing also that we are having some particular reluctance among Dutch companies to join, and I wonder if you can comment on that.

Mr. EIZENSTAT. Obviously they will have to speak for themselves, but as I understand the concerns, they are based upon a meeting that we had with the Dutch prime minister. Let me say the following: First, that the United States Government believes that it is very important that Aegon, all Austrian insurers, and all German insurers join ICHEIC. It is the best mechanism and vehicle for resolution of insurance claims.

Second, Aegon indicates that it has reached a settlement of its insurance claims with the Dutch Jewish community which it feels is inclusive. They also are concerned, as Chairman Leach indicated, that some of the terms of their entry into ICHEIC might in some way disadvantage them relative to the other five European insurers because of how market shares will be calculated. And our response to that is that should be a matter of negotiation, and indeed it is something that would be negotiated hopefully in a way that does not disadvantage them, but permits them to participate without in any way having to pay twice or providing other disadvantages. That is something that in the end Chairman Eagleburger will have to work out with them, but they ought to give him the opportunity, and see if a mechanism can't be arrived at where they can join to the mutual satisfaction of ICHEIC and Aegon.

Mr. LAZIO. Is Aegon/Transamerica now refusing to negotiate?

Mr. EIZENSTAT. Well, they are refusing to participate in ICHEIC. I believe there have been some discussions with Secretary Eagleburger, but they have not yet reached a point where they feel comfortable joining. I would hope that those negotiations could be accelerated, and we could deal with senior officials at Aegon, and that they would be able to participate in ways that they found satisfactory.

Mr. LAZIO. Is it fair for me to assume that the Dutch government could be more engaged in having a dialogue with some of these reluctant companies that clearly have responsibility to participate?

Mr. EIZENSTAT. Well, first of all, in terms of reluctant companies, we don't have any German insurer with the exception of Allianz. It is very important that the other German insurers participate. We have no Austrian insurers. I read the statement that Austrian Chancellor Schuessel from Austria made today, which includes a statement that they will now urge Austrian insurance companies to participate in the Eagleburger commission, which we take to be very important and hope that they will do so.

Third, with respect to the Dutch government, I met and Mr. Singer and Mr. Taylor from the Claims Conference met with Prime Minister Kok, Prime Minister of the Netherlands. I think he is engaged, but at the same time he wants to see whether his company feels that they are going to be in any way disadvantaged. We think that they won't be disadvantaged, and we think that it is very im-



portant that they participate and we have communicated that to the Dutch government.

Mr. LAZIO. I think the results will reflect the amount of effort.

Mr. EIZENSTAT. I hope that the results will be positive and that they will join.

Mr. LAMBSORFF. I would like to add some remarks about the situation on the side of the German insurance industry.

As Secretary Eizenstat said, there is only one company which is a member of ICHEIC. That is Allianz. It is the biggest one. It is one of the founding members, one of the sixteen founding members of the Foundation, and they are in a situation that they do not know what do we have to pay into the humanitarian fund of ICHEIC, and what is left, what can we pay into the humanitarian fund of the Foundation or into the fund generally. This has to be clarified between Chairman Eagleburger on one side and the Foundation and our efforts on the other side.

The ICHEIC process is related to claims. These claims have to be paid. It is related to search for claims for unpaid policies. This can be extremely expensive, and it can be as expensive as Swiss banks looking for dormant accounts. It is much too expensive, but that is another issue. That has to be avoided. At least the company would like to know how much money has to be put aside for that, and how much money do we have to pay into the humanitarian fund of ICHEIC. And we and the Foundation, of course, need the German insurance industry to pay for the 5 billion which has to be put up on the German business side. So this is still not clear. It has to be cleared, and it must be clear, and I hope it can happen.

I got a telephone call just this morning from the German insurance business. They said, "We want to know what do you expect us to do? We want to be a member of the Foundation, but we don't want to pay twice for the same facts." That is the problem.

Mr. LAZIO. The measure is are the companies engaged in negotiating in good faith? Are they interested in coming to an agreement, or are they avoiding responsibility? I think that is what we must look at.

Mr. LAMBSORFF. Yes, but all of the companies, all of the German companies, are interested in being a member of the Foundation. As long as they do not know what do they have to expect with ICHEIC, they are hesitant about joining ICHEIC.

Chairman LEACH. Thank you for those very important questions.

Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman. I want to express my appreciation to the Deputy Secretary, who has done extraordinarily good work here, and to the German government for this kind of cooperation. I do want to note that I think this is also a useful time to talk about the roles of legislative bodies. My recollection is that when this committee and the Senate counterpart and others began to look into this, there was some skepticism that matters of this international delicacy were appropriate for a bunch of politicians to deal with. And I think, in fact, the initiatives that were taken vindicate the role of a legislative body in a democracy. Obviously when it comes to the specifics, to negotiating how this works out, it is not our role. But I do think that we are entitled as an institution to

reflect on the favorable consequences of the intervention, and I should say that people should understand that.

You mentioned Aegon and the Dutch government, and they should understand that as progress is made with many of the potential people who have to contribute, pressure is going to increase on those who are left. I was pleased to hear the Austrian government's statement. Maybe it shows that the EU's very prescient response to the recent elections in Austria had some impact and maybe—who is it from the Netherlands that is skiing in Austria right now, is it the Queen or the Princess? Maybe she will talk to the Austrian government and come back to the Netherlands inspired by the Austrian example and urge her countrypeople to do the same thing. But people should understand that there will be increased attention on those.

Let me ask Mr. Eizenstat one question which stems in part from my Judiciary Committee role, and I notice you say with regard to the Swiss settlement that Judge Korman will be having a hearing on the 15th. I guess he was temporarily delayed because he had to straighten out the Republican Party's nomination process in New York. He is the judge who brought democracy to the Republican Party of New York, and now he can go back to bringing justice to some extent to the victims of the Holocaust.

If this goes on schedule, does that mean—you say conclude matters by June. Does that mean payments will start in June?

Mr. EIZENSTAT. Two points, Congressman. First, in my opening remarks I paid very strong tribute to the role of the Chairman and all of the Members of this committee for having focused attention on it, and I think it is a vindication.

Mr. FRANK. I appreciate that. I just want to make a note that it wouldn't be a congressional hearing without a lot of repetition.

Mr. EIZENSTAT. Second, with respect to the Swiss settlement, the judge and the special master, Judah Gribetz, with whom I have been in touch, are concerned about the need for the Swiss government to provide a refugee database to help them make a match. They also need a frozen asset list of German companies so they can make an informed decision regarding how much of the settlement goes to slave laborers, and they need to be able to publish the names of newly discovered accounts so potential claimants know whether they should file a claim.

The special master is concerned about getting adequate cooperation from the Swiss authorities. Last night I called Swiss Ambassador Defago, and it is our very strong view that this information needs to be forthcoming as soon as possible.

It is the hope that there will be a fairness hearing and that a distribution can be made sometime by this summer.

Mr. FRANK. Thank you. I assumed that the Swiss government monitoring this proceeding will understand that request is strongly seconded by the Congress, and we would hope that there would be some response.

I also appreciate that because one of the things that we deal with in other contexts is the choice that we have to make between class action proceedings and setting up in some cases separate or parallel administrative proceedings. So it does sound like you are saying that the difficulty at this point is not something inherent to

class action procedures, but rather a problem which would have existed whether it was class action in terms of Swiss government cooperation?

Mr. EIZENSTAT. No, I would go further.

First, let me clarify that we hope that the Swiss authorities will act favorably on the Volcker recommendations pertaining to the publication of the names of 25,000 account holders that have a strong probability of being related to victims of Nazi persecution and the consolidation of databases, which are now in fifty-nine separate banks, to facilitate the process of matching names of account owners to those who died in the Holocaust.

With respect to the class action settlements, this has taken an inordinate amount of time in the Swiss case. The amount of time to try to notify a class, to try to have a fairness hearing has been, in my opinion, inordinate.

Mr. FRANK. So the class action procedure as opposed to the procedure that we are working with?

Mr. EIZENSTAT. The class action procedure—and we said this to the German companies from the start—would give them the greatest assurance of legal closure. Once the class is certified and the judge agrees it is fair, that is the end of it. You don't have to worry about Statements of Interest, and we said that. For whatever reason, the German companies didn't wish to have that, so we worked on this mechanism. In the end this mechanism will be more expeditious.

Mr. FRANK. So starting later, it may end sooner.

Mr. EIZENSTAT. I believe it will. Once these cases are dismissed, and they will be dismissed as soon as we can get agreement on the Bundestag legislation, then the claims period, which I think, Count, in the current German draft, will be eight months for people to file claims. Once that claim period is over, immediate claims can be paid, and indeed we are looking at some way of advance payment.

Mr. FRANK. I will close. That is one advantage that might come out of it. We have almost a case study here, not deliberately set up, but it worked out that way, where a similar problem involving large numbers of people was handled in a class action suit on the one hand and an administrative-type procedure on the other.

Mr. EIZENSTAT. And there is one other factor, frankly, and that is the Ortiz decision in the Supreme Court which complicated the ability to certify a class in these sort of mass damage cases.

Mr. FRANK. Was that the asbestos case?

Mr. EIZENSTAT. Yes.

Mr. FRANK. Thank you.

Chairman LEACH. Thank you, Mr. Frank.

Before turning to the gentleman from California, let me add an aspect of Mr. Frank's observations, and that is the role of democracy in this circumstance. We have with regard to the Swiss settlement a very awkward situation where the Volcker Commission has arrived at some 54,000 names of which some 25,000 appear to be likely Holocaust-related. But names lack meaning if they are not made public, and so it is a Catch-22 of rather extraordinary dimensions. One aspect of legislative bodies and the precept of democracy is a strong vested interest in transparency. Truth, to be meaning-

ful, must be public truth, and this committee would strongly urge the Swiss government to move.

Mr. EIZENSTAT. I appreciate that support, Mr. Chairman, because we see no reason why after fifty years there should be any objection to the public release of refugee names and frozen assets. They are necessary for the court in the Volcker process to be perfected.

Chairman LEACH. The gentleman from California.

Mr. ROYCE. Thank you. I thank you, Mr. Chairman, for the focus of this hearing today and for the focus of the hearing three years ago that over time, with the assistance of Chairman Volcker, brought some measure of justice and resolution to a problem that had existed for many years, and now several hundred thousand family members of the victims of the Holocaust have received some measure of compensation for the money that ended up in bank accounts in Switzerland.

One of my hopes, Mr. Chairman, as we move forward we can also look at the funds that have disappeared from General Abacha in Nigeria, President Mobutu, President Sharif, and see if we can get closure on those monies transferred overseas.

But I particularly applaud you for this hearing today and for your efforts. I want to thank Secretary Eizenstat and Dr. Lambsdorff for their efforts now to try to bring some measure of justice in terms of slave labor and in terms of forced labor. And one of the questions that I would have is is there any reason to be optimistic that the German Foundation Initiative could be so all-inclusive as to resolve of the remaining Holocaust-era disputes in the form of a comprehensive settlement, including potential insurance claims? I would ask that of Secretary Eizenstat.

Mr. EIZENSTAT. Yes, I think there is reason to be optimistic because I think the German Bundestag members, the German government, Count Lambsdorff, and the German companies recognize the importance of comprehensively covering all potential claims so that our Statement of Interest can be comprehensive.

Mr. ROYCE. What are the impediments to including insurance claims in the German Foundation Initiative?

Mr. EIZENSTAT. Insurance claims is one of the most difficult issues. We are looking at ways in which insurance claims can be dealt with in ways that are fair to the 10 billion deutsche mark settlement, but at the same time assure that each policy that exists will be paid. This is very, very complicated because there is some question about whether the claims are inside or outside of the Foundation amount. And we believe that the crucial thing is that everybody who has a real policy should be paid.

Now, with respect to German insurers, we should not be talking about a great deal of money because, as the Count said in his opening statement, Congressman Royce, the German government passed a law in the 1950's which required property restitution, and most, if not all, insurance policies have been paid. I am sure that there are some which have not. There is a complicated issue with respect to a subsidiary of Allianz called RAS, which was acquired by Allianz in the 1980's, which Allianz had no relationship with during the War, but which wrote a good number of policies in Cen-

tral Europe, and the question of how to handle that set of policies is the most difficult and the most daunting.

Mr. ROYCE. Would the United States involvement in the German Foundation Initiative bring a treaty-level status to the comprehensive agreement?

Mr. EIZENSTAT. No, sir. There will be an executive agreement which will state our understandings of when and under what circumstances we file our Statement of Interest, but it will not rise to a treaty.

Mr. ROYCE. I thank you, Secretary Eizenstat, again for all of your good work.

Mr. Chairman, again thank you for the focus of this hearing here today.

Chairman LEACH. Thank you, Mr. Royce.

Ms. Waters.

Ms. WATERS. Mr. Chairman, I would like to thank you for your leadership in organizing this hearing and keeping this Congress in touch with this issue. This is very important.

I would also like to thank Dr. Otto Lambsdorff for his testimony. You were testifying when I came in today, and I have gone over your testimony here, and I would like to commend you for all of the work that has been done to bring us to this point.

And, of course, Stuart Eizenstat is one of my favorite people in the world. I think he is one of the smartest people I have ever met, and I have known him over the years, and I think that the work that you are doing with this is so commendable.

Let me just ask, as I sit here, of course, and listen to the work that has been done and recognize how much time and effort has been put in and understand the work of the Independent Committee of Eminent Persons, I am wondering how to take this format and use it to deal with slave labor of my ancestors here in the United States. It is very strange to sit here and be forced to have to think about that without wondering what I could be doing that would lead us to a point to acknowledge slave labor in the United States and reparations.

Reparations in the African American community have been basically condemned as a radical idea, and many of those, including John Conyers, who has tried so hard to get this issue before the Congress, have literally been ridiculed.

Let me just ask in terms of possibility of support inside Treasury, is there a possibility of—is there a unit of some kind that deals with this issue of persons who dedicate some time to it?

Mr. EIZENSTAT. There is a unit in the State Department which is headed by Ambassador Bindenagel that deals with Holocaust-related issues. There is no unit in any agency that I am aware of that goes beyond that, but it was set up for this purpose, and it deals, Congresswoman, with everything from art, to communal property, to insurance, to banking, to slave labor, to Swiss cases, to the Austrian situation, anything that is World War II-related.

I would note that with the exception of property itself, the payments that would be made here to claimants are to surviving claimants, those who actually were alive, because of the recognition of the difficulty of going back and paying what could be tens of millions of heirs of people who died before. But in terms of a fixed of-

fice, there is one for Holocaust issues, and it is in the State Department, and I help direct that office with Ambassador Bindenagel.

Ms. WATERS. How many people are dedicated to it? How many people are in the office?

Mr. EIZENSTAT. There are four full-time people.

Ms. WATERS. Four full-time people. Is this something that we did—is this a separate appropriation, or is it in the office with the support for it allocated in the overall general budget?

Mr. EIZENSTAT. It was established when I was Under Secretary of State to work directly with me, and it was created out of existing State Department funds. There was no additional appropriation sought. It has a relationship to what we call EUR, which is the European bureau in which it is lodged, and it is these career Foreign Service people who work for the State Department. They weren't brought from outside for this purpose.

Ms. WATERS. I see.

Mr. EIZENSTAT. One of the reasons that it is in the State Department, and one of the reasons that it is in EUR, is because the issues—the Austrian issue, the German issue and the Swiss issue, affect our relationships with those countries as well as have an impact on U.S. citizens.

Ms. WATERS. Is it possible that there could be a role inside Treasury on the domestic slave labor issue?

Mr. EIZENSTAT. That is something I couldn't speculate on. It has not been brought to our attention at this point, and I am now at Treasury, of course, but I took this portfolio with me, and I continue to work with the office at State as if I were there, but I couldn't speculate on whether we could go beyond that to cover other problems.

Ms. WATERS. Mr. Chairman, do you think that perhaps this is an issue that we may develop in this committee to begin to get some kind of closure on, some hearings on?

Chairman LEACH. The gentlelady raises an extraordinarily profound subject, and the Chair will take it under advisement and seek the counsel of other Members on it. But the profoundness of the issue that you raise in an American historical setting as well as in the human rights setting is deep.

Ms. WATERS. Well, I think that the work that has been done on this issue is absolutely superb and wonderful, and I support it 1,000 percent, and I want us to do everything that we can to get justice for all of the victims of the Holocaust in every way possible for all of those assets that were stolen, taken, hidden, what have you. I want everything that can be done to be done to reclaim them. I want people to be compensated.

I think the slave labor issue is a little more complicated, but it certainly, for me, forces me to have to think about the slave labor of my ancestors and my people. And, of course, I am sure that the question will be raised by all of us in the Congressional Black Caucus of, and what are you doing on the issue of domestic slave labor? And so I raise it here so we may begin to collectively think about ways that we can at least bring some closure in some way with the support of Government in some way, and I thank you for your response and your consideration. Thank you very much.

Chairman LEACH. Thank you, Ms. Waters.

Mr. Ose.

Mr. OSE. Thank you, Mr. Chairman.

I want to add my compliments to the gentlemen here who have been so involved in the implementation, the negotiations and soon-to-be implementation of this agreement. I happen to think this is one of those things that Congress gets to exercise oversight on, and I think what you see here is a true interest in seeing this process brought to conclusion successfully.

This would not have happened without your leadership, Mr. Chairman, and so I want to add my compliments to those which have been previously offered.

I do have one question, and that is relative to the 10 billion marks that we are talking about being the principal of the Foundation, how does that compare to the overall level of claims?

Mr. EIZENSTAT. That is a good question. I think it is impossible to say, because other than the lawsuits, no individual has made a particular claim with respect to these companies.

Perhaps the best comparison I could make is that going back to the 1950's, and through the 1980's and into the 1990's, a number of the German companies who are participating in this effort established their own compensation funds for their surviving employees. As I mentioned, this is a small fraction of those who will be paid by this Foundation.

While those payments have varied, many of the companies have paid around 10,000 deutsche marks per person for their employees on a one-time basis.

Mr. OSE. I am not quite sure that I understood whether or not—are you saying that you do not have empirical data today that would lead you to offer a number in terms of what the absolute amount of claims might be relative to the amount in the Foundation?

Mr. EIZENSTAT. It is our hope, as Count Lambsdorff said in his opening remarks, and I would like him to supplement this since in the end the German government will be paying this, that the hope is that those who fall into what we have called the slave labor category will get something in the order of 15,000 deutsche marks per person; that is, \$7,500 or so. And with respect to those who fall into the forced labor category—and we estimate, Congressman Ose, that there are around 240,000 survivors in the slave labor category, roughly half Jewish and roughly half non-Jewish—with respect to the forced labor category, our numbers are less precise, 750,000 to a million or more. And here it depends exactly on how the foundations to which this money will be paid decide to allocate the money.

Count Lambsdorff mentioned perhaps 5,000 deutsche marks per person for this, but we won't know the amount per capita until two things are determined. First, this claims period ends and we know how many people file claims saying that they fit into this forced labor category. We have used experts, and we have had conferences in Florence. We think that there is somewhere between a half-million and a million people in this category, most of whom are in Central and Eastern Europe, most of whom are non-Jewish.

The second and equally important factor is one of the most difficult issues we had to overcome, and which we have overcome, is that a number of countries like Poland insisted that their forced

farm workers, agriculture workers, be paid. Understandably, German corporations said it is one thing for us to pick up the tab for defunct German industrial companies, but we are not going to pay agricultural workers. The German government was also reluctant to do it, and the way that we have compromised this issue is that allocations will be made from the German Foundation to five reconciliation foundations, one each with Belarus, the Czech Republic, Poland, Russia and the Ukraine. They will have discretion, if they wish, to pay beyond industrial workers to, for example, agricultural workers. The broader they spread that, the less per capita there is. So until they make those decisions, we won't know what it is per capita.

Mr. LAMBSORFF. I would like to add, this is one of the most complicated issues of all of our negotiations, the question how do you define a forced laborer? How many forced laborers do you include into such a group? And, of course, the more people you bring together, the smaller the per capita amount will be.

Following a suggestion/proposal we have made based on Secretary Eizenstat's initiative, we will leave as much discretion as possible to the reconciliation foundations which do exist. I have reported in my statement on that in the various countries so that they can decide whether they would like to include very many people and try to give something to as many people as possible, or whether they would say, we would like to concentrate on those people who have suffered above a certain average during wartime, and therefore the per capita amount can be higher. It should be left to them and be their decision, because otherwise, if we decide in a centralized way we cannot do—perhaps we cannot do justice due to different circumstances in different countries.

Mr. OSE. Thank you.

Chairman LEACH. Thank you very much, Mr. Ose.

Mr. Bentsen.

Mr. BENTSEN. Thank you, Mr. Chairman. I have a couple of questions. First of all, I appreciate all of you being here, and I appreciate your testimony.

Secretary Eizenstat, you said that—I think you said that you don't believe there is any need for congressional action with respect to creating a legal safe harbor or a legal peace, I guess the term was used, and I wasn't trained as an attorney, but it seems to me that a Statement of Interest on behalf of the United States Government would not be sufficient to deny standing to a claimant.

Furthermore, it seems to me that there might be a concern. You talk about the claims period, and I am reminded there is litigation right now with respect to the Simpson-Mazzoli Immigration Act where there was an amnesty period, and that period ran out, and some are filing claims saying that they were not properly notified. That case has not been settled yet, and it will probably run its course through the courts, but it concerns me that the interest of the United States is not sufficient if you really want to close the gap or shut off legal access in U.S. courts. And while you are correct it would only apply to a certain number, that number could grow over time as we see increasing globalization going on and more mergers between U.S. and German companies and more presence in the United States.



I think that also might be compounded, and this leads to another question as you determine what the level of compensation is for forced labor versus slave labor, and so I would like you to address that.

The second thing I would like you both to address, in your testimony, Secretary Eizenstat, you talk about two issues where there is a disagreement between the United States and Germany and the Bundestag on the Foundation legislation. One has to do with scope, but either I missed it or you didn't get into great detail of what that difference is in scope, which could have a dramatic impact on the claimants and whether or not they felt that they were being fairly compensated.

The second is on any accumulation which you did get into. My question there is, in your opinion, what is the status of that? And Mr. Lambsdorff addressed this in his testimony a little bit, and he further went on to state that this is a problem from his perspective. I think he is coming from the opposite end, perhaps, and he states in his testimony that the German government understandably wants to exclude property claims that are not based on racial persecution. Can you give me a greater definition what that means, and does that play into your definition of scope as well, Mr. Secretary?

Mr. EIZENSTAT. First, with respect to legal closure, again, we spent an incredible amount of time with experts and outside experts, and we believe that we have come up with something. While it is not an ironclad guarantee because of the nature of our system, it will be sufficiently strong for the German companies to feel that they can obtain legal peace, because we will be saying that, not only should the Foundation be the exclusive remedy, but that dismissal of the cases, of future cases, is in our foreign policy interest. We know in the end that the court has to make that judgment. We think that is sufficiently strong.

Mr. BENTSEN. Is there a particular reason why you wouldn't want Congress to adopt some safe harbor? The President's budget is asking Congress to adopt a change in the tax laws, which I agree with, with respect to any claims paid, making them, in effect, tax-exempt. Are you concerned with the precedent that it may set?

Mr. EIZENSTAT. First of all, I appreciate that you have mentioned this, and I think other Members have mentioned the possibility of a congressional safe harbor. I wouldn't foreclose it and don't want to appear to be foreclosing it. I am just concerned about the legislative process, it can take a long time, and we are anxious to get this process going. Now, whether after the process is going, whether an additional measure of assurance could be obtained through such legislation is something worth exploring. I wouldn't want it, in other words, to be a condition of going forward, but it might provide an additional measure of assurance to German companies, and this is certainly something we would like to look at.

Mr. BENTSEN. If you could address the other points.

Mr. EIZENSTAT. Yes. With respect to scope, the scope issue is really at one level quite simple to express, although not easy to implement.

In order for us to be able to file this Statement of Intent, as the Count said in his opening remarks, there has to be a theoretical

possibility of all claimants being able to have some claim on to the Foundation. We have created a catch-all clause, which actually one of the attorneys, one of the American attorneys for the German companies, suggested, Mr. Robert Kimmitt, and that catch-all clause would essentially say we can't imagine all of the circumstances under which some suit will be brought. We have tried to lay out forced labor, slave labor, insurance, banking, and so forth, but there may be some cases of injury caused by German companies during the War which we can't imagine. And so this catch-all, which will have a capped amount, would provide that theoretical assurance. So underneath the 10 billion deutsche marks, we would have a subcapped amount for slave labor, subcapped amount for forced labor, subcapped amount for insurance, subcapped amount for banking and, quote/unquote, other cases and the Future Fund.

Having that catch-all properly worded is crucial to the scope of the Foundation. It doesn't increase the liability of the German government or the German industry by one deutsche mark. That liability can't go above 10 billion deutsche marks, nor will it go above the subcapped amount. We have provided some language to the Count, and I will let him expound on this on.

One of the issues in that catch-all that concerns the German government is the confiscation of property for non-racial reasons is the possibility of reopening reparation issues. We have given them some strong language indicating that nothing in this Foundation Initiative would create any new rights with respect to this, and I think this would be an appropriate point for me to ask the Count to continue on this.

Mr. LAMBSORFF. Yes, Congressman, indeed what the German government is not ready to do and ready to accept is the opening of a reparation debate. In our view, that issue has been settled, various international agreements. The last one was the Two-Plus-Four Treaty in 1990.

Secretary Eizenstat has given me language which excludes, or at least tries to exclude, any repercussion in the direction of opening the reparation debate if we deal with not racial, property claims. Racial property claims, that is not the problem. But let's go beyond that. I have transmitted this language to the German government because that is a high political issue which I cannot decide and do not want to decide. The German government has to react whether they can live with this language that Secretary Eizenstat has offered or whether we have to work with them to come to a solution. I can't give you a definite answer today.

Mr. EIZENSTAT. May I just add one other point on this issue of legal closure, Congressman Bentsen, because it is obviously an issue that you have thought about a great deal, as have other Members of the committee.

I would note the following: First, all of the attorneys with whom we have dealt and who have been part of this process themselves control virtually all of the cases. We would have a consensual dismissal of all of those cases as part of the settlement. So that settles that.

Second, there are significant legal hurdles. Indeed, two of the suits have already been dismissed by Federal courts in New Jersey,

the statute of limitations, and so forth. So our statement will be in addition to the motions to dismiss that will be filed by German companies citing these legal obstacles, and the combination of these two points give German companies enough assurance.

Mr. BENTSEN. Thank you.

Chairman LEACH. I would like to ask unanimous consent to place in the record the statement of Mrs. Waters.

[The prepared statement of Hon. Maxine Waters can be found on page 155 in the appendix.]

Chairman LEACH. Mr. Sherman.

Mr. SHERMAN. Mr. Chairman, thank you for holding this hearing on a very important issue. I want to thank the witnesses before us, especially Secretary Eizenstat, who has done so much work on this issue, not only in coming before us today, but his work along with the other Members, including myself, on the U.S. Holocaust Asset Commission.

I would like to focus on what I see as something analogous, and that is the view of slave labor compensation on the one hand versus property compensation, compensation for labor versus compensation for property. We are told that in order to be compensated for slave labor, one must survive roughly fifty-five years after the end of World War II or the claim is extinguished. But when it comes to property, if the owner is deceased, the heir or even the heir of the heir is entitled to that property. And it would certainly be difficult to find the heir of a slave worker or a forced worker, but it would also be difficult to find the heir of a property owner, whether that be a life insurance policy or whether that be jewelry or art or whatever, or a bank account.

So I can see some reasons why the claims of those who were forced workers who did not survive for fifty-five years, the claims of them and their family have been extinguished perhaps because that is the only way that a settlement could be reached. Perhaps it was because if a bank or life insurance policy is there, it is booked as a liability of the company, and so paying it is not a charge to earnings; whereas labor performed in the 1940's, if it had to be paid for to heirs of the worker today, would be a charge.

There are a variety of reasons, some perhaps as bizarre as earnings per share, which account for this very disparate treatment of the heirs of those who had their labor stolen and the heirs of those who had their property stolen, and it may be necessary that we endure this anomaly, but we should not hide behind the view that it is harder to find the heirs of workers than it is to find the heirs of property owners.

Mr. EIZENSTAT. May I try to respond in a couple of ways?

Mr. SHERMAN. Yes, Mr. Secretary.

Mr. EIZENSTAT. First of all, we would have a notice and outreach effort so that potential claimants of property would be notified. I am not sure I would agree with you, people are easier to find. People know whether their parents or grandparents had property. It was often discussed. But there would be a notice provision so people would have an opportunity to file claims.

Second, many of the German property claims, in fact I would say the overwhelming majority of German property claims, have been paid in the lifetime of immediate heirs or even survivors, because

under German law in the 1950's, there was a requirement for full property restitution or compensation. That program has been quite transparent, and thanks to the good work of the World Jewish Congress and the Claims Conference, when East Germany was united with West Germany after the fall of communism, a similar restitution program for property was carried out and is indeed being carried out for such property. So it is easier to identify.

Second with respect to insurance, insurance has by definition certain heirs who are entitled to recovery.

Mr. SHERMAN. I would say under the labor laws of every country I know of, if you die on the job, your last paycheck goes to the heirs, and so the legal rights are no less than the insurance, but I—

Mr. EIZENSTAT. Here I think—you said it yourself. It is the practicality. We are talking about potentially tens of millions of heirs, and it is not practicable. However, we have tried to create an avenue for heirs to have some ability to be covered, more, if I may say so, than they are likely to get in court action, which would take years and be of uncertain success, and that is under the Future Fund. Many Future Fund education and social projects would be available to heirs. There would be a special effort to try to help heirs get scholarships and things like that.

Mr. SHERMAN. I want to talk about insurance, and I want to commend Commissioner Barbara Senn in Washington, and Assemblyman Wally Knox in California respectively for their work in raising the bar and saying that European insurance companies should not through their subsidiaries be doing business in certain American States, and I would think any American State, unless they are willing to pay the policies issued to Holocaust victims. And I see that there is a practice that is nearly negotiated here.

What I would like to know is, Mr. Secretary, do you believe that—first, under this policy, will the companies list on the Internet the names of the insureds for whom they have not paid that relate to the Holocaust era, so that potential heirs can check that, or will potential heirs simply have to rely on the work of government employees?

Mr. EIZENSTAT. I am not trying to evade the question, I will give you the best answer I can, but that would be more properly directed to Secretary Eagleburger, who will be testifying later.

There will be very extensive notice and publication efforts. The companies who sign the MOU, and this is one of the reasons that we would like to have Aegon and the other German insurers participate, will agree to open their files, to publicize the list of those insured so that those kinds of claims can be made. Otherwise even though they may be willing to pay claims, the claimants won't know. If a German insurer said, we are willing to accept claims, if there is no publication process, then it will be a highly imperfect outcome.

Mr. SHERMAN. And do you support, or will the Administration support, an effort that those companies that do not enter into a reasonable process will not be allowed to sell through their subsidiaries policies in the United States? If anything, this is a consumer protection issue. If you won't pay your policies from the Holocaust, I don't want consumers in my district to be sending you money.

Mr. EIZENSTAT. Insurance is regulated by States, and we have very little influence, but I feel that sanctions are not the best way to achieve the result. The best way is to try to achieve it consensually. We have been working in that respect. That is why it is important for these companies to participate in the ICHEIC process so that they get the benefit of the "safe harbor" which the insurance commissioners have agreed to as being signatories to the MOU.

Mr. LAMBSDORFF. I would like to make one additional remark. As far as I know, there is no European insurance company, certainly no German insurance company, that is not ready to pay claims and that is not ready to feel satisfied with some kind of loose evidence, because how can you do it differently?

However, if you have to go through your archives and have to look through one million files and come out with perhaps 1.3 percent of unpaid policies, then you come to the question how can we balance the expenses for this on one side and the result on the other side?

I do think, Congressman, you mentioned the Internet, that gives us a better chance and a better opportunity for notification. We have done it before in a very expensive way. The Internet could be very helpful in that.

Mr. EIZENSTAT. Secretary Eagleburger will testify to this, but he is trying to do what he calls a "top-down" process on the issue of claims and archives, as opposed to what we refer to as the "bottom-up" effort that Chairman Volcker did. Chairman Volcker deserves an incredible amount of credit. He took on an impossible task, and he has done it with incredible diligence, but it has cost several hundred-million dollars, and Michael Bradfield is here as well, who is his assistant. It cost several hundred-million dollars, that's dollars, which have gone into the hands of large accounting firms, not to victims, to go through these dormant accounts.

I am not suggesting that this kind of searching process should not have been done, but I think we have all learned some lessons. Even though it may not be 100 percent accurate, we will end up with more money available for victims.

Chairman LEACH. Thank you, Mr. Sherman.

Mr. Inslee.

Mr. INSLEE. I would like to thank Dr. Lambsdorff for joining us today. We really appreciate it.

I would like to focus for a minute on how we can use this process in an attempt to prevent future disasters, because there is a compensation factor here, but there is also a preventive factor here that I think is very, very important.

It struck me listening to you that perhaps one of the most important ways that this can be effective is to act as a challenge to the Austrian government to accept the responsibility for becoming, and truly demonstrating their commitment to come into the family of nations.

And I would like to ask Dr. Lambsdorff and then Mr. Eizenstat what should be our bar, where should we set that bar for Austria in a sense, philosophically or economically, for them to demonstrate their commitment? And I think that is very important for this government to do this at this moment of international question on

those issues, and I think this could be an opportunity for Austria or a great failure of Austria in this regard. So I just ask you, gentlemen, to help us understand what specifically should we be asking Austria, and do you share my view that we should be assertive and aggressive with the new Austrian government in this regard?

Mr. LAMBSDORFF. Well, Congressman, on our side—and I agree with you that dealing with the future and doing everything to work on prevention so this is not repeated is very important. That is the essence of the idea of the Future Fund, and that is necessary, and it is in full agreement with what was discussed in the Holocaust Conference in Stockholm, Education for Future Generations. Nobody wants to compare the Holocaust with any other crime against humanity, but unfortunately we do see these crimes against humanity everywhere in the world. It is terrible. So I think the activities of the Future Fund must have a very broad scope. That is the idea.

Now, Austria. Mr. Chairman, I have heard a number of statements about Austria. I do not have to speak for the Austrian government and certainly not for the new Austrian government. I do not know how many Members of this committee and in this room know Mr. Haider. I know him quite well, and I have had personal experience with him. His party was a member of the Liberal International when I was President of the Liberal International, and we forced him to leave, and he did leave. So I don't want to tell you long stories, but, of course, I have to be—being here as a representative of the German Chancellor, I cannot deal with Austrian problems.

However, I have found it very interesting. Sometimes observations can be helpful. One of the first statements of the new government was, "we are going to deal with Austrian responsibility for the Holocaust." And you can't imagine why he did that. First, I see efforts in other countries. Second, while I do think we do not have a very high reputation at the start of our government activity, perhaps that can help us. If that is the result, I don't question the motivations. If that is the result, it could be OK.

I have been contacted today to meet with an Austrian delegation after I get back because they want to talk about what are you doing in the negotiations here. They are interested, and obviously they are interested to act quickly. That is a good development. For whatever motivation, if the result is it ends up with the Austrian government and Austria as a country accepting its responsibility, I think it has to be welcomed.

Mr. EIZENSTAT. May I just add a few points. I want to, frankly, thank you and Congresswoman Schakowsky for your patience. You came early and stayed late, as we say.

I think the really crucial issue with respect to Austria is to really follow the German model. Germany has accepted its past. It has faced its past honestly. Up to and including fifty years later with the remarkable statement, by President Rau, they have recognized their accountability, and they have acted upon it. They have paid 100 billion deutsche marks in compensation, but nothing can compensate for the loss of six million people and millions of others, but they have faced their past.

It is important that Austria face its past with the kinds of action that Chancellor Schuessel has laid out today. We will be following that closely.

Second, you asked what the bar should be. I think the bar should be implementation of what they agreed to, the document that their own president made a condition of the formation of the government; agreeing to EU norms, tolerance, democracy, respect for diversity, and human rights. We should look at not only what they say, but what they do.

Mr. INSLEE. This issue of our ability to extinguish claims to allow this process to move forward, the one thing I would say, Mr. Eizenstat, I would encourage the Administration to consider congressional action to help accomplish that. The reason I say that is even if there is agreement by the council representing known claimants, who knows what claimants will appear. And also, I think there is a legitimate issue about the executives extinguishing claims, and I think you would find wide acceptance in Congress for this. I think it would be a neater, tighter package if elected officials in Congress agree.

Mr. EIZENSTAT. Thank you. I appreciate that.

Chairman LEACH. Ms. Schakowsky.

Ms. SCHAKOWSKY. Count Lambsdorff, you talked about a satisfactory solution being when all are equally mildly dissatisfied. I represent a district where there are a number of survivors who are profoundly dissatisfied currently. You pointed out that 10 percent of the survivors are dying every year. Erna Gantz, from my district, one of the leaders in the restitution battle, recently has passed away. As far as Mr. Eizenstat saying coming early and staying late, I will stay until those checks get distributed. I didn't understand, and I wanted to clarify, and I am sure you can do it, are we talking about paying only when the eight-month claimant period is over? Is that when checks would be distributed, only after we establish what is the universe of claimants?

Mr. LAMBSDORFF. Yes, that is what I said before. That is one aspect that worries us. That is foreseen as eight months in German law. There are people who say that period is too short. You have people perhaps at the last corner of the globe, and before you reach them, eight months is too short. I would rather see it shortened because before we do not have a clear overview how many applications do we have, how much money can we distribute, we can hardly start to do the full payment. Whether we can try to give 50 percent, 70 percent and have a reserve has to be seen. I do not—we have not—we cannot decide about that just now. But then, of course, there are additional expenses, because if you pay twice, that means a lot more administrative expenses, and all of these administrative expenses have to be paid out of the 10 billion, and we have to look after this amount so that money is left for the real purpose, namely for the survivors.

Ms. SCHAKOWSKY. What is the plan for notification, for publicity, for getting the word out to everyone who, as you say, could be in all parts of the globe?

Mr. LAMBSDORFF. I can only answer with an answer that was given to me by one of the class action lawyers. He said we need

one year for notification. I said, that can't be true. This is a time-frame which—

Ms. SCHAKOWSKY. That is why I am trying to figure out how within this calendar year we can get a check out if we have to get legislation through the Bundestag and have a notification period of some sort. We have an eight-month-only window for people to make claims, and then figure out the formula for distributing the money, how does that possibly add up to ten months?

Mr. EIZENSTAT. If I may just take that. We don't think that these have to be seriatim. Some could be done simultaneously. Once we have an agreement, for example, on the scope and the necessary legislation, there is no reason that a notification process can't begin, so that we don't wait until the end of the Bundestag process and then the end of the claims period, eight months later, to begin a notification process. And I think there is a real desire on the part of the German side to make payments as quickly as possible. So what I would hope, Congresswoman, is that we could get the notification process started before the end of the claims window.

Mr. LAMBSDORFF. Especially regarding the slave labor group, we know about 90 percent of the survivors. There we have much more reliable data than we have in forced labor. There, of course, we could do it, and I think we should do everything possible to make payments as early and as quickly as possible and not wait for the eight-month period.

Mr. EIZENSTAT. Even with respect to the forced labor, while the Count is clearly right that we have a better notion of the number, names, identity, and location because of the excellent files and transparent process that the Jewish Material Claims Conference has had over the last forty-some-odd years, because there were pre-existing reconciliation foundations created in the early 1990's between Germany and these five Central European governments, they have already been making distributions of the 1.5 billion deutsche marks or so that the Germans paid. They have a list of names. All of those won't necessarily be slave or forced labor, but many of them will. So there again, they have identities, and that ought to make the notification process much more rapid.

Ms. SCHAKOWSKY. Mr. Chairman, if I could ask the witnesses, I have a number of questions remaining. I am wondering if, Secretary Eizenstat, I could submit those in writing to you for answers?

Mr. EIZENSTAT. Of course.

Ms. SCHAKOWSKY. Thank you very much.

Chairman LEACH. Dr. Lambsdorff, I would like to raise one question that relates to policy in Poland and actually in the United States, too. There is a concern in the Polish community around the world that this claim settlement process may not adequately take their concerns into consideration. Would you care to comment on their concerns as you see them?

Mr. LAMBSDORFF. Sorry, Mr. Chairman, I didn't hear you.

Chairman LEACH. The concern relates to the Polish community both in this country and around the world and whether their concerns will be taken adequately into consideration?

Mr. LAMBSDORFF. Yes, of course, we will try to do that. We have five East European governments, and four of them have a Rec-



conciliation Foundation, Poland included. We have a similar institution with the Czech Republic, and we have a number of East European governments where you find forced labor as well who have not been included in these foundations which were set up after the War, and, of, course we have to take them in as well. There are a number of practical problems, but I have seen the Polish government and I know that—I have seen them in Warsaw. They have domestic and political problems in relation to this compensation issue.

We know very well that Poland has been a country which has been hard hit and has suffered extremely during the last period. We know that very well, and, of course, we take that into consideration. But, Mr. Chairman, what we try to do, Secretary Eizenstat and myself, is here is the amount of money which is available. And now, please, you try to come to an agreement between the representatives of the victim groups. I would certainly just like profoundly to sit there and dictate the allocation of money, but I think it is an impossible idea. We can only hope and moderate and facilitate to come to an agreement, please, because otherwise everybody will not be mildly dissatisfied, but seriously dissatisfied, and this should not be the result of our efforts.

Mr. EIZENSTAT. The government of Poland has been involved in all of the plenary sessions in a very active way at very senior levels. We have had more meetings with the government of Poland than any of the other Central European governments involved. The foreign minister Mr. Geremek is here. I will be meeting with him this evening to carry on that conversation.

Second, with respect to Polish Americans, I have met on perhaps four occasions with the Polish American Congress, and the Polish American Congress has volunteered to be one of the partner organizations that would distribute funds from the German Foundation in the United States so that Polish Americans won't have to go to Warsaw or Berlin to receive their compensation.

And last, it was at Polish insistence that we worked out this compromise on agricultural workers. That was one of their key issues, and we believe that we have been able to satisfy their concerns in that respect.

Chairman LEACH. I appreciate that, Mr. Secretary.

Let me just end with one final comment. The Austrian issue is on all of our minds, and we have all read quotes of some of its new leaders in the past that are imperfect. We all recognize in a political nature that sometimes in public life people attempt to appeal to the higher spirits of the human nature and sometimes the lower, and we are very concerned that the second may be the case in Austria today.

By the same token we have been informed in the last few days and by your testimony, Mr. Secretary, that the Austrians have made some commitments that we should respect, most particularly to the insurance commission.

Mr. EIZENSTAT. And with respect to slave and forced labor, they have indicated that they will create a fund there as well.

Chairman LEACH. But I would only like to stress that the world community will be looking to ensure that these commitments are kept, and the insurance one is of particular interest to me because

I believe that the commission that is established should be considered an international commission and referred to in the terms that you did in your opening statement. And ironically it may be the Austrian model is something that—if they fulfill their commitments—other countries in Europe may want to look at as well.

In any regard, let me thank both of you. This is a very difficult time for all of us in dealing with these questions, and I particularly want to thank Dr. Lambsdorff for his willingness to come from Germany and the continuing extraordinary—and I want to use a word, Mr. Secretary—scholarly approach that is unique to public service that you have brought to the issue. This committee is very appreciative. So I thank the two of you and look forward to the second panel.

Mr. EIZENSTAT. Thank you, Mr. Chairman.

Mr. LAMBSDORFF. Thank you.

Chairman LEACH. Our second panel is Paul Volcker, Chairman, Independent Commission of Eminent Persons. Paul, would you like to proceed.

**STATEMENT OF HON. PAUL A. VOLCKER, CHAIRMAN,  
INDEPENDENT COMMISSION OF EMINENT PERSONS**

Mr. VOLCKER. Thank you, Mr. Chairman. I am conscious of the fact that time may be of some consideration here, but let me first, given this particular setting, congratulate you on quite a different matter of getting banking legislation through the Congress after a period of some twenty years, of which I was intimately involved for ten years and have interest for the following ten years, and it is finally done. It took a long time, and it wouldn't have been done without your efforts. I think that is a very clear, and I want to take this opportunity to say that publicly.

I have a statement here, and I appreciate the interest you and the committee have had in this matter, which has been amply demonstrated in the earlier testimony. My statement is fairly short, but I thought in view of the time, I would just read the last few pages that refer to matters that have yet to be done.

Chairman LEACH. Without objection, your full statement will be placed in the record.

Mr. VOLCKER. And I hope that you will place in the record these tables and charts which we have prepared. These are the tables and charts that reflect quite fully, I think, the work that the Independent Committee of Eminent Persons that I had the honor of chairing, it is the material that we used in presenting our report.

I will not ask you to put in the record the whole 217 pages of our final report, but copies are available, and I am sure have been made available to Members of the committee.

[The information referred to can be found on page 209 in the appendix.]

I also want to mention that here with us today is Rabbi Israel Singer, who is the Secretary General of the World Jewish Congress, who is going to testify himself; and Zvi Barak, who is another member of the Committee of Eminent Persons, who has come over here from Israel, and he has obviously been one of the most active members of the committee and has taken a continuing and strong interest.

But if I may, let me just emphasize what remains to be done in connection with our own investigation and particularly in order to satisfy the claims to dormant accounts in Swiss banks.

We had earlier established in connection with the publication of names that was already made—about 5,000—established a Claims Resolution Tribunal supervised by a board of trustees composed of some of the members of the Independent Committee of Eminent Persons, including myself as Chairman. That tribunal has attracted seventeen distinguished arbitrators to examine claims of those previous 5,570 dormant accounts that Swiss banks themselves identified, and that work is now pretty much completed of that earlier publication.

Now we have the work of resolving claims of the 54,000 accounts identified in our investigation, and, in fact, investigating claims of victims of Nazi persecution to any account in Swiss banks, and certainly we hope that that can go forward promptly.

In our work we have proceeded under the assumption that the accounts identified in our investigation would be adjudicated by an independent impartial forum, and we unanimously proposed that the established Claims Resolution Tribunal provide that forum. We have made a series of recommendations in our report, and let me just establish what they are.

It is important, too, that the Swiss Federal Banking Commission, which has extended us very considerable and helpful cooperation in the past, should promptly authorize consolidation of the existing, but scattered, audited work papers and databases relating to all of the 4.1 million accounts opened from the 1933 to 1935 period in Swiss banks, and to arrange to put all of those databases in a central archive so that they can be used conveniently in a claims resolution process.

Second, and this also takes action by the Swiss Federal Banking Commission, authorization of publication of the names of holders of approximately 25,000 of the accounts that we have identified. These would be the accounts that we judge have the highest probability of a relationship to victims of Nazi persecution. There isn't any doubt that some of the others accounts that we have identified, and indeed some accounts we have not identified, also have a relationship, but there are varying degrees of probability attached to our investigation. What we are recommending is that these 25,000 accounts with the highest degree of probability be publicized so that victims with a claim to those accounts can more readily recognize the possibility of making such a claim.

Third, we do recommend that any person with a claim to a dormant account of a victim, whether or not the name is published, should be provided facilities for resolving such claims through the CRT. And that would certainly include existing claims already compiled by the New York State Holocaust Claims Processing Office and other claims that have been made through other channels, and they should all be matched against a centralized database of accounts and resolved.

And then finally, we recommend and as members of the Claims Resolution Tribunal so instruct the arbitrators to provide a fair return to victims or their heirs whose accounts were as a matter de facto liquidated; that the individual account values should be ad-

justed on the basis of long-term Swiss rates of interest. And what that means if we do that from 1945 to the present, you would multiply the 1945 value by 10 times.

Now, these decisions on the centralized archives and publication of account names need to be taken promptly so that the claims resolution process can indeed begin. Those who have waited so long for accounts to be identified should not have to endure a long further wait for the commencement of claims adjudication, the point that was just made in the earlier testimony.

These decisions on archives centralization and account publication are, I would emphasize, now in the hands of the Swiss government, particularly the Swiss Banking Commission. We understand they have undertaken a consultation process, and they have scheduled a decision for next month. From my point of view, the earlier that decision comes, the better.

Now the precise role of the Claims Resolution Tribunal and the resolution process has been a matter necessarily of discussion with the U.S. district court that is overseeing the settlement of the class action suit against the Swiss banks brought in the United States. And it is my sense from these conversations that these recommendations should be implemented with the concordance of the court, and plans are being made by the CRT for the mechanics of the publication of account names, presumably on the Internet, preparation of claim forms and a development of systems for processing the claims.

One further thing which does remain is a decision on the funding of the Claims Resolution Tribunal. That was not specified in the original memorandum establishing the ICEP investigation itself, but it is my belief that the thrust and spirit of the effort strongly suggests substantial Swiss bank participation in this funding. Clearly the bottom line cannot finally be drawn under this entire problem until the claims resolution process is successfully completed, and it seems to me that is a matter that is at least as important to Switzerland and the Swiss banking community in particular as to any other interested party.

Finally, I would like to note the close relationship between the work that needs to be done to adjudicate claims to individual accounts of victims of Nazi persecution in Swiss banks and the class action settlement of Holocaust victims claims now being administered by Judge Korman in the district court in New York.

The class action settlement sets the upper limit of \$1.25 billion on the liability of Swiss banks to Holocaust victims. Under the settlement, claimants through deposit accounts have a priority among the various classes of eligible beneficiaries of the settlement. Awards made by the CRT to claimants for deposits in Swiss banks will be deducted from the payments made by the defendant Swiss banks toward fulfilling the entire \$1.25 billion obligation. Now, in the judgment of ICEP, claims of victims or their heirs entitled to awards we believe can be satisfied within the settlement amount agreed in the court proceeding. However, it is also clear that the work of the CRT needs to be closely coordinated with the other elements of the administration of the settlement. To this end we are working closely with Judge Korman and with the special master, Mr. Judah Gribetz, appointed by Judge Korman to develop a plan

of distribution of the settlement and also working with the parties to the settlement.

Those are the main points that remain open, Mr. Chairman. I hope that they will not remain open for very long.

[The prepared statement of Hon. Paul A. Volcker can be found on page 200 in the appendix.]

Chairman LEACH. Well, I thank you very much. I, frankly, believe the world owes you a great debt of gratitude for your work in this area.

One of the rather singular issues that seems self-apparent is: How does the math work? And that is if with relative precision you can identify 25,000 names that are highly probable to be related to Holocaust issues, and the sum of money that is presented is \$1.25 billion, that on an average would be approximately \$50,000 each, which would mean the average account at the end of 1945 was \$5,000.

Do you have any sense what the average size of these 25,000 accounts was in 1945?

Mr. VOLCKER. We have analyzed all of the 54,000 that we have identified and others, and insofar as possible found account values. Now, many of them do not have account values that we could identify. We had a name for all of those accounts.

Chairman LEACH. Does that include safety deposit boxes?

Mr. VOLCKER. It includes safety deposit boxes, but safety deposit boxes were opened in an earlier stage, and there are so relatively few that were involved here, and they have a problem. Gold, jewelry—you would get the gold—presumably you had the physical property, and that doesn't involve a difficult analysis. The difficulty is how do you value financial assets.

Most of them were bank deposits or deposited securities. We have a lot of information, but it is not complete, about account values. This is all reported in the full report of our work. And for various categories we have some information, just glancing at this table, at the low point 50 percent of the values are known, for certain types of accounts; up to 100 percent for some other accounts. And it varies depending upon whether it was a deposit account, demand deposit account, they tended to be fairly low. If it was a savings account, they tended to be very small. If they were so-called depot accounts where people put securities into it, they tended to be higher.

So we can break all of this down, and we debated this endlessly in the Commission. We decided we could not make a reliable estimate. There were too many uncertainties how much of this money would be claimed, how much we could determine a value for and then translate it into current dollars.

We felt reasonably confident that when all was said and done, and we took the 25,000 accounts plus some other claims in other accounts, not all of those 25,000 accounts will have a plausible claimant, and we had the experience of the Claims Resolution Tribunal for the earlier accounts that we felt safe that it is going to add up to less than a billion-and-a-quarter.

Now, maybe we can be proven wrong, but I don't think so. If you just took all of these accounts and made a kind of mechanical projection where we didn't know account values and estimated account

values, you could get a bigger number. But I think that that is unreasonable as a fair expectation of what is going to happen because not all of these accounts are going to be claimed, they are not all going to be Holocaust victims, and we felt, as I say, comfortable that it would fall within the billion-and-a-quarter.

Chairman LEACH. One of the aspects of all of this as we look at Switzerland, is that the country has made certain very forthcoming steps. On the other hand, there has been some public reaction that has been imperfect. What is your sense for the Swiss public attitudes at this point in time on these issues?

Mr. VOLCKER. Mixed. I think in general my sense is that there has been an acceptance of our report. There is irritation in some quarters, a feeling that they were unfairly put upon and that they were no more guilty, if that is the right word, than other countries. This is only part, of course, of a larger investigation, including, for instance, refugee treatment, which had a report by another commission in Switzerland.

We had generally what we have characterized as good cooperation by the banks, but we certainly had resistance by some individual banks who had to be rather persuaded and convinced to cooperate. In the end virtually all of them did to enough of a degree so we felt that we could make a report. But I think in the end I would like to believe that the results have been constructive, but there is still some irritation. There is no doubt about it.

Chairman LEACH. Well, as we look at this from afar, this is not the first Swiss government effort in this endeavor, nor Swiss banking community effort in this area. It does appear that your commission and the Bergier Commission have really gone a long ways toward reaching resolution, and that relative to other approaches, it has been very impressive.

Mr. VOLCKER. Let me be clear in responding to your question. So far as the Swiss government is concerned, we have had full cooperation. My feeling is that they welcomed the report. I talked to the President of Switzerland at the time that we issued the report, and she certainly welcomed that the investigation at least was over and that we had done a satisfactory job.

We have had good cooperation by the Swiss Banking Commission all through this. They have in some instances been rather heroic. They have a couple of crucial decisions that have to be made now, and so far as the banks are concerned, I obviously think that it is in their interest that they cooperate in the financing of this final resolution process.

And if there was failure in these areas, it would obviously leave something of a stain on the whole process, but I hope and believe that that will not be the case. We have had good cooperation from the Swiss government right through.

Chairman LEACH. That is my impression as well, and I think that there is a sense in Switzerland that the 20th Century issues of an economic nature should be resolved soon.

Mr. VOLCKER. As was mentioned, if I may interject on some of the earlier testimony, our investigation has been very expensive, and there has been a lot of restlessness in the banking community about that. We have always said it is justified because this is not simply a matter of money, it is a matter of establishing the facts

and clearing the record, and I think that has been generally accepted by the Swiss government. But it would seem ironic if, after spending all of that money, the job isn't completed with an expeditious claims resolution process.

Chairman LEACH. I fully concur.

Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you.

Chairman Volcker, it is an honor to meet you and to express my appreciation for your work. Despite all of that work, a year-and-a-half after settlement what I hear from people in my district, where is the money? There is still not a penny, not a nickel has been distributed, and in some ways I have to tell you that all of this discussion and seeming progress has added to the frustration rather than having alleviated it, because expectations keep rising, and yet there is still not any money. So if you could just tell me what are the major things that are holding up the distribution of the funds?

Mr. VOLCKER. Well, at this point, first of all, some money has been distributed from an early publication of names. It is a relatively small amount, and even that has not been brought up to current values because we have not completed that part of the process. And it has taken a long time, and I don't know if I can be as frustrated as many of the victims, but I am plenty frustrated.

Ms. SCHAKOWSKY. I know you are.

Mr. VOLCKER. What is holding it up now is we have to get a publication of the names, we have to get agreement on the procedures, and we have to get it financed. All of those are decisions that I hope and wish they were made last month. But it is terribly important that they be made this month or no later than March, which is the current schedule for the Swiss Banking Commission decision. Then we will publish names.

Then we can begin handing out claim forms and getting actual claims. A lot of claims we already have. We are just ready to go when we get the material consolidated and can get the necessary releases. New York State has done a lot of work in getting some claims together. We have been able to process those claims because we don't have access to our own files until they get released, in effect, for this kind of work.

So as soon as that is done, we will go to work, and just as in other investigations, we are going to have to allow six months to put in claims. We will try to have and we plan to have as expedited reconciliation procedures as we can have. People can't come in and say, my grandmother's name is X, and I see the name, and they have no other indication of the legitimacy of the claim. But they are not going to have to come up with very much. We want to make this as easy as we can, but they have to have some plausible grounds for making a claim.

Ms. SCHAKOWSKY. What is your best guess?

Mr. VOLCKER. I will be extremely disappointed if money is not flowing during the course of this year, and I would hope that it could be completed by the end of next year, but we have lots of names, and we don't have—just 25,000 are published, we have a database of four million names, and there are a lot of potential claimants.

Ms. SCHAKOWSKY. You have a database of four million names, though. There is an estimated total you have here of 6.8 million accounts that existed at the time.

Mr. VOLCKER. Right.

Ms. SCHAKOWSKY. The 4.1 is fully 40 percent lower than that. Are there names within those?

Mr. VOLCKER. There undoubtedly are. We had a big, expensive effort involving hundreds and hundreds of accountants, but all we could get to was the four million names out of the 6.8 which they estimate existed during that period, which means there are names that we will never know about. There will be claimants who will be unable to make a claim because we can't find the account. And we think the names that we have tend to be from the banks that were most likely to have foreign accounts and refugee accounts, but there are undoubtedly refugee accounts, persecuted person accounts that are among the 1.7 million that we don't have.

Ms. SCHAKOWSKY. Have the banks begun to pay in? Do we have any of the money? Have they paid in?

Mr. VOLCKER. Well, they have paid in for some of the names that have already been cleared from the earlier list, but there is no money paid—have they made a payment?

I am told that the court does have some in escrow in effect, \$500 million already.

Ms. SCHAKOWSKY. Is that earning interest, and does that interest attribute to—

Mr. VOLCKER. I hope so.

Ms. SCHAKOWSKY. Is that for administrative costs?

Mr. VOLCKER. They have a complicated formula, and at some point it gets interest. That is under the supervision of the judge.

Ms. SCHAKOWSKY. I know it is different for the slave and forced labor. We heard some estimates today of how much a claimant might—I suppose depending on the different kinds of accounts, is there any way to estimate the kinds of money—

Mr. VOLCKER. When we have information about the size of an account, that will determine the size of the payment. We have various formulas for adapting whatever account value we have to present value.

Ms. SCHAKOWSKY. Is that the 10 times?

Mr. VOLCKER. It is 10 times the value that it should have been in 1945, but sometimes we needed rather elaborate estimates to estimate the 1945 value because we may only know the value in 1972, let's say.

So we want to put back all of the fees that have been taken out of that account and subtract the interest that has been paid so that we get a 1945 figure, and then we will multiply that by 10 for an ordinary deposit account. And that is the compounded rate of interest on long-term Swiss government securities over that fifty-year period. Now, if we don't have an account value, obviously it is a more difficult thing, and if somebody can establish plausibly that the account belongs to them or their progenitors, we will make an estimate of an account value presumably based on an average of account values that we know.



Ms. SCHAKOWSKY. Is there anything that we can do, the "we" being the United States Congress, individual Members who have a particular concern of their district to facilitate this process?

Mr. VOLCKER. I don't think so. I don't think that I am going to ask the United States Congress to finance the process. That would be helpful, but I think that is up to the Swiss. I think your interest is welcomed and important in keeping this process going as expeditiously as possible, and I wish it could go faster. I have a personal interest in having it go faster, so you don't have to impress me with the importance of that. It may not match the recipients' interests, but I have—our interests are aligned.

Ms. SCHAKOWSKY. Thank you.

Mr. VOLCKER. Thank you.

Chairman LEACH. One last question, Paul.

Ms. SCHAKOWSKY. Mr. Chairman, when you are done, I forgot a question.

Chairman LEACH. Why don't you go right ahead.

Ms. SCHAKOWSKY. I apologize.

Chairman LEACH. I yield back to the gentlelady.

Ms. SCHAKOWSKY. Apparently some dormant accounts have been charged excessive fees by the Swiss banks.

Mr. VOLCKER. Yes.

Ms. SCHAKOWSKY. I am wondering what efforts are underway to repay those?

Mr. VOLCKER. A lot of these accounts have been closed. They are not any longer on the books of the banks, and a lot of them are indicated closed to fees. What the banks did in some cases, many cases, they charged fees, and those fees over a period of years became large relative to the size of the account. When the account got to a certain point, they charged a closing fee. That was the official excuse for closing the account.

We have attempted and will attempt under best—we have a lot of information on this. When we go back and try to estimate the 1945 values, we will reverse all of those fees as best we can do it, and I think we have a basis for pretty good estimates because the auditors found a lot of information on fees. So the process necessarily relies on estimates, but I don't think that they are estimates picked out of the air. There is some basis for them, and the fees could have been sizable, yes.

Ms. SCHAKOWSKY. I apologize, and I thank the Chairman.

Chairman LEACH. There has been anecdotal evidence of a fair number of accounts that might have been held by intermediaries. What kind of a process is under way to review that, and are you confident in that system?

Mr. VOLCKER. This is a question that you raised in both of the earlier hearings that we had, and it is the least satisfactory part of the investigation. To the extent that the intermediaries were Swiss, and probably most of them were Swiss, and the deposits were in their name, and this all happened fifty years ago, and the accounts have been closed, it is extremely hard to identify.

Now, what we did was get a list of all so-called official intermediaries, notary publics, and so forth, in Switzerland that existed in 1945, and we—there were thousands of them. We ran all of those against the list of names to see whether they had accounts

or repetitive accounts, and we found several thousand accounts in that category.

The auditors were alerted to report any evidence that they found that looked like it might have been an intermediary; some name that held a lot of different accounts, for instance. But some of the intermediary accounts may have been combined into one account, and so that is not perfect either. But where they had some information, they reported that. These matches or suspicious names, so to speak, have been turned over to the Bergier Commission, which has investigative authority over Swiss and outside the banking system which we did not have.

So they are alerted to this problem and are certainly aware of it and interested in it, and I am told that they have not yet gotten those lists because they have to be released by the Swiss Federal Banking Commission, and so that is another decision that the banking commission has to make.

But there will be a follow-up by the Bergier Commission, but I am sure this is one area where our combined efforts will leave holes because it has been an area of investigation that I don't feel satisfied we have been able to fully develop.

Chairman LEACH. Well, thank you very much, and we appreciate your testimony, but, more importantly, the work that you have dedicated so much time to.

Mr. VOLCKER. I am sure that I speak for all of the members of the group that we have appreciated your interest in this, and that interest has helped us do the job.

Chairman LEACH. Thank you, Paul.

Our third panel is composed of the Rabbi Israel Singer, who is the Secretary General of the World Jewish Congress; Mr. Gideon Taylor, Executive Vice President, Conference on Jewish Material Claims Against Germany; Avraham Hirschson, Chairman, Knesset Committee for the Return of Jewish Property; Mr. Roman Kent, Chairman of the American Gathering of Jewish Holocaust Survivors; and Miles Lerman, Chairman, U.S. Holocaust Memorial Council; and Rabbi Andrew Baker, who is Director of European Affairs for the American Jewish Committee. If I can ask you to come forward.

Let me in particular welcome for the second time Representative Hirschson and say that we are always appreciative of having fellow parliamentarians. I think in terms of parliamentary protocol, we will suggest that Mr. Hirschson go first.

#### **STATEMENT OF AVRAHAM HIRCHSON, CHAIRMAN, KNESSET COMMITTEE FOR THE RETURN OF JEWISH PROPERTY**

Mr. HIRCHSON. Thank you, Mr. Chairman. I would like to remind you and the committee Members I was here in the hearing more than two years ago. We were on our first steps of the historical justice for all of our people. It was a very difficult time. Most of the people didn't believe in our way of historical justice. A few supported us. You and your Members of the committee supported us in those difficult days.

I remember I was fascinated by how you understood that our issue is not the money, it is the not bank accounts, it is not the insurance companies. Our major important thing was the under-

standing, who puts the money in the banks, who makes the insurance by the companies. Those people were sent to Auschwitz, Buchenwald, and they were murdered.

Of course, we are now in another situation. After the wonderful work of Paul Volcker's committee, and after the report and the most important work of the report of the Bergier Historical Committee, of course it is another situation, but until now we have some major problem, the problem with other countries, they don't want to go into the procedure. They are trying to build new laws. On the other hand, they are trying to come to us and to cut with us short deals, and I would like that it would be very clear here, we will not cut any short deals with anyone, with any country, because what is most important for us is the procedure. And we would like that each one of the countries will have the procedure like it was done in Switzerland in the last year.

Mr. Chairman, we are in a very difficult situation about what is happening in Austria these days. Vienna has not learned the historical lesson, not only that we were shocked by the resolution of the Austrian election, but its effect that each one of four Austrian citizens didn't learn the historical lessons of Austria of Adolf Hitler. And after fifty years, it is amazing that this country didn't learn the lesson.

Haider is trying to show the world that he is not anti-Semitic, but he is anti-Semitic. I learned in the last weeks something about Haider. I learned that in one of the gatherings of the former SS people, he say to them, "My dear friends, you yourself sacrificed the vote." Yes, he is not showing us that he is anti-Semitic, but if he is questioning and if he is asking, Auschwitz was a death camp or a punishment camp. How many were murdered there? Six million, I don't think so. It is enough. You don't have to say very clear thing about it.

So now I am in impossible situation because I am caught between two justices. One is the justice of the survivors of the Holocaust that are sitting near me, and I say that after fifty years they have to get back their money and their property. It belongs to them. But there is another injustice, and this is an injustice where the blood of my brothers, my sister that were in the chambers are shouting at me and saying, "Don't go to any agreement with this government that Haider is a part of", and I have my decision, and it is my moral decision. If Vienna wants to be a part of this world, of the Western World, if Vienna wants to come as a normal nation to the new millennium, they have to tell Haider go out from the government. They have to make the procedure that Switzerland has done.

Mr. Chairman, it is a difficult time, and I think that this is the time for the citizens of all the world to take upon themselves together responsibility to work together, and then I am sure that we will succeed in our very, very important mission for generations to come. Thank you very much.

Chairman LEACH. Thank you, Mr. Hirschson.  
Rabbi Singer.

**STATEMENT OF RABBI ISRAEL SINGER,  
SECRETARY GENERAL, WORLD JEWISH CONGRESS**

Rabbi SINGER. Thank you, Mr. Chairman. I will read a part of my statement and then digress from my written statement, which I will give to the committee.

It is a distinct honor once again to appear here to testify before this distinguished committee. It is an opportunity that I really thank you for, to be able to convey to you our deep sense of gratitude. And may I say to you that you may take pride in the extraordinary achievements that you have effected since the first hearings on this subject some three years ago.

You might recall at those initial hearings dealing with Swiss banks, which have been expanded today, not one survivor had yet received compensation, and no humanitarian needs had yet been addressed. The proposal for a humanitarian fund, which was made at that hearing, was realized. In fact, it was made by you. The proposal already, I can report to you, has succeeded in paying nearly a quarter-of-a-million Holocaust survivors as a direct result. Survivors in Argentina, Zimbabwe, Iowa and Israel have indeed a lasting tribute to you and to this committee which they owe. Thank you, Mr. Chairman.

The larger Swiss bank settlement, which I was honored to be a volunteer on for over hundreds of hours together with my colleague Steve Horak, who sits right behind me, under the chairmanship of Mr. Volcker, has some unfinished business, and I would encourage this Committee on Banking and Financial Services to take them into consideration. Paul Volcker, our Chairman, passed over them among other points, but I would like to repeat some stark points which need immediate treatment because they have already been agreed to after 350 hours of negotiation between ourselves and the Swiss members on the committee.

We have agreed to, of the 54,000 names that were found, to publish 25,000 some-odd names. There is still some administrative foot-dragging with regard to the publication of those names. It would be a shame if that money in all cases would be paid to heirs rather than survivors. Indeed, one of the survivors who made a settlement who appeared before your committee passed on, Mrs. Sapier. It would indeed be a shame if the settlements were made with heirs or for the benefit of class counsel alone. It would be a bigger shame if this case dragged on and we would have to deal with the heirs of class counsel to pay their heirs rather than themselves. It would be something that wouldn't be the kind of justice that this committee was seeking, nor which we invested hundreds of hours of volunteer time in creating. Justice would be delayed yet more by administrative foot-dragging. That would be a shame.

I would also like to suggest that with regard to the Swiss settlement, the judge would be concerned that the Claims Resolution Trust, which I had a major role in establishing, which, again, I voluntarily serve on in every way, including expenses, I would like to suggest that Claims Resolution Trust expenses should be agreed immediately to be paid for, as was agreed to by the Swiss members, rather than looking at this again and dragging one's feet.

It is the conclusion of justice and its implementation, not only the announcement of justice, that we come here to ask you to do.

It is not just that justice should just be seen to be made, but it should be implemented as well. We thank you for helping us make justice and announce justice, settle for justice, but, most importantly, to make that measure of justice which is all that we are really dealing with here, because the settlement and the nature of a settlement is such that it is only a measure of justice.

Count Lambsdorff said that he understood, we made him understand, and I am pleased to be sitting here next to my colleague Gideon Taylor from our generation who is negotiating for persons of a more senior generation that sit at the other end of the table, and my partners in the negotiating committee, Roman Kent particularly, is the youngest of the Holocaust survivors. When Count Lambsdorff said that he doesn't want to pay heirs, he doesn't want to pay people who are of the next generation, I believe him. He, too, knows the urgency because he knows his age, and he has mentioned that several times. I wish him long years, but I hope that he will be able to do other things and be able to finish this quickly. It would be a shame, an absolute shame, if we haggled, and we are not haggling.

Our position in these negotiations, and I speak now not as the Chairman of the World Jewish Restitution Organization, which helped to resolve the issue of Swiss banks, but I speak as the chief negotiator for the Conference on Material Claims that helped negotiate with Count Lambsdorff and with Mr. Eizenstat, the settlement that he spoke on with regard to slave labor and aryazation, that we come to a specific final settlement quickly not just with regard to the 10 billion marks that seem to have been capped, but with regard to the adjudication and the administration of those funds, not through a court, but, as we originally said, through administrative processes, and pay that money out to victims, not to heirs as class counsel would like.

We don't want that money paid to heirs, we want that money paid to victims now that it has been decided to pay those victims still alive. They have made a distinct settlement here, and that settlement is of the millions of persons who are slave laborers, only 140,000 are left among the Jewish slave laborers. It would be a shame if not 10 percent, but 15 percent would die every year, and by the time we began settling these payments, we would lose another 30 percent until they were paid.

With regard to aryazation, we are not interested in having persons who are relatives, distant relatives whom I would personally seek to exclude from my will if they were relatives of mine, to get paid, but to have victims paid. I think that some of these concerns with regard to widening the number of persons who might benefit from some of these properties with regard to the aryazation is an absolute scandal. We are not here to see to it that financial problems are resolved. We are dealing with a moral settlement that is symbolic at best. That is the nature of settlements, and that symbolic gesture should be made to the victims, not made to some distant relative of an heir. I think that that kind of legalism is possibly the only effort left that some people can make, but it is not the one that we are striving for and the one that you called this committee into session today, nor the last time when you began dealing with these questions of justice.

My colleague, the Chairman of the Knesset Committee on Restitution, dealt with Austria in a moral and, you could say, principled way, and I agree with him. It would be a terrible tragedy if that which we were negotiating for, my colleague Gideon and myself and some of our colleagues, speaking to the former Austrian Chancellor with regard to the minimal payments, with regard to the 70,000 apartments that were stolen, and with regard to the 45,000 businesses that were aryanized in Austria, and that these small payments that were made so far and those which are being considered right now would be the product of a political scandal or political embarrassment. They should be voluntary payments being made by those who owe that money, not between governments whom one does not view with great comfort in dealing with.

The banks that have made settlements so far have done so haltingly, and have done so in a manner that is very, very scantily related to the exposure which they have. I would recommend that those which have not yet spoken in Austria should not speak under the pressure of the embarrassment of their new government, but should speak as industry and as those individuals who aryanized the property irrespective of who is in their government. We will not negotiate with them, but voluntarily they made certain statements with regard to what they would do when their government was different. I think that those members of the opposition should be announcing what it was that they were negotiating with us on and that those industries should make those statements independent of their government presently. We should not have to crawl to those to whom we do not choose to sit with.

Bank Austria was limited to that institution. When they made their settlement, they tried to include 1,200 other companies and total economic peace for Austria. We saw to it that would not be part of the settlement. We hope and pray that that settlement reached in Judge Korman's chambers will indeed be respected. And at this time I say to you, Mr. Chairman, if it will not be, we shall appeal it. Settlements are not made to be broken by either counsel or by judges, they are made to be kept, and we say that in this Banking Committee with regard to another bank that may be coming under your observation.

We ask you, sir, that you take very, very serious note of what was said by Secretary Eizenstat with regard to all insurance companies. You know that we are dealing with this as a top-down basis, not on a bottom-up. We will only be dealing with a small measure of justice with regard to all insurance companies.

I don't accept that 98 percent of all policies are paid by any company or will be paid by any company. It is not possible. Even the most assiduous recordkeepers among the companies only have 50 percent of the records. They admit that. Even the bottom-up process that Paul Volcker participated in that we worked on only found four million of six million accounts, of which we only found 1 percent, and that accounting cost hundreds of millions of dollars. What top-down process with an insurance company will ever find more than a minute percentage?

We ask that those percentages be made, however, by standards that are the same for all companies, and that those standards be homogenized and universalized, not that each company chooses to

volunteer to throw at victims what they choose, when they choose, if they choose.

We do not accept sweetheart deals with any community, even the Jewish community. And we look to the strength with which Secretary Eizenstat represented our Government that all insurance companies, all, including Aegon, join the International Commission.

Conversely, those insurance companies, particularly the Dutch insurers—and it is not my interest in having a quarrel with Holland today, an outstanding people who were our supporters on moral and human rights questions on many, many issues throughout history—allow the memory of those who were victimized to be once more treated in a manner that is less than accepted by the large insurance companies of the rest of the world.

I had the pleasure last week with Secretary Eizenstat to meet with the Prime Minister of Holland, and we hope that he indeed will establish standards that have been accepted by those of other Western democracies. Globalization has created standards and creates standards with regard to sales, with regard to certain kinds of treatment of customers, and also with regard to victims. In refusing to join the International Commission, they choose not to participate in a global tradition which has been established partly as a result of the pressure of this committee. We expect that their continued expansion into the United States market would present an affront to American citizens while they refuse to deal honestly with their responsibility.

Some of my colleagues view this matter as being one which requires stiff economic sanctions. I personally have always been opposed to economic sanctions, but I speak to you, Mr. Chairman, as the minority voice in my constituency. I am alone in opposing such economic pressure, and the reason for that is that what has happened to date has happened because this matter, whether it is Swiss banks, or whether it is the issue of slave labor, or whether it is the issue of aryanization, has occurred the way it has occurred, successfully bringing justice late, but not never, only because of public awareness, public understanding, public pressure, which indeed these sessions are a very important part of.

I ask you, Mr. Chairman, to allow me to conclude with a specific proposal, that this, the last of these hearings, will have an extraordinary impact, and I am sure that you agree, therefore, that the issue must continue to be pursued in many ways. I would therefore suggest that this committee consider issuing a continuing progress report, say at six-month intervals, so that the public-at-large remains informed and involved and knows that these companies, these banks, these financial institutions, and that all governments are held accountable. This, we believe, would not only produce practical results, but preserve as a lasting legacy this committee's work as establishing justice.

Mr. Chairman, let me express my thanks to you and to the committee, and with your permission to wish to be able to call on you in the future to help to shape a world in which decency and fairness prevail. Thank you, Mr. Chairman.

[The prepared statement of Rabbi Israel Singer can be found on page 227 in the appendix.]

Chairman LEACH. Thank you very much, Rabbi Singer.

Mr. Taylor.

**STATEMENT OF GIDEON TAYLOR, EXECUTIVE VICE PRESIDENT, CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY**

Mr. TAYLOR. On behalf of the Conference on Jewish Material Claims Against Germany, I would like to thank you for the opportunity to update you and this committee on the developments during the last few months relating to the negotiations with German banks and industry within the framework of the German Foundation Initiative and the discussions with certain European insurers of the International Commission on Holocaust Era Insurance Claims. We greatly appreciate the role that this committee has played in drawing the attention of the public and of lawmakers to the issues which are so important for all of us.

The Claims Conference, which comprises twenty-three Jewish organizations including the American Gathering of Holocaust Survivors, represented today by one of the members of our negotiating team, Roman Kent, one of the major figures in the negotiations, as well as the Israeli survivor organization, has participated in negotiations with the German government on issues of restitution since the 1950's. After the announcement of the establishment of the German Foundation Initiative in February last year, the Claims Conference continued in its traditional role as the party negotiating on behalf of the Jewish side with the German government and German industry. In that regard, we work very closely with the State of Israel in these negotiations and on many issues, and we particularly appreciate the presence of Chairman Hirschson today, who has been a most significant figure in this effort and with whom we work closely on the negotiations regarding the slave labor issue.

We are also most grateful to Deputy Secretary Eizenstat and Count Lambsdorff for the way that they have led the negotiations which have taken place to date. Undoubtedly the most significant and moving aspect of the announcement that took place in Berlin on the 17th of December was the statement issued by President Rau which was quoted earlier to this committee. However, the generalized announcement that took place in Berlin still leaves many significant issues unresolved.

In welcoming this announcement, the Jewish participants had already made difficult decisions and agreed to many compromises, and we have concerns about the form that the final agreement will take, and we hope very much that the agreement will be one which reflects the fundamental principles on which we negotiated. In particular, we feel strongly that slave laborers must receive a dignified payment from the Foundation Initiative, and just as significantly, the issue of the responsibility of the banks for their participation in the aryанизation of Jewish property must be seriously and appropriately addressed by the Foundation.

During the last weeks there has been much discussion, as the committee has heard earlier, on the draft legislation, and we have been in constant contact with the governments of Germany and the United States and very much hope that the final version of the legislation will reflect those concerns.



We are particularly concerned to ensure that the major details as to how the Foundation will operate will be spelled out clearly in the legislation and not be left to be resolved in the future. We believe that such clarity is most important if the Foundation is to succeed. In this regard we strongly believe that the unique role of slave laborers, those who suffered unimaginable horrors in concentration camps and ghettos, must be appropriately recognized by the Foundation.

The work program of the Nazis was truly horrific. Those who were subject to it were described as "slave laborers," but in reality the goal of the Nazis was their destruction as much as it was the use of their labor. The structure and the details of the Foundation, we believe, must reflect this terrible history.

It should be noted that the overwhelming majority of the funds from the Foundation will go to non-Jewish persons who suffered at the hands of the Nazis either as slave laborers or as forced laborers, and we think that this should be noted, and this committee should be aware of this point.

On February 16, 1999, when Chancellor Schröder announced the establishment of the Foundation, he specifically stated that the purpose of the Foundation was "to meet the moral responsibility of German companies," including German banks, "arising from the use of forced labor, aryianization and other grave injustices committed under the National Socialist dictatorship."

Aryanization was, as you have heard earlier, the Nazi program of the confiscation of Jewish assets. The inclusion of an aryianization component in the Foundation was a direct consequence of earlier discussions that the Claims Conference had with various German banks regarding the banks' responsibility for their participation in aryianization.

The historical fact is clear that banks did participate in aryianization and profit from these racial programs, and indeed this fact and these issues have been examined by reports issued by the United States military government in 1946. We believe that the amount allocated for this section of the Foundation should reflect the magnitude of the moral and financial culpability of the banks. We also believe that this aryianization section should have one component that will enable individual claimants to make claims as well as a component which will benefit the neediest Nazi victims on a humanitarian basis. This latter humanitarian fund will benefit the very many persons who, because of the unique circumstances of the Holocaust, have no documentation of their claims or are unaware that they may have a claim.

In addition, the humanitarian section will also acknowledge the fact that many of those who might have had claims relating to the banks in the aryianization of Jewish property perished in the Holocaust.

Regarding insurance, we welcome the launch of the claims process of the International Commission on Holocaust Era Insurance Claims scheduled for next week, and we participate actively in that Commission and pay tribute to the role of Lawrence Eagleburger in overseeing this process.

We are most concerned, as you have heard, about insurance companies, both German companies and others, which have not joined

the International Commission, and we would urge this committee to take all steps possible to encourage them to do so. We appreciate the commitment of State insurance regulators who have pressed these companies to do so.

We believe also that the relationship between the German Foundation Initiative and the International Commission on Holocaust Era Insurance Claims needs to be resolved in a way which appropriately reflects the understandings so far reached and the proper financial responsibilities of each.

Although much has been achieved in the area of the German Foundation Initiative and the International Commission and during other restitution negotiations, we believe that the path before us is nevertheless long and time is not our friend. We not only want to see a measure of justice achieved, but we want those who suffered indescribable horrors to be alive to see that a new generation and a new century has not forgotten them.

Thank you.

[The prepared statement of Gideon Taylor can be found on page 231 in the appendix.]

Chairman LEACH. Thank you, Mr. Taylor.

Mr. Kent.

#### **STATEMENT OF ROMAN KENT, CHAIRMAN, AMERICAN GATHERING OF JEWISH HOLOCAUST SURVIVORS**

MR. KENT. Thank you, Mr. Chairman. Thank you for the honor of inviting me to this hearing.

It is difficult for me to express myself right now, because I am a little dumbfounded. I heard the reports by Secretary Eizenstat and Graf Lambsdorff, and I have trouble with it. I have participated in the discussions, and what I hear and what I think are two different items.

I would like to excuse myself for not having a written statement to you, to this committee, but I just found out about this hearing yesterday, so I didn't have a chance to prepare a statement. But maybe it is just as well, because I will—instead of reading exactly the statement I will try to share my thoughts with you on this subject without going into the particular detail as my friends and colleagues did.

And I will represent this to you, my thoughts, not just as a survivor, but also as the one who has to speak. And we must speak not only for the survivors; we must speak for the six million of our brothers and sisters that are no longer with us.

So let me also follow maybe what Graf Lambsdorff did and tell you something about myself, because when we talk about these numbers, we are talking about six million, we are getting lost. It is hard to comprehend a number of six million being killed. So let me take myself, which is the best thing to describe something, and my family, so that we can follow what happened and why we do what we do.

I was born in Poland. We were four children in the family. All four children went to private schools, and we lived a fairly comfortable life—I would say quite a comfortable life. Then the War started.

We were thrown out from our home. Imagine, Mr. Chairman, if somebody comes to you one day to your home, puts a lock on it, and says, "that is no more yours. Everything you have there, including your shirt and toothbrush, is no longer yours"; it belongs to a German, and you are thrown out from it.

And then we went to ghetto. And then from ghetto we went to Auschwitz, separated, of course, from the family. And then to other camps: Flossenburg, Dornau. I don't think I have to tell you any more because it speaks for itself.

In 1946 I came to the United States and it would be maybe of interest to you—it should, because I came under the auspices of the United States Government. Orphaned as a child, my brother and myself came to the United States. And maybe from my accent I have, you could deduce that I was adopted in Atlanta, Georgia; I got my southern accent there. I attended the high school and then Emory University.

When we, as a group, I and my fellow survivors—and maybe one of the best examples is the gentleman sitting to my left, Miles Lerman—we worked hard in the United States. I believe we were good citizens. We raised our families. And many of the things which I am talking about to you today we kept inside, because we were raising the family, we were working, we were building a new future, trying to forget the old one.

But still, at the same time, we kept the memory. And we survivors have committed ourselves to preserve the memory and the uniqueness of the Holocaust. We have achieved that through educational programs, museums, commemoration; and today, you know, we have the days of remembrance throughout the United States every year. Mr. Chairman, as the best example, Miles became the Chairman of the Holocaust Museum in the United States.

And if I will jump a little and tell you this is why it strikes me like funny, like an irony, when Germany is starting today and announcing with fanfare that "we are going to establish a Future Fund for commemoration." Where were they forty years ago? Fifty years, thirty years, twenty years? It is an irony that they are showing it to you and they announce it with such pride.

But let's go slowly further. It is then when we were able to come to ourselves. We slowly started to fight for justice—not for money, for justice. Now, let me say that there were references before to the 1952 agreements. Let me point out to you, Mr. Chairman, that we survivors were never part of this agreement. We didn't care. We were still skeletons, skin and bones, we didn't care about the money. We didn't want to.

But I also like to point out that as it was said here by Graf Lambsdorff and so on, this agreement in 1952, when we look at it today, what kind of agreement was it? It was an agreement made without any precedent. What is so holy about an agreement that was made in 1952 about issue like Holocaust, which never existed, based on something that nothing was known about it? What is so holy about it as to not amend it and to change it if there were injustices? It is nothing wrong with it.

I think the people in the Congress, just like the Bundestag in Germany, are sitting every year and are changing laws that were passed sometimes even a year ago, five years, ten years. So I don't

consider the way the Germans consider the 1952 agreement like it is Bible, it cannot be changed. It should be changed. It must be changed, particularly when we are talking about the 1952 agreement, we have to realize, as I said before, that there were many people that did not want to have any part, anything to do with Germany. When they started the so-called law which they called Wiedergutmachung, which I resent the name because you cannot make good something that was killed, it does not exist. But that is what they call it, Wiedergutmachung.

Many of our friends did not want to apply for any compensation. They did not want to have anything to do with Germany, they didn't want to take the money that they referred to as "blood money." Many were children. They didn't want to apply.

Such a law has to be changed, should be changed, and we are making some progress in changing some of it. But here is—and again, I like to tell you what makes the survivors different from many other people. You know when somebody is sick, to give you an example, we can say that "time is the best medicine. Take a month, two, time is the best medicine." Mr. Chairman, Lady Congressman, for our survivors, time is not the best medicine. It is contradictory to medical science.

You see, when we were young, and we were busy with raising a family, we did not think about anything else. We were in a new country. We were building the family. Today, when we are old, we go back, our memory goes back. Our children are grown up and moved away. And when you look at me or Miles, thank God we are OK.

But how many of our survivors are lonesome, by themselves with no means to support themselves except Social Security or whatever it is? And they need more help now than they needed when they were young. And they think more about what happened in the camps. And let me tell you, as I told you, I am sharing my thoughts with you here, that even I many times think about it. How can I forget the first day when I came to Auschwitz? Impossible.

So we, as part of the Claims Conference, the American Gathering we have started in the last few years, we joined the Claims Conference. And I say it again that at the beginning we survivors were not part of the Claims Conference. It is just in the last few years that we joined it. And I will say that we did reopen certain issues. And we have slowly broken through this so-called "BEG agreement, 1952," and we have set up what the Germans call "hardship fund." Recently we have received additional pensions for the people in Eastern Europe. But may I say to you it is too late and too little.

You know, I brought with me the book. This is one word that is written on the book, "Auschwitz." I think this book can say all what we can say about the Holocaust. It is a word which will be remembered for now and eternity as evil. I must tell you that when I spoke a couple of years ago with the German officials—like here was the president of the Bundestag and the executive secretary, they have told me at that time that conditions in Germany are very bad and that they cannot do anything for us.

It was maybe a coincidence that I have received this book when I flew to Germany on this meeting, and I read it. And I have told

these people of the Bundestag that what she is telling us today, that the conditions are very bad in Germany, is nothing that is new to me. I am not in a concentration camp. We read papers, we watch television and so on. And I have told her, "Let me tell you now something which you did not tell me. What you did not tell me", I said to her—and I showed her the book, which I say, "I just read it because it just came out—if you look here."

And I went to them and I showed them: "You look here at plans of Auschwitz and others, these were done not just by Nazis, these were done by draftsmen and engineers, businessmen, workers; they were all German people. And let me tell you what you did not tell me, namely, these people in the last forty years have the highest earnings in Europe. And let me tell you what you did not tell me is that these people are today on the highest pensions in Europe. So if you are telling me that the times are so bad, let me tell you point-blank, my heart does not bleed for these people that have the highest pension in Europe. And even if you have to cut them by 2 percent, their pension, and give it to the people that suffered, that were in the camps and 90 percent of them died, these people deserve this. So don't tell me about it."

You know, talking to you this way, I must say that what I heard today on all these meetings was "money, money, legal closure, closure," and I have to tell you that I am really very greatly disturbed. I am disturbed by the aftermath of articles pertaining to the inquiries. And we heard today all day long about gold, not about other SS atrocities, and the slave and forced labor. These are important issues, but I am really tired of hearing it.

I want to tell you, Mr. Chairman, I certainly want the facts regarding the role of Switzerland and its banks, the role of Germany and the industry, and of any other country involved which was profiting during the Holocaust; I want this to be exposed, so that the truth be known and a just and overdue compensation be given to all victims of the Holocaust. Yes, what is uncovered already is just as shocking as it is disgraceful.

No longer will Switzerland be thought of simply as cuckoo clocks, skiing and neutrality. I fear, however, that the recent tone of the Swiss government and many others tarnishes the memory of the six million who perished. Even this hearing emphasizes that. The bickering and the lawyers bringing class action troubles me. For the media, the glitter of gold that is the great expectation generated by the search and lawsuits seeking damages in the millions, if not billions, of dollars is somewhat blinding. The thing created by the press has diverted attention from the unprecedented evil that was the Holocaust.

Now we have an additional issue in the limelight which is the slave and forced labor. It is unfortunate that the Holocaust now relates to banks and other assets and not just for the extermination of the people and the murder of six million brothers and sisters. As a matter of simple justice, survivors should get back what was seized from them and their communities in Europe. They want the true disclosure as to what happened in Switzerland or, for that matter, any nation. But great care must be taken if fervor over the gold overshadows the moral responsibilities, and I hope that this committee will see to it that it does not.

It seems to me, going to the present issues, that about a year ago the German government established the so-called German Foundation Initiative, called "Remembrance, Responsibility, and the Future." Questions that come to my mind: Initiative, sixty years after that, do we call this initiative?

"Remembrance, Responsibility, and the Future." It has a good name. But in all our talks we talk about legal closures, about lower cost of legal closure. The last one in Bonn; that was the one meeting I did not attend, because we survivors in the United States decided to boycott it because it became a three-ring circus. I could see the glitter of gold in the eyes of the lawyers that were thinking how many millions of dollars they would like to make out of our skin and bones, out of the survivors.

I have seen the perverting of the meaning of the Holocaust. And that of the slave labor and equating the slave labor to forced labor. And when we talk about the slave labor—and I heard before the questions, you know, English language is extremely rich in words. But there is really no word that can describe, although we use it now as "slave" labor, because a slave was somebody that was a property; you did not kill the property voluntarily.

But the slave labor, the way we use it here is somebody that was designed to be killed through work. It was the German expression to be killed through work. And they had a schedule, ninety days should be the lifetime that they could use a man to work, and then let him die and they will pick up somebody else.

And the third issue, which also was to be like a three-ring circus, is the pleading of poverty by the industry. Imagine the poor German industry, the Siemens, the Bayers, the Volkswagens, the Mercedes-Benz, these are the people that are buying our banks; they bought the third largest auto company, Chrysler; they bought insurance companies. They are pleading poverty. I was at one time ready, but I didn't have the guts to go and tell them "we will make a donation for you."

As a matter of fact, a leader of their industry in one of the meetings said—and he meant it seriously, he said "You know, we, the industry, are paying part of the bills that the government is giving, because we pay taxes." I remember Stu Eizenstat was there too, and he was also stunned.

And it was quiet in the room, and I answered him, "Yes, Dr. Gantz, you are right, part of the money which the government pays is your taxes. But if we are going to do this, why don't we go back in the history? Let's go to the Marshall Plan. I paid the taxes, all my fellow survivors, all Americans paid taxes too, so should we deduct it, should we add to it?" We heard no more about the taxation.

But I would like to say again and I would like to emphasize that we survivors never spoke about money. We spoke about morality, we spoke about ethics. And some justice, relative justice, not a complete justice, we are realists—it does not exist, absolute justice for all. Not just for us. But we also told them at this negotiation that from us survivors, they can get no closure, they can get no forgiveness, because the only people that can forgive them are the six million people that they killed. They are dead. They cannot forgive them.

And this is what brings me to the trouble, that part of the negotiation which we were talking here so much, and misleading statements or innuendos about the 10 billion deutsche marks. And that goes back to what I said about the image, that it is money being grabbed by the Jews. It is wrong. It is not for the Jews. The Jews are only getting a small portion of the money, and yet it is presented in such a way as if it would be Jews. And unfortunately, I must say that I had a meeting with Graf Lambsdorff, Ben—who is my friend, and Mr. Singer was there, too, just the three of us—and Graf Lambsdorff said “that creates anti-Semitism.” And I have told him, “If it does, it is your fault, because you are creating the impression that the 10 billion deutsche marks are for the Jews.”

We are not grabbing. We never spoke about money. Maybe 30 percent of the money will be to the Jews.

Now, when we are talking about the negotiation, I tell you that the way I see it, that the problem with the negotiation is that too many of the negotiators have never been exposed to life in the concentration camp. Too many never heard the cries of agony from the tortured. But they are eager to talk and write about the lives in the camps.

I can only tell you that I never wrote a book, but I did personally experience life in these concentration camps. I can also tell you that there are no words, no tales, no pictures which can possibly convey the brutality, terror and bestiality that occurred daily in the places of horror. Yet so many, so many want to represent us.

If you would be at the meeting of this negotiation team, you would see half of the people are lawyers. So many of them want to represent us. So many want to tell us what is good for us. Without even realizing that only those who survived the concentration camp can truly understand us survivors. Then even we cannot convey to others but a minute portion of the actual happening.

I am sorry, Mr. Chairman, I take more time than maybe I should, but I was not given exactly the time period, and I will try to finish.

Because so much was said about this so-called December 17th date, I don't know whether I should call it the famous or infamous December 17 date. I was there. I was asked by some of my people, “Roman, you must be there.” I went there. I heard the speeches made by President Rau, by our good friend Stuart, and Graf Lambsdorff.

I would like to tell you that I have the highest regards for Stu Eizenstat. He has the patience of an angel and he guides these meetings in a way that I have never seen anybody do it. And even today I have talked to Stu that, “Look, I mean, I don't know how you do it, how you keep calm.” And he said, “I still have to learn how to keep you calm.” But it is not so bad.

I would like to point out that no survivor was asked to speak at the presidential palace. It was just the three of them. But being there, I felt that we survivors should say something. It was wrong for us to be there, only two or three of us were there, and just standing next to this President Rau, I did express some of my thoughts. And I said that from the very beginning, we survivors fought for and stressed the moral issues and tragedies of the Holocaust, not only for us as Jews, but for the world at large. Even

today the unimaginable damage caused by the Holocaust cannot be fully comprehended.

And I would like to emphasize, standing next to the president, I still felt that I have to tell him this, that 1.5 million Jewish children were killed. No, not killed, but brutally murdered. And I said that sixty years ago, I too was child; I was one of the few who survived. And just the moral issues, the historical justice are what we survivors fought for. I continued by saying that the remarks that have been made here today, and particularly the ones made by you, President Rau, justify the efforts we have made concerning morality and morality only. Forgive us, and I used the Hebrew word "shehahatanu", for we have sinned, it was this, what I and the world heard today. And I finished by saying, "Let these words reverberate now and forever here and around the world so that another Holocaust can never happen to us or to any other people."

I like, Mr. Chairman, to emphasize that I did not utter one word in the presidential palace about compensation. Yet I want to stress that there should be no question, no question in anyone's mind that the living survivors should receive—they should receive enough compensation to spend the rest of their lives in relative comfort. This is the least to which they are entitled. I would like to stress that the lives of 1.5 million children and their families are priceless. No, we do not want to equate morality and ethics in terms of dollars and cents. That is the difference between us, the survivors of Auschwitz and the non-survivors.

I can only hope and pray that the victims of the Holocaust did not die in vain. If we can be a moral force and, by example, make the world a better place to live, that would be the greatest legacy that we survivors can leave for posterity.

I would like to thank you again, Mr. Chairman, for allowing me to share some of my thoughts with you and your committee. It would be thoughtless, however, if I would not say that the draft legislation proposed by Graf Lambsdorff, given to the Bundestag, was completely disappointing and unacceptable to us. I cannot agree with the beautiful report which was given by the Graf.

There are so many points there that it have no business to be there. It was an insult to us. It was to me a heartless, cold document absolving the German industry of all these things, of all their atrocities, of all their tragic work; and should the 10 billion deutsche marks obliterate the meaning of the slave labor?

Now, we cannot agree to that. We cannot agree to that, because as long as you have people like Haider, who refers to a concentration camp as Mr. Hirshson said, as "punishment camp", and as long as we have David Irving questioning the Holocaust, we must not allow historical documents, and for that matter, any document, to distort the real evil of the Holocaust.

I just want to finish by making a couple of additional comments about some of the statements made which were so contradictory, with your permission.

Chairman LEACH. Sir, you have my permission.

Mr. KENT. Thank you.

I heard the statement how much the German nation already paid—100 billion deutsche mark, or whatever it is, and it strikes me like a funny way of saying how much they paid, rather than



how much they took, and how much they paid out of that. If they stole from the people in Europe 500 billion and if they gave slowly year after year and adding up to 100 billion, should I go ahead and thank them? You paid me? If you took my whole apartment and you are giving me a chair every year, so that after fifty years I maybe have a living room, should I go ahead and tell them thank you? It is the wrong way of putting it.

Again, like I said about the German draft, there were so many things and the words are so nice, but its meaning is so different. When we talk about that we want to pay as fast as possible. Why were a lot of things kept by the German government in their hiding pockets and not told to us? Why, when we asked, "Are you talking about foundation? What is the membership of the foundation? If it is allocation why don't you do work on it before? Why do you wait until everything is finished? And what is maybe even worse, why do you want to push us survivors to negotiate with the Eastern European government how to divide it? We are not giving the money."

I have told Count Lambsdorff, it is not our business to have any—we have no quarrel with the Polish government, with the Russian and so on. We have no right to fight. It is so easy for him to say, "We will agree to everything that you will agree." That is not my money to agree with somebody. Yes, I have a foundation, a charitable foundation. I can decide who I give. Germany gives the money. Graf Lambsdorff tells me, you agree with the others.

We never fought about money. It is wrong to do it, is it not? And then to throw it at us, "You delay it." No, they delay it.

Because another thing which they threw in all of a sudden, almost at the end of our negotiations, they suddenly decided that Bundestag has to approve it. Why did they wait so long? If Bundestag was supposed to approve it, they should have done it before.

I think, Mr. Chairman, I've said enough. I never spoke so long. But somehow looking at you, smiling, patiently listening to me, you gave me the courage to say what I said. So please forgive me if I took too much of your time. And if I have burdened you with too many problems, but this committee has been very instrumental to the memory of the Holocaust and that is what we survivors want to achieve.

So thank you again.

Chairman LEACH. Well, thank you, Mr. Kent. And let me just make it very clear that the United States Congress cannot cut off in any way the testimony of a Holocaust survivor. You deserve your time.

Mr. Lerman, whose work, by the way, we respect so enormously.

#### **STATEMENT OF MILES LERMAN, CHAIRMAN, U.S. HOLOCAUST MEMORIAL COUNCIL**

Mr. LERMAN. Thank you, Mr. Chairman.

I would like to touch on a subject matter that is somewhat different, but very, very definitely intertwined and tied in to the subject matter that we have the dialogue on. And this is the subject matter of Holocaust education.

Chairman LEACH. If I could interrupt you for just a second, if you could pull the microphone closer and a little lower, I think you will find it carries to the back of the room a little bit better.

Mr. LERMAN. Is this better?

Chairman LEACH. Yes, it is.

Mr. LERMAN. The subject matter of Holocaust education, and not for the purpose of the horrors that this represents, but for the purpose of using it as a moral compass for today—for the Kosovos, for the Rwandas and for the rest of the world. I have recently returned from Sweden where I have co-chaired with Under Secretary Eizenstat the U.S. delegation to the Stockholm International Forum on the Holocaust. This, Mr. Chairman, was an absolutely unprecedented gathering of representatives from forty-eight countries and several non-governmental organizations who came together to explore ways and means to implement a global network of Holocaust education. The delegations contained twenty-one heads of state.

All the representatives of governments at the Stockholm International Forum declared the importance of the lessons of the Holocaust for contemporary society. As I mentioned before, they pledged to promote Holocaust education and remembrance, including an annual day of Holocaust remembrance in their countries, as we are having in the United States, and to facilitate the opening of archives in order to ensure that all the documents related to Holocaust matters are available to researchers and historians.

Countries pledged to work cooperatively with the intergovernmental Task Force for International Cooperation on Holocaust Education, Remembrance, and Research with the U.S. Government participation; and it is led by the Department of State and the United States Holocaust Memorial Museum. I have included a copy of the formal declaration of the forum and a description of the task force with my written statement, which you have on file, Mr. Chairman.

There are many reasons why so many countries on such high levels participated in this unprecedented gathering. The reasons were: The concern over the growth of neo-Nazism; public opinion polls showing that young people in some countries have very little knowledge of this tragic chapter in history; the events in Bosnia and Kosovo and Rwanda and East Timor, and elsewhere; concern for human rights; the hopes for the new century and the new millennium and other factors, not the least of which is the early vision of the United States Government in establishing the United States Holocaust Memorial Museum.

Much of the pressure toward greater efforts worldwide in Holocaust education, remembrance and research has been the indirect result of the activities of the Committee on Banking and Financial Services of the U.S. House of Representatives, in particular, and of the United States Government generally concerning Holocaust-era assets for which I want to thank you formally and officially. I can't thank you enough for that.

As a result of this committee's investigation into the question of bank accounts in Switzerland and the expansion of that inquiry in the Congress and under the guidance of the Deputy Secretary Stuart Eizenstat, to encompass insurance, real property, art, and forced and slave labor, as Mr. Kent has enunciated, attention has been focused as never before not only on the need for financial restitution to survivors, but also on the great need for the world to

understand the tragic history of the Holocaust, to understand it. Perhaps even more important ultimately than this committee's outstanding work regarding the assets themselves has been the way in which governments and the general public have come to understand the need to know the truth concerning the Holocaust, however painful it may be.

It is essential that the future generations learn not only what happened, but they get to understand how it was possible for it to happen. And this is very important.

The efforts of this committee have also spawned an entire new era of research. Previously, in years back, scholarship on the Holocaust concerned itself primarily with the murders. There was relatively little work on the tremendous theft, the tremendous robbery that accompanied it. Because of the need during the past few years to examine bank, insurance and other corporate records, a younger generation of scholars has developed expertise on the economics part of the Holocaust. This is totally separate subject matter.

And inasmuch as this new research will be instrumental in the implementation of a process to help compensate the unlawful confiscation of material matters, it is essential that we keep in mind that the last word on the Holocaust cannot be bank accounts or insurance policies. It must be Holocaust education, first and foremost.

The last word on the Holocaust, must not, however, be money. And ultimately the issues discussed by this committee are about memory and justice and planting the seeds of a better future. I urge the committee to pursue its inquiries until they are fully settled, but to continue your efforts with the understanding that I know you have, that what you are really examining is historical truth and humanity's aspirations for a better tomorrow.

Thank you, Mr. Chairman.

[The prepared statement of Miles Lerman can be found on page 233 in the appendix.]

Chairman LEACH. Thank you very much, Mr. Lerman.  
Rabbi Baker.

#### **STATEMENT OF RABBI ANDREW BAKER, DIRECTOR OF EUROPEAN AFFAIRS, THE AMERICAN JEWISH COMMITTEE**

Rabbi BAKER. Thank you.

The efforts in these past few years to identify and recover Holocaust era assets have been quite remarkable. Questions concerning looted Nazi gold, stolen art, dormant bank accounts, unpaid life insurance policies, and long-rejected claims for forced and slave labor have all been addressed and appear to be on the way to resolution. Surely, no observer or participant to these developments imagines that this could have been possible without the active interest and intervention of the United States Government.

At the same time, significant problems still remain in each of these areas, and delays and new stumbling blocks have increased frustrations.

The court-certified settlement in the matter of Swiss banks has promised the possibility of additional help and benefits to Holocaust survivors beyond those with claims to actual accounts. But the process of uncovering these accounts has been a difficult one

and disclosure of new lists will delay further final determinations of how much money can be allocated to survivors and possibly even the distribution itself. The inability of parties to the agreement to reach a common understanding on distribution at the beginning has already added months of delay.

The creation of an international commission to resolve Holocaust era insurance claims was thought to offer a collaborative means of joining companies, regulators and victims' representatives to find a swift and equitable solution. Former Secretary of State Lawrence Eagleburger deserves much credit for his work as Chairman, but he presides over a divisive and argumentative process where progress is now measured in small steps and the number of participating insurance companies is decreasing rather than growing.

A year ago this month a representative of the German Chancellor announced in Washington that within ninety days a fund would be established to make payments to former slave and forced laborers. After much difficulty, though still before the end of this past calendar year, an agreement was announced for this total payment of 10 billion marks, and Deputy Treasury Secretary Stuart Eizenstat should be recognized for shepherding this very difficult negotiation toward a final settlement. But there are several different claims which must be satisfied by this total sum, and the actual payments to individuals, as well as the number and categories of forced laborers to be covered, still remain to be decided.

People who are involved in these various negotiations have worked tirelessly and no one would dispute that a whole host of details must be completed before such complicated final settlements are put in place. But the news of these various agreements has often been trumpeted long before claimants or survivors are able to see any tangible result. Naturally, it has produced frustration and increased suspicion on their part.

Now we are about to face a new set of questions and problems. How will we divide and how will we distribute these funds? And I am not speaking of those cases such as a bank account or an insurance policy or a work of art where there is an identifiable heir or claimant. Rather, it is where we will have humanitarian funds as compensation for heirless or unclaimed assets or where we will have a lump sum payment for large numbers of victims.

Even among the most severe victims of the Holocaust, it is not easy to determine an equitable system of distribution or even to know if such a system is possible. Do we consider the experience and suffering during the Holocaust as the major factor? Do we take into account the financial needs and conditions at the present time? Can we find ways to approach fairly the very different situations today in which Holocaust survivors live in Israel, in America, and in Eastern Europe and the states of the former Soviet Union?

Add to this the fact that at least in the current slave and forced labor negotiations, we have expanded the group of victims to be addressed. It will include people who surely suffered during the War, but in the main were not concentration camp inmates, nor, like Jewish victims, targets for extermination. Justice is served by addressing the claims of these victims, too. But we must now contend with an overall settlement that virtually pits victim groups against each other to fight for their share of a fixed amount.

Even as these problems demand answers, we should keep in mind some larger, more long-term questions. Throughout these months, many people have spoken eloquently and repeatedly about the lasting legacy of these asset debates. We have been reminded that they must not be viewed as only matters of money, but rather of justice, of morality, of history, of education. Yet I fear that when we look at these things, at the still tangled, unfinished business of the Holocaust, we address each important issue in isolation from the next.

It is as though the recovery of stolen assets, the pursuit of Nazi War criminals, the advancement of Holocaust education and research, the revival of Jewish life in Central and Eastern Europe, and the dynamics of the current bilateral relations with the countries affected are all separate. In fact, the truth is quite the opposite. We need to see that they are connected and able to reinforce each other in positive ways.

For many years and continuing to the present day, the Claims Conference on Jewish Material Claims Against Germany has conducted direct negotiations with the German government on behalf of Jewish Holocaust survivors. However, recent developments have now grouped it together with the representatives of other non-Jewish Nazi victims. The experiences of these victims during the Holocaust era were very different. And they do not see each other as having shared grievances or the solidarity of a common suffering. But the representatives of Jewish victims do recognize that there is merit in the others' claims, even as they resist efforts that set these claims against each other.

In the end, I believe it is important for both moral and practical reasons that the many non-Jewish victims of Nazi forced labor and their respective governments will come to recognize that Jewish representatives shared and helped advance their efforts for redress as well.

Many of the most needy of Jewish Holocaust survivors live today among the remnant communities of Central and Eastern Europe and in the former Soviet Union. The way in which these negotiations play out can either serve to ameliorate the relationships between these Jewish survivors and their neighbors and governments or serve to increase tensions and heighten resentment.

Great emphasis has been placed on the importance of Holocaust education, and as we heard, last month's Stockholm Forum was an unprecedented step to encourage government involvement in dozens of countries. Quite obviously, an understanding of the Holocaust in all its dimensions should contribute to a better understanding and appreciation for the efforts to recover looted assets, even as they make evident that money was only a small part of the story. But it should be pursued in such a way that the study of the Holocaust, particularly in the former Communist bloc countries, will foster introspection and self-examination that was impossible before 1989. With prodding from the West, several of these countries have created national historical commissions to investigate the events of the Holocaust on their own territories. Now we need to find the financial means to help them undertake the research and archival work, which may, in many cases, take them here to the U.S. Holocaust Memorial Museum or to Jerusalem to Yad

Vashem. But in doing this, let us also find ways to help educate a new generation of scholars by creating opportunities for young researchers and interns from Poland, from Latvia, from Lithuania, from elsewhere in Eastern Europe, so that they can be involved in these efforts. At the end, there should be not only completed historical reports, but new teachers as well.

As for Holocaust education, efforts should not focus exclusively on the twelve years of the Holocaust itself. During the past eighteen months, the American Jewish Committee has conducted a review and analysis of secondary school textbooks in seven Central and Eastern European countries. Even where the subject of the Holocaust is addressed, all too often the centuries-long history of Jewish life in these countries is virtually absent. Thus, it is as though Jews appear on the landscape only to be deported and exterminated by the Nazis.

Correcting this omission is important for several reasons. It will inform new post-Communist generations of students that their own national histories are intertwined with Jewish history. And it will strengthen the efforts of remnant communities as they seek to revive Jewish life and recapture their own histories. And the revival of Jewish life in this part of the world truly is one of the miracles we have witnessed.

Despite very limited resources, small numbers, resurgent anti-Semitism, and the internal disputes that seem to accompany all Jewish communities, they are actively engaged in the process of rebuilding. They need help in caring for their aged and indigent, the majority of whom, by the way, are Holocaust survivors; and these negotiated settlements should bring welcome relief. But they also need help in educating their children, even as they educate themselves, to make up for the decades when such Jewish learning was illegal or not possible.

Help for this, too, should come from these agreements. As I remarked the last time I was invited before this committee, the Jewish communities in Central and Eastern Europe themselves are also survivors.

Mr. Chairman, in these last half-dozen years I have had the opportunity to travel frequently to the countries of Central and Eastern Europe. In every place there are those who would minimize the Holocaust, who view Jews, past and present, with distrust and suspicion, whose own sense of being a victim of the Soviet horrors cannot permit an acknowledgment that their own countrymen might have collaborated in Nazi crimes. Encounters with these people can be a chilling and depressing experience.

But, it is equally true that in all of these places there are also people, mostly young and idealistic, who hold different views. They tend to the care of abandoned Jewish cemeteries. They dig through long-forgotten local archives to retrieve pictures and documents of pre-War Jewish life. They organize seminars on teaching the Holocaust. They monitor newspapers and television broadcasts for anti-Semitic and racist expressions. They want to know their country's past and, in particular, its Jewish past. They want to link their country's future with the civic and pluralist values of the West.

Quite frankly, I think this second group is much smaller than the first. But I believe and I have hope in their future. Who will

be the ones to preserve the legacy of the Holocaust in Central and Eastern Europe if not they? The local Jewish communities are too few, and we are too far away. These are the people whose eyes have been opened to the possibilities and to the responsibilities of building a new society on the values that we also cherish.

You know them. They are the people who came here on government study visits since 1989, who staff the Open Society Foundations, who have created Atlantic Councils, who have advocated for NATO membership and human rights; some of them even sit around some of the negotiating tables. In our efforts to recover Holocaust assets and to preserve Holocaust memory, they are not our adversaries. They should not be our competitors. They need to be our partners.

Thank you.

[The prepared statement of Rabbi Andrew Baker can be found on page 239 in the appendix.]

Chairman LEACH. Well, thank you very much, Rabbi Baker.

Thinking of the last two witnesses on the education issue and about the hearing we are going to have tomorrow, I am wondering if it might not be an interesting undertaking—or perhaps you have already undertaken it at the museum, Mr. Lerman—to have an exhibition, possibly a permanent one, on degenerate art. That is, Hitler defined certain art as “degenerate”; in that defining, he really defined himself as degenerate.

What makes me think of this, I was recently in a small town in Switzerland where they hold an annual conference, and there is a museum to an emigre from the Nazi era named Kirschner, who I don't believe was Jewish; but he committed suicide, it is believed, in large measure because most of his art was destroyed by the Nazis. I think that is a very big symbol to a civilization. And it might be an interesting thing for your museum to contemplate.

But I don't know. Maybe you have undertaken this sort of thing.

Mr. LERMAN. You would be interested to know, Mr. Chairman, that while I was with my senior colleague staff members, the director, Ms. Bloomfield, Wesley Fisher, who is with me here today—while we were in Sweden there was a tingling, there was an excitement, because it is the first time where forty-eight nations—and some of them were former collaborators of Nazi Germany—came together, knowing fully that they were coming for one purpose, to find a way of taking a good look at themselves, to take a good look at their past.

And at the conclusion, I stood up as Chairman of the United States Holocaust Memorial Council and committed the United States Holocaust Memorial Council, my colleagues, the experts—they are the teachers; they are the ones who are working today with 30,000 teachers in the United States—I have committed that any country that is embarking on a program of Holocaust education, and they need assistance, they need help, that I encourage them whether in methods, whether in evaluation of lessons or material, we stand ready, we are the expert. Unfortunately, we are the expert.

We have learned it throughout the years while we are building the museum and throughout the period of the six-and-one-half years of fabulously successful operation. We have found ways to

convey the positive among the ugly, and we will do that. This will be an ongoing process.

Robert Singer will proceed with his task that he is doing so ably, and everybody is applauding it. We will continue with our task, and we hopefully will create a generation that will be a little better than it was a year ago.

Chairman LEACH. Well, thank you.

Let me turn to Mr. Hirschson. The settlements that are being talked about that Mr. Kent indicates are inadequate, others indicate at least are symbolic. Will they make a measured impact on Israeli life and Israeli economy? Will they be any help to your country?

Mr. HIRCHSON. Of course the changing life, there are some of the survivors who are in very bad condition, and each dollar or each schedule that is paid now is changing, you know, on a daily basis their life. But I am asked every day by hundreds of survivors, and they want to know when it will be finished and when they can get the money. And the thing that I am dealing with is every day hundreds of letters of the survivors that want to know when the day will come that they can see justice.

Chairman LEACH. Well, I appreciate that, and certainly your country has the largest number on a proportional basis, but I think Rabbi Singer is right when he affirms that we are really dealing with symbolism much more than justice; that is, it is inconceivable, apparently, to reach justice, but it is not inconceivable to reach an element of symbolism that at least addresses philosophically the issue. And I think that is all we can do. But in terms of justice, I think that is beyond the realm of conceivability.

Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, for this hearing today. And I really want to thank our witnesses, particularly Chairman Hirschson, for coming this long way and contributing so much to this discussion. And to all of you not only for being here today, but for your years and years of commitment, your ongoing commitment that I know won't end even when the checks go out, and I hope that they do. This is, as you have all said so eloquently, so much bigger than money and property and things.

I look forward to working with all of you to achieve our goals of the whole world never forgetting.

Thank you.

Chairman LEACH. Well, I think that is an appropriate statement to end the hearing on, and I want to thank you all very much for your testimony, we are very appreciative. The hearing is adjourned.

[Whereupon, at 3:00 p.m., the hearing was adjourned.]



## RESTITUTION OF HOLOCAUST ASSETS

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THURSDAY, FEBRUARY 10, 2000

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON BANKING AND FINANCIAL SERVICES,  
*Washington, DC.*

The committee met, pursuant to call, at 10:15 a.m., in room 2128, Rayburn House Office Building, Hon. James A. Leach, [chairman of the committee], presiding.

Present: Chairman Leach; Representatives Lazio, Ryun, Toomey, C. Maloney of New York, Bentsen, Sherman, Inslee, Schakowsky, Moore, Forbes, and Lee.

Chairman LEACH. The hearing will come to order.

Yesterday we reviewed in some detail the issues of the settlement of the Swiss bank accounts and the progress in reaching agreement on payments to survivors and heirs of survivors of forced and slave labor during World War II in Germany.

Today we will hear testimony on the status of a proposed settlement of insurance policies, and then turn to the vexing matter of the rightful ownership of art works and other objects stolen or looted by the Nazis, by the Soviets, and perhaps by others before, during and immediately after World War II. Before introducing Secretary Eagleburger, who will testify on the important insurance issue, let me briefly address the art question that this committee previously reviewed two years ago.

Since then, the Art Museum Directors Task Force has established principles and guidelines for the Nation's major art museums, and much work has been undertaken by museums around the country to trace the provenance of numerous paintings and other pieces of artwork. The example set by the North Carolina Museum of Art last week is, in the mind of this Member of Congress, the proper one. Upon learning that one of its most prized paintings, "Madonna and Child in a Landscape" by the German artist Lucas Cranach the Elder, may have been stolen by the Nazis, the museum promptly reviewed the ownership trail of the painting from an Austrian family to a Nazi leader to the New York art market, to a Beverly Hills collector, who eventually donated it to the Raleigh, North Carolina museum.

Upon confirming that it was indeed a looted painting, the museum decided to return it to the grand nieces of the man from whom it was taken. It may be the first time ever that a major disputed artwork has been returned without legal action. It is a principled act of a principled museum.

We will hear this afternoon from a New York woman who has a far different story. Martha Nierenberg will document the endless

delays and numerous broken promises she has encountered in seeking paintings taken from her family home in Hungary.

We will also hear from the distinguished leaders of several of the world's leading art museums and from organizations instrumental in this effort to ensure that art is returned to the families from whom art was stolen during the Nazi era.

Does anyone else seek to make any opening comments?

Mr. Bentsen.

[The prepared statement of Hon. James A. Leach can be found on page 248 in the appendix.]

Mr. BENTSEN. Thank you, Mr. Chairman, let me once again commend you for the seventh hearing or the sixth series of hearings that we have had on the recovery of Holocaust assets, and let me also make a point of commending you for going beyond just monetary assets to other properties. And I think it is important that the panel and others understand, I am not aware of another committee room in the Congress where you have a Kenneth Noland or a Sigmar Polke or other Modern art hanging. Usually it is pictures of the former chairman, so I think you bring a special appreciation to this and you are to be commended. I yield back the balance of my time.

Chairman LEACH. I thank the gentleman. Does anyone else seek recognition?

Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. Secretary, yesterday Mr. Bentsen engaged Secretary Eizenstat in a line of questioning that got at the concept of developing Federal legislation to create official safe harbors for members of your commission. And I guess I would like to hear your thoughts on whether that is something that you believe is appropriate, whether it is needed, and if so, about what kind of timeframe we should look at to do that. Thank you.

Chairman LEACH. Thank you.

Let me say, in introducing Secretary Eagleburger, I know of very few people who have served in public office in the last generation who hold anything like a reputation comparable to that of the Secretary, and we are honored that he has come before us and very appreciative of the extraordinary work that he has undertaken on a unique, if not unprecedented, commission in the insurance arena, that is, of an international dimension. We are very appreciative of the time and effort that the Secretary has put in. He may have thought he was entering into a period of some retirement, and actually there may be great efforts to pull him out of this retirement into further public service, but what he is doing at this time is deeply commendable.

Mr. Secretary, please proceed.

**STATEMENT OF HON. LAWRENCE S. EAGLEBURGER,  
CHAIRMAN, INTERNATIONAL COMMISSION ON HOLOCAUST  
ERA INSURANCE CLAIMS**

Mr. EAGLEBURGER. Thank you, Mr. Chairman.

When I was in Government and would come before a committee to testify, I never did what most people who come to testify do, which is to start off by saying how pleased they are to be before

the committee. I didn't believe in doing that, because I didn't think that I should lie to the committee before I had a chance to testify.

I can say, however, this time it is a pleasure to be here, because it gives us a chance to talk a little bit and I hope that I won't take too much of your time, but to talk a little bit about doing justice to a number of people, the number I think is still to be determined, but I think a substantial number of people who have not had justice done for them for some six decades and I view this commission of which I am a member as seriously and hopefully, successfully, trying in fact, to do justice.

You had testimony here yesterday about the foundation, the German foundation exercise. You have had testimony from Mr. Sher to my left, who is my staff director on the commission, so I won't bore you with a long history. Let me simply say that the commission itself was basically the idea and the consequence of pressure from the National Association of Insurance Commissioners of the United States, that is the insurance regulators from the fifty States. It was their idea in the first place to create this commission, largely to get claims paid that had not been paid in sixty years.

There was a Memorandum of Understanding that was drawn up between the companies and the regulators and the Jewish groups who also participate in this commission. That was all done before I was, in fact, approached to become chairman.

You have, I think, a copy of that Memorandum of Understanding from the last testimony of Mr. Sher, but if you wish, I can certainly leave another copy for the record now. It is important in the sense that it sort of sets out a road map of what it is that we are supposed to be trying to do, what the company responsibilities are and so forth.

I will tell you when you read it through, if you can answer all of the questions that it occasions, I would like to have time to talk to you privately, because I haven't figured all of them out myself. It is not the world's most elegantly written document. Having said that, it is fairly clear on the responsibilities of the various members of the commission.

On the basis of that Memorandum of Understanding, we on the commission, again, through negotiations on the part of all of the members of the commission, have been engaged, and in my judgment, for too long, but we have now arrived at a fairly clear set of procedures to go out to the world and say to potential claimants, here is a mechanism whereby you can, if you think that you have a legitimate claim for insurance that has not been paid, you can come to this commission and we will make sure that your claim is considered, and considered seriously, by the companies that are engaged in the international commission itself.

There was no such mechanism in the past, and one of the things that we discovered as we got into this whole exercise was that there were—in the archives and the records of a number of the State insurance commissioners themselves, there were fairly large numbers of potential claims that had been sent to the New York State regulator, for example, and they had to sit there, because there was no way to engage the process with the insurance companies to try to get them considered. The State regulators had, on oc-

casation, sent these potential claims to relevant insurance companies, but there was no mechanism. If the insurance company wanted to ignore the claim, they simply ignored it.

I think we now have reached the point where there is a clear means by which we can make sure that the companies do, in fact, consider the claims that may be made.

On the 15th of February, we will announce the opening of our claims process, and what that means, in effect, is that we will, through websites, through publications in newspapers, through cooperation with various Jewish groups, we will go out hopefully to most places in the world where there may be claimants and tell them here is how you make your claim. We will have toll free telephone numbers and we will do media advertising, and we are coordinating the process with some 10,000 Jewish and survivor organizations. I can go into more detail in the questions and answers. Let me simply say that we now, I think, after almost a year of negotiating with ourselves, have reached the point where we can now go out and hopefully generate the kinds of claims that I think may be out there.

We have had a fast track claims process already in place, largely taken from these State regulators, the claims that they have had and not been able to do anything with, we have taken those and at least begun to push those out to the various companies to see if we can't get claims paid, at least on the basis of those particular documents.

I should say that the insurance companies, on the basis of this fast track, have made some 174 offers on potential claims. The offers have gone as high as \$113,000 and the average has been over \$10,000 in terms of offers made to claimants. So we have had some progress even before we got the mechanisms for filing and considering claims really established. We have, at least, gotten some claims considered, some paid, and I consider that, myself, progress, since we've at least begun to pay some people who for too long have been ignored.

One of the questions that still remains unresolved within the commission, and I know that you have had some discussions of it in general here already, is the question of what about the companies, European insurance companies, who may have been active, either they or their predecessors, in the Holocaust period, and they are not members of this commission?

I have tried very hard to try to get a number of these companies to, in fact, join the commission. I will just list for you briefly the ones that we have approached, and that have either not responded or have so far at least said they are not going to join the commission. Aegon, CGU, Gerling, Munich Re, Sorema, Royal and Sun Alliance, Swiss Life and Prudential.

I have sent letters to the various State regulators indicating my belief that they should become members of the commission. We will see in the course of the next weeks whether that is at all successful. I know there has been—and therefore, I will talk about it for a moment—some discussion of the Dutch insurance company Aegon, which recently bought TransAmerica, and there has been a good bit of fiction in and out of this subject. Let me set the record straight.

I believe Aegon should be a member of this commission. I also believe Aegon should not be required to pay twice on claims that it has already paid once, and Aegon has an arrangement with a foundation in the Netherlands and have considered and paid a number of claims. That is fine and as far as it goes, Aegon is to be congratulated for that. But there are a whole host of potential claims that this process has not covered.

I believe Aegon should join the commission under the same conditions as the other members of the commission, but with the understanding that we will have to make sure that the claims that they have paid they will not have to pay twice.

On the other hand, I do not believe, as far as this commission is concerned, that we should have two classes of citizenship. The responsibilities undertaken by the five companies that are now in the commission should be the same responsibilities taken by any other company that joins the commission.

We have had a number of conversations with Aegon authorities. I will tell you now, nothing, as far as I am concerned, approaches a negotiation. Therefore, any claims that may be made that we have begun negotiations and have been unable to arrive at any agreements is incorrect. There have been no negotiations. There have been some conversations, and that is as far as it has gone. I would like to see Aegon join the commission, but I feel equally strongly that there are other insurance companies, and I named them, which also should become members of this commission.

Munich Re is another insurance company which I would particularly invite your attention to. Munich Re is a reinsurer, but it is also the owner of a number of companies that themselves have written insurance policies during the Holocaust period; and that, therefore, need to be represented in the commission and Munich Re ought to be the representative. It includes a big group. There are a number of claims against some of these companies that rest now in the hands of some of the State regulators. Munich Re needs to come into the commission as well.

That leads me to a point, which is related to what you heard about yesterday, significantly, the German Foundation Initiative.

First of all, I should say to you that Deputy Secretary of the Treasury Eizenstat deserves tremendous praise for having pushed this issue when, in the beginning, at least there was remarkable lack of interest in the subject. And this foundation will be doing, as I hope we will be doing in the commission, and that is finally too long delayed doing justice to a whole host of people that have been ignored for too long.

One of the problems, if I can describe it that way, one of the issues that the commission and the foundation are going to have to work out amongst themselves is how the German insurance companies that are contributing to the foundation, how that contribution will be related to what their responsibilities are within the commission. This is not an impossible job to reach an agreement on. It will take some time and we have been doing some negotiating on the subject. The fundamental question against which everything else can be resolved is some sense of how much money the German foundation ought to be setting aside for the International Commission in terms of paying claims that the International Com-

mission will receive as they relate to the German companies that are in the foundation.

Again, it is complicated, but it is not impossible to resolve once we have some agreement on the magnitude of the problem and how much money ought to be contributed by the foundation to the commission itself. But what it does raise is a significant question for me, at least, which is, I do not believe that we ought to be granting legal—what is the term—closure, to companies that while they are represented in the foundation, do not themselves participate in the commission, and do not themselves specifically pay claims that may be argued against them.

So when it comes to the question of how those companies, if they are in the foundation and not in the commission, ought to be treated, I personally am of the view that legal closure should only be granted to those companies that have, in fact, fully participated.

There is no question, this is a difficult issue. Whether in the end when these negotiations are over, I will recede from that position at some point or another has yet to be seen. And we need to understand that if the Jewish groups and the companies and the regulators can arrive at a consensus on this question, I will certainly bow to their wisdom.

But at least in the beginning, I am of the view that the only companies that should get legal closure are those that, in fact, have participated fully in the commission. And we are going to have some difficulty negotiating that issue out, I think.

Let me close by saying I don't want to get into too much detail here, and if you have questions, I will be glad to answer them.

I know that there was discussion over whether RAS, which is an insurance company that is majority owned by Allianz, which is a member of our commission, should fall within the foundation or not. My strong view is it should not, it is not a German company. We will need to negotiate this out.

Let me close by saying one other additional issue that now I think is ripe, is that as you probably know, the Austrian chancellor yesterday indicated that he wanted Austrian insurance companies to participate fully in the process of restitution. And I can assure you that I will take that word from the chancellor as controlling as far as Austrian insurance companies are concerned. We have a number of them on our list of potential members of the commission and we will be approaching those companies soon.

I would be happy—if the committee wishes—I would be happy not only to provide a copy of our Memorandum of Understanding, but also the letter that I sent to the insurance regulators, listing the other companies which I think ought to join the commission.

[The information referred to can be found on page 253 in the appendix.]

Finally, I would be happy to provide for the record, if you wish, once we have our February 15th opening of the claims process, I would be happy to provide all of the documentation that goes with that in terms of explaining call centers, telephone numbers, and so forth, and so forth, and how the process would work.

Thank you, Mr. Chairman.

[The information referred to can be found on page 256 in the appendix.]

Chairman LEACH. Well, thank you very much for that thoughtful testimony.

Let me just stress for a minute that I think I speak for the committee when I say not only are we indebted to your service, but the perspective that you apply to the issue is the perspective of the committee, and that there is no dissent from the perspective that you have suggested.

Second, just for the record, I would like to raise one concern relating to one of the companies, which I understand may be a misunderstanding, and so to that degree, that we can resolve it, I think we have an excellent chance of a company participating in the commission. One of the companies was concerned that with regard to a humanitarian fund that might be established, that a decision might be made that obligations would be allocated related to American market share, not related to percentage share of the market in the occupied countries during the War. Am I right that this is an international commission, not a commission related to what might, after the War, become a disproportionate market share of any given company?

Mr. EAGLEBURGER. You are right, Mr. Chairman. I should say in the whole messy process of trying to establish how you evaluate claims, evaluate insurance policies, the whole question of trying to get this claims process ready, the companies and the Jewish groups and the regulators in their negotiation have been basing their estimates on market share in Europe. I have never heard of any question of market share in the U.S.

I should say that it is up to the companies to decide how they are going to share the costs of the humanitarian fund. It is not my job to do that, but I have never heard any judgment being made on market share in the U.S. It would be a silly process, it seems to me, and I can tell you to the degree my views on the subject would carry any weight, I would be totally opposed to. You can't come to a sensible agreement who pays what, unless you look at market share in Europe at the time of the Holocaust. That is the only way that it makes any sense.

Chairman LEACH. I appreciate that. One of the companies feels vulnerable that other companies may gang up on it.

Mr. EAGLEBURGER. On the basis of what I have seen so far, the companies are enough in competition with themselves that I would find it extremely unlikely that they could agree to gang up on another company. That would be the first time in the history of the commission.

Chairman LEACH. I appreciate that. I just note that, in theory, the making of rules can give disproportionate liabilities for what might be considered unjust reasons. I hope, based upon your assessments today, that one of the companies that you have mentioned will be able to join the commission, and hopefully in the very near future. I personally am extremely optimistic.

Mr. EAGLEBURGER. Let me say on the subject one more time, no company should be required to pay twice. All companies in the commission should be bound by the same rules so that there is no first and second class citizenship. And the question of basic contributions on U.S. market share, in my judgment, would be foolhardy and certainly would not happen.

Chairman LEACH. One final question. It is my understanding that the commission is looking to the establishment of a humanitarian fund. Do you yet know how large that is likely to be?

Mr. EAGLEBURGER. No, sir, I don't. Again, we have to deal with this in two pieces. There is the humanitarian fund that would relate to the foundation, the German companies and the foundation. Then there is the humanitarian fund—the same fund, but two different contributors. There is the humanitarian fund, as far as the non-German companies are concerned. So first of all, we are trying to come to some agreement on what the humanitarian fund from the foundation, what that contribution ought to be. We will then have to do the same sort of negotiation on the humanitarian fund for the non-foundation companies.

Originally, when we didn't have the foundation before us, but were dealing simply with the commission as such, I was very strongly of the view we should not even approach the question of what the humanitarian fund ought to be until we had run through the claims process and had some sense of how many claimants there were. Because of the foundation, its existence, and because we have to now tell the foundation how much we think we need, both in terms of claims payments and in terms of the foundation, it is time to turn things on their heads and to come to a conclusion on the size of the humanitarian fund in the absence of any sense of how many claimants we have is going to be very much a question of sort of an estimate, again, of market share.

But a lot of it is going to be pulled from the air on the basis of our less-than-confident judgment as to how much we are going to see in the way of claims. It is an issue that is now under negotiation between the three segments of the commission, with the chairman of the commission sitting there and getting more and more frustrated at the inability as of this date to come to any conclusions.

I can't tell you the size of either piece of that humanitarian fund. It is still under negotiation and we have another commission late in February. I devoutly hope we can come to a conclusion at that time. But on the basis of the past record, I certainly couldn't promise it.

Chairman LEACH. Thank you.

Mr. Bentsen.

Mr. BENTSEN. Thank you, Mr. Chairman.

Mr. Secretary, first of all, let me thank you for the work that you are doing on this in your semi-retirement, I guess.

I am not going to get into the issue that I raised yesterday about what I guess Secretary Eizenstat called "legal peace." I think my colleague from Kansas, Mr. Moore, wants to talk about that. But I do want to say, with respect to your comment, I think what you said was for those companies that do not enter into the commission, I take it your position would be that there should be no legal peace for those companies that have operations in the United States. Mr. Eizenstat said yesterday, I believe in his testimony, that it was his hope that companies that did come into the foundation and the commission, that the Government, our Government, would be able to persuade State insurance commissioners not to seek sanctions against those companies.



Would it be your opinion that those companies, which might, by the fact of their being based in Germany, become part of the foundation, but not part of the commission, that the State insurance commissioners should still pursue those companies in order to get them in the commission in order to deal with the asset claims?

Mr. EAGLEBURGER. That is my view at the moment. But I have to admit or concede that if the foundation is going to work at all, one of the clear sine qua nons, if that is the way that it is pluralized, for the German participation is that they get legal closure.

So my view is standing in the way of that. I understand that. I also understand that this commission, of which I am a member, in the end needs to recognize that I may have to change my position, because I don't want to torpedo the foundation. There are too many other vested interests here, too many other people that finally will be having justice done, I don't want to torpedo the foundation.

At the moment, I am of the view if they are in the foundation, it is an insurance company, and it is in the foundation and it does not participate in the commission, and I mean, by participation, it is there to pay claims if they occur against that company, for example, it is my view that they ought not receive that legal closure.

Well, let me be straight with you. In the end, if I have to retreat from that, I probably will do so. If that issue would, in fact, torpedo the conclusion of the foundation, I will probably have to say I don't like it, but the foundation is too important for me to stand in the way of it.

Mr. BENTSEN. Can I ask you, though, there is some overlap, as I understand how the foundation is supposed to work, and yesterday we focused mostly on slave labor and forced labor, and there were other property issues involved in it as well, but that is a set amount, at least the way that it was discussed and the way that Count Lambsdorff discussed it, that is a set amount of remuneration to those who felt they were harmed, including those who may have lost assets.

Here with the commission ideally you are looking for real assets that can be identified, claims, and I have a follow-up question on how you are going to value that, assuming you can find the records, but here is where someone has a real live claim to an asset, to a policy, and so, isn't there some apples and oranges between the commission and the foundation?

The second thing, I seem to recall that Mr. Eizenstat was saying that there weren't all that many German insurance companies, other than Allianz that were around then and around now. The others have been reconfigured. So yes, there is some overlap, and I guess this makes it confusing, but wouldn't you agree it is a little bit apples and oranges?

Mr. EAGLEBURGER. I think it is apples, oranges, and maybe some grapefruit.

My point is, having said that, the easiest answer to that is to say insurance is all over here in ICHEIC, and the foundation deals with everything else. That clearly is not going to work. And one of the things that the foundation wants to do is, in fact, encompass those German insurance companies as well as other German industrial aspects.

Under those circumstances and because, as I say, I think the foundation is doing God's work, if you will, I want to try to make this apples and oranges some way, or another come to some sort of fruit salad. I would prefer clearly that all of the German insurance companies are in the commission, and that is where I stand now. I think it would be wrong to give them closure, legal closure if they don't participate. But, number one, I think there are a number of other German insurance companies involved here. Allianz is not the only player in this game. I mentioned Munich Re as an example, and there are a whole host of German insurance companies that Munich Re in one way or another is involved in.

What we are trying to do now in negotiations between the three parts of the international insurance commission is to arrive at an agreed figure that would cover what we estimate will be the claims against German insurance companies, in this case, Allianz, at this stage. The foundation would set that amount of money aside, turn it over to ICHEIC or something, we guess what the amount of claims will be and we guess at this stage, and that money comes from the foundation to the commission. We then also make an estimate—not an estimate, we agree on what the humanitarian fund component would be and we tell the foundation this is what we want on the humanitarian side.

Assuming that the foundation agrees when we go to them and say we want 500 million deutsche marks or whatever it may be, and they set that aside for the commission, we would have to operate within those totals.

Now, I feel very strongly that there has to be some cushion built into this, so if we are really wrong on the claims, there is some sort of a fund that we can then go to, which will make it possible for us to pay claims.

Mr. BENTSEN. Yesterday, Mr. Eizenstat said, with respect to the Bundestag's legislation, enabling legislation of the foundation, one of the issues that the American counterparts had brought up was the question of accumulation and that the German legislation right now said that they were going to accumulate payments that were made and net those out of any payment from the foundation.

What you are explaining to me is what is being discussed now with respect to ICHEIC and the insurance is in effect—would those be netted out of the foundation, the 10 billion deutsche marks in the foundation for payment, or is that a separate amount of funds?

Mr. EAGLEBURGER. It has to come out of the 10 billion. As I understand it now, the foundation figure, overall figure is 10 billion deutsche marks. We would have to—whatever it is, we, ICHEIC, agree should then be told to the foundation in terms of how much we want would have to come out of that 10 billion. It then gets to be a problem, as I said, if I want some confidence that whatever we think is going to be the amount we need for claims, if it runs beyond that, I need to have some guarantee that we are going to be able to pay some additional claims. We have not worked all of that out.

If we have that cushion, it will have to be outside of the foundation. The insurance companies will have to say "we guarantee if it goes beyond figure X, we will pay our share to make sure that all of the claims are paid."

What I don't want to see is a situation in which—and I don't think that it is likely, but a situation in which we say we want 10 million deutsche marks for claims, and we end up with 15 million deutsche marks worth of claims and no way to pay that 5 million. We have to find a way where there is a cushion for that 5 million.

Mr. BENTSEN. You also could end up with a disparity between non-German insurance companies that are part of the commission and German insurance companies who are part of the commission, and you might end up in effect with a sort of reverse joint and several liability, that you exclude some and others and they get left holding the bag.

Mr. EAGLEBURGER. My point is, I will turn blue and get on the floor and kick my heels before I agree to anything that does not provide an ability to pay whatever claims may come in. And if that means that there has to be an amount set out aside from the foundation, that may never have to be used or whatever it is, I am not going to be in a situation at all, ever, where there is a claim that is a legitimate claim, and I can't pay it, because we have agreed to a lesser figure. That does not mean that we can't work with the foundation and set a figure as long as I have a cushion out here somewhere, but what I want to avoid is precisely the point you made. I also don't want to make the other non-German insurance companies end up paying for something that is not their responsibility.

So once we have negotiated what we tell the foundation we want, I want to take the same process and negotiate with the non-German insurance companies, within the same framework, what is their contribution to the humanitarian fund and how much are we going to need from them for claims. In other words, if we can work out something with the foundation, I want to make sure we use the same framework to work out something with the non-German companies.

Mr. BENTSEN. Thank you, Mr. Chairman.

Chairman LEACH. Thank you, Mr. Bentsen.

Ms. Lee.

Ms. LEE. Thank you, Mr. Chairman.

Let me just say how important these deliberations are. In addition to dealing with the important work of ensuring that these claims are processed and collected appropriately, they really continue to educate us and serve as vehicles to remind us of our real obligation is to ensure that atrocities against groups based on race, religion, ethnicity, national origin and political belief never happen again. Thank you very much for conducting these hearings.

Let me just ask Mr. Eagleburger one question, just in terms of process, and I am not very familiar at this point with how the State insurance commissioners—what their role is and how we should work with our State to make sure that the work that you do is done efficiently, effectively and in a way that ensures the best possible outcome?

Mr. EAGLEBURGER. Ma'am, in the first place, it was the Association of Insurance Commissioners that ended up creating this commission, because they were sufficiently concerned with what they saw in the way of potential claims that weren't being dealt with, and they recognized that if insurance companies, foreign insurance

companies were going to do business in the U.S., they had an obligation to try to correct this sixty-year-old problem, if I may.

So they, in negotiation with the Jewish groups and the companies, in effect, created the commission in the first place. They have been very supportive throughout the process in terms of exercising their own influence with insurance companies to try to make them join the commission and to behave once they are in the commission.

There was a question asked of me earlier regarding safe harbor legislation and so forth. But the commissioners so far have been very good in terms of doing what they can to protect the insurance companies within the commission from unnecessary harassment or legislation that would push them to do things that we are trying to get them to do voluntarily through the commission, but the companies all understand that should we fail in the commission, the insurance regulators of the fifty States have a good bit of authority in their own hands that could be unpleasantly exercised against companies that don't want to cooperate.

Anything that the Congress of the U.S. can do to help support these commissioners, and I recognize that fundamentally, insurance and its regulation is a State responsibility, not a Federal one, but anything that you can do to make the regulators understand that the Federal Government supports them in their efforts I think would be healthy and would be useful.

I must say thus far NAIC, that is the association of these regulators, have been superb in its support and has been very creative in its creation of the commission in the first place. They have done well, and at the moment, I can't think of anything specific that needs to be done to strengthen their hands. They have done well with it so far.

Ms. LEE. Thank you very much.

Chairman LEACH. Thank you.

Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

Secretary Eagleburger, it is a real honor to meet you. I represent a district that has many Holocaust survivors and includes the city of Skokie. And my predecessor, Sidney Yates, certainly has left a legacy of working very hard regarding Holocaust remembrance, and so I feel a particular obligation to work on this on behalf of my constituents and the Yates legacy.

I have a number of questions that I want to ask, so first of all, with respect to your time, if I could submit to ICHEIC some of these questions.

Mr. EAGLEBURGER. Of course. And I will give you answers faster than when I was in the State Department.

Ms. SCHAKOWSKY. I appreciate the offer of documents that you made earlier. I am sure that the Chairman would want them. I certainly would want them. If I can get a comprehensive set of claims rules that shows how you are going to be deciding when somebody is eligible. I don't know if these claims rules have been made available to the public yet.

Mr. EAGLEBURGER. I don't think that they have, but they probably will be. I am happy to supply that. If I can wait until next week when we have our public announcement, then why don't we

send the committee everything, how the valuations are, what the claims process is and so forth.

Ms. SCHAKOWSKY. Great.

Mr. EAGLEBURGER. We will get you everything.

Ms. SCHAKOWSKY. Great. I am very concerned when you talk about the number of claimants that it is dependent upon the availability of good lists, and I wanted to raise some concerns that have been brought to my attention.

The Italian insurer Generali at first denied the existence of any Holocaust files, now has found 340,000 policyholders and they have created a computer disk of 90,000 that they say are unpaid, but my understanding is that ICHEIC has said that they will only publish about 5,000 names, which is a tiny fraction of the original list. Why not publish all of them or as many as possible?

Mr. EAGLEBURGER. What we have done, and Generali is a specific case, and let me say, Generali, in my judgment, after a period of not being so sure, Generali has really done quite well in trying to meet its obligations. What they did give us was a disk with close to 90,000 names on it of unpaid policies. What we have done then is contracted with the Yad Vashem. You all know what Yad Vashem is. They have a substantial computer capability of seeing whether names on this list are likely to be Jewish or whether they are not. They now and have been for some time been in the process of going through that Generali list and compare it with their other means of deciding which names may or may not have been Jewish and don't ask me to explain that. It is very complicated.

My point is that they have now given us a list of names that they think are quite clearly Jewish. I don't remember the exact number, but we will publish that right away. They are going through it again. This may take two or three times. But what is wrong with publishing the whole hundred thousand I think is two things, at least until we have had a chance to look and see an analysis of what may or may not be a Jewish name. There are two problems with it: Number one, in terms of publishing the list of names and having people sort through and decide whether, in fact, this is a name that relates to them, it is, I think, not only highly inefficient, but very misleading to just broadcast this list of 60,000 names until we have done some analysis. That is point one.

Point two, when I say publish names, we are not going to do this just once. In fact, I am going to talk about lists in a minute with you. As we refine these lists, as Yad Vashem says, this is clearly not a Jewish name, this may be, we will be publishing additional lists. To me, that is the more efficient way to do it, although it may take longer to finally get all of the names out.

Ms. SCHAKOWSKY. It would seem to me, if we are talking about a fairly narrow timeframe for claimants to make claims, to me it seems that publishing as many names as possible for people to look through.

Mr. EAGLEBURGER. We have got two years from the 15th of February.

Ms. SCHAKOWSKY. Allianz now says that they will now provide a partial list, 150,000 names over the next year or so, as I understand is a quote from Allianz. Or Winterthur of Switzerland, which says that they have located up to 45,000 files, and they assume

that they were paid and I understand that the company denies any further responsibility for these, Zurich Raksa, who is claiming privacy laws, prevent the publication of names.

All I want to say is that it seems to me that we ought to be taking the position that the universe of names being out there should be as large as possible. I would think that would be true rather than a process that may take a lot of time to winnow down and may, as it does, leave out names. I am concerned that everyone in my district who is entitled to get those claims paid knows that their name might be there.

Mr. EAGLEBURGER. First of all, I hope that I am as committed to getting everyone in your district that deserves—

Ms. SCHAKOWSKY. And I appreciate your blue tantrum commitment to us.

Mr. EAGLEBURGER. By the way, let me assure you that it is not going to take a year-and-a-half to get the lists.

Let me make a more general statement about lists, if I may. But conceding at the beginning of this, that getting these lists has proved to be more difficult than I hoped at the beginning. Not simply because of company recalcitrance, but also a question of, in some cases, fairly, and in some cases not, just how complete their own archives are. And certainly, the companies agreed and it is in the Memorandum of Understanding that they would provide these lists. But I have believed from the beginning—I think I am almost alone in this—that while the company lists are important, they are not as important as something else we are doing, and that is, the commission has decided, and we are in the process now of looking at every possible archive anywhere we can find it. And, for example, we have just gone through an Austrian archive that had about 70,000 names in it to try to pull out from that any potential Jewish insurance claims. Nobody had looked at this list before. There are lists in Belgium and the Netherlands and Poland. We are going to go through every possible one that we have the time and money to go through, because I believe that we are more likely to find potential claimants out of that process than we are out of anything that we get from the companies.

Even if I were to say to you I had every confidence that the companies would give us everything they have got, I still believe we may find more out of the Austrian archives, which, by the way, was a question of when the Anschluss took place, these people were called in and had to list their worth. And in many cases in fact they wrote down that they had an insurance policy. These are the Jews that were called in after the Anschluss. So there is an archive here that I think is demonstrative of what may be the real way to find out names. So we are going to do that as well.

And I must say to you if we had everything, there is no way that we can get all of these lists of names out in one fell swoop anyway. But as we get names, we are going to put them on the website, and I don't understand all of these computer things, but we are going to put them out in every way that we can, but it is going to have to be a rolling process, because there are a number of archives where I think we may find some gold.

Ms. SCHAKOWSKY. Let me just thank you very much, Mr. Secretary. In no way did any of these questions reflect my questioning your deep and long and wonderful commitment.

Mr. EAGLEBURGER. If yours was not questioning that, you are the first one in a long time.

Ms. SCHAKOWSKY. I am not.

Chairman LEACH. Mr. Lazio.

Mr. LAZIO. Thank you, Mr. Chairman. Just a couple of quick remarks and I am going to have to apologize to you and the committee, Mr. Chairman for having to step out. I will not be here when Ambassador Lauder speaks or when Director Powell speaks, but I want to compliment both of them. They are titans in the art world and they have helped build two of our most impressive collections in our Nation. They also, I think, share a passion, and I think particularly so, because Ambassador Lauder spent much of his life advocating for fair and just compensation for Holocaust victims.

And to Secretary Eagleburger, let me just—without asking a question, let me just make the point that I am exceedingly troubled by Aegon and by the lack of participation on the part of insurance companies. I understand only one in Austria, perhaps only one in Germany right now, and you can give us feedback if you can, and there has been a particular reluctance among Dutch insurance companies to participate in the commission.

That certainly is not going to be able to stand. There has been tremendous progress and there has been progress since I last visited the National Gallery where Director Powell gave me access to some of the checkpoint documents, frankly, in rough shape in terms of cataloging and indexing. I understand there has been progress on that front. Unless we have a broader base of participation, unless the American Government and the State Department, in particular, uses its influence to ensure that those governments, those relevant governments encourage their insurance companies to get involved in this, I do not feel that we will have a successful conclusion to this chapter.

Mr. EAGLEBURGER. Congressman, let me say that there are no Austrian companies in the commission. The Austrian chancellor opened up a big door in which he said that Austrian insurance companies should be paying their claims and without quite saying it, he said that they should join the commission. I will certainly have an invitation out to them in a hurry.

I can't agree with you more on the question of the companies that have a moral and probably a legal obligation to be participating that are not. I can only tell you that I will continue to push as hard as I can and get progressively nastier on the question of whether they should join or not. In the end I can't make them join, but I can be particularly difficult on the question of whether they ought to get legal closure if that is within the foundation exercise if they are not prepared to participate.

I do not believe that companies that have an obligation, and it is clear that they have one, to pay claims, and the best way to do that is through this commission. I do not see the merit to letting them off the hook legally if they don't participate. But I think we

are going to have to negotiate on that subject with the foundation for awhile.

But I can tell you it is not that I want a huge commission, I would rather be given what has happened over the course of the past year. I can tell you that the fewer companies that are in there, the quicker we will get our business done. Having said that, we have got to have them in and I will do everything that I can to get them in.

Mr. LAZIO. To the extent that you think that a partnership with Members of Congress will be helpful, the committee would feel strongly about assisting you in your efforts.

Mr. EAGLEBURGER. I appreciate it, and you may regret you made the offer.

Mr. LAZIO. Thank you, Mr. Chairman.

Mr. EAGLEBURGER. Mr. Chairman, a question was asked by Congressman Moore about whether there should be some safe harbor legislation. I failed to do so earlier.

Chairman LEACH. That would be appropriate. Please proceed.

Mr. EAGLEBURGER. I have to tell you I am ambivalent, and that is not usually my state of mind. Fundamentally, insurance and its regulation is a State responsibility. How much Federal legislation on this subject would help, I can't quite say.

I basically believe that the insurance regulators probably ought to have as much flexibility as they want. Now having said that, if the legislation were written carefully, I can see some merit in the sense that it might well encourage some of the companies that are not now in the commission to, in fact, join the commission.

So it is a fuzzy answer, but the best I can do at this stage is recognizing the Federal aspects of this and the questions of State authority, nevertheless, if it were carefully written legislation which didn't limit the ability of the regulators to do what they felt was necessary, I could see it could have some attractive aspects in terms of enticing other companies to come into the commission.

Chairman LEACH. Thank you.

Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman.

First, I join with several of my colleagues in commending Mr. Eagleburger for his work on this issue. We all strive for justice for Holocaust victims. We can also view this as simply a consumer protection issue. We should have justice for everyone who bought a policy in the first half of the 1900's, and I think it is absurd for any company to do business anywhere in the United States, and certainly not in California, if they delight in not paying a policy, or if their business practices are so bad that they don't even know to whom they have sold the policy.

Certainly no insurance company can establish its reserves, can report on its soundness, can be in a position to assure new policy buyers that it has the money to pay old policies unless they have a list of who they sold the old policies to, and perhaps the age of the person who is insured and no company should sell a single policy in the United States if they don't know what the claims will be against their reserves, and yet these companies say "we don't know who the insureds are and we don't know their ages." Certainly



companies that are that sloppy cannot assure that they will be able to pay the insurance.

If we look at this as a consumer protection issue, also we will not focus exclusively on Jewish names. First, many Jews don't have Jewish names. Second, consumer protection is not limited to just those who suffered in the Holocaust. Many families were destroyed and disrupted, many villages from South Europe to Western Europe, and if a family has not been in a position to make a claim, we ought to help them. I should also note that Romanian people suffered in the Holocaust as a direct result of efforts to exterminate them or to partially exterminate them. So we ought to insist that a comprehensive list of all insureds who were born before 1910 and whose policies have not been cashed in, been published, if there are some insureds who are alive, well, and in touch with their insurance companies who want to send in a letter saying "Please don't include my name, I am 86 years old and I don't want anybody to know I have insurance," fine.

But how many people, given the two World Wars that Europe has suffered under, how many people born before 1910, how many policies issued before 1941 are not in a category where heirs should not be aware or made aware that there is an insured? The Internet makes it perfect. We could take all of the lists from all of the companies and put them in alphabetical order, put them on the web and tell people the age of the insured, the town in which they lived when they bought the insurance policy, the date of birth or their age or year of birth, and certainly no company unwilling to participate in this process should be selling to consumers anywhere in the United States.

Now, I know that insurance is traditionally a State issue, but I see some of these companies trying to raise international concerns, "Oh, you can't do that to us, you can't interfere with our trade," and certainly any trade agreement the United States may be a party to that provides sanctions, if we insist that companies pay their insureds, let them come with the sanctions. Let some company say that they want to profit from what Hitler did, and if America doesn't like it, we should be sanctioned.

Let us see if that is what the WTO is all about before we get further involved in this process. I am confident that if we insist that those companies that want to do business in this country, and those companies that want to escape the civil litigation joys of the United States, must publish a list of insureds, and it won't just benefit those with Jewish names.

Mr. Eagleburger, I don't know if you have a response.

Mr. EAGLEBURGER. Only briefly. First of all, I can't argue with you at all. This is an issue that ought to be applicable to any and all insurance claimants. I can only tell you that my charter and the Memorandum of Understanding focuses on a specific group. Please don't make my commission broaden its role or I will probably end up even more crippled than I already am.

The only other point I would make and don't take me wrong on this, I am not saying that this is a blanket excuse, I will say, however, in terms of insurance company records that in some cases and that is all, in some cases, I do think that they have some legitimacy when they say "our records were destroyed during the War." How

much that applies, I can't even tell you. I can tell you in a couple of cases that I have looked into, there is some legitimacy to it, but only some. And that is not to say that your basic point isn't correct, because I think it is. On the other hand, some companies have something of an excuse with some of their records for the period, that's all.

Mr. SHERMAN. Mr. Chairman, I would point out while the commission scope is limited, the scope of this Congress and this committee is not, and perhaps our committee, in conjunction with other committees, should hold hearings with a goal of writing consumer protection legislation so that only those European companies that do their best—and I realize records were destroyed during the War—to publish such a list, are allowed to approach American consumers. Thank you.

Chairman LEACH. Thank you very much.

Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman, and I appreciate the committee's diligence in reviewing these issues. They are critically important to all of us. Mr. Secretary, thank you for being here today. I wanted to ask you, if you would, my friend from New York, Mr. Lazio, raised the point of the many companies that are not participating. I know in the case of the Dutch, for example, that they claim that they paid beneficiaries of their policies and that, therefore, there was no need really for them to participate or to contribute to the fund. I was wondering, Mr. Secretary, how valid or invalid that is, and if ICHEIC has had an opportunity to get documentation from the Dutch and others who may be making claims that, in fact—or suggesting that they had paid claims, and if we had been able to get that kind of documentation?

And as a follow-up to that, I know certainly many of these insurance companies have U.S. subsidiaries, and I was wondering if you can comment, Mr. Secretary, on ICHEIC's ability to sit down with some of those domestic-based subsidiaries and find out just how much we can encourage them to actually participate and contribute to the fund?

Mr. EAGLEBURGER. Let me answer the second part first, which is the fact that these European insurance companies have U.S. subsidiaries or are owning large American insurance companies is fundamentally the only reason that these European companies are in the commission to begin with.

As far as I have been able to tell, the American insurance subsidiary has no particular entrance into the files and the things that we need from a European insurance company, we have to get from the European insurance company. The official of the American subsidiary, I am sure, behind closed doors, are saying to the European owner, "For God's sake get me out from under this. We have to cooperate." I believe that is happening, sometimes with more success than others.

But, I guess, fundamentally, my answer to the second part of your question is while the fact that it is the American subsidiary that has drawn the European companies into the commission itself, when it comes to the kinds of questions that we now have to deal with, whether it is claims or valuation of claims or whatever it is,

the only way in which we are successfully to deal with these questions is through the parent European company.

On the question of whether we have any evidence with regard to Aegon on how well it has done and whether there are any potential claims or not, the only way I can answer that is to say that there is no question through this Netherlands foundation, has participated in the claims-paying process on the claims that have been filed through them. I have no idea how many other claims there may be. I am told by a number of people who may or may not know that there are a number of claims that have not been paid, that really pertain to Aegon.

The only way I can come to grips with a real answer to your question is if Aegon joins the commission, we will find out. I don't intend to let them be charged twice. If they paid a claim, they paid it. Whether it is in the Netherlands or elsewhere, but the only way we can find out for sure is to have them join the commission and have them participate in the whole process and pay whatever claims show up. I will make you an educated bet that we will find that there are still claims out there.

Mr. FORBES. Mr. Secretary, hearkening back to your former life here at the State Department, can you comment for my edification as to what kind of coordination there may be with diplomatic efforts, and at what point a decision is made that it needs to be included in any diplomatic approaches that this Nation may make?

Mr. EAGLEBURGER. I would be happy to, because this is a case where I can say with total honesty that the Department has been superb. There is a fellow sitting behind me, the one with the mustache. His name is Bindenagel. He is a foreign service officer I have known for a long time. He is in charge of the whole State Department and now liaises with Eizenstat as well. When Eizenstat was in the State Department, he was the contact. He still is.

He has been superb in terms of any time I have needed anything in the way of State Department help, I have gone to him and we have gotten it. The Secretary of State, I have had to ask on one occasion for support, and she was right there right away. I have not only no complaints, I have to tell you that the Department has been superb. That is not something I was always able to say in the past, but in this case they have been really great.

Mr. FORBES. Thank you very much, Mr. Secretary. I appreciate your good work.

Thank you, Mr. Chairman.

Chairman LEACH. We do have a vote on and I want to call on you, Mrs. Maloney. If we can do it in three or four minutes and then we can excuse the witnesses.

Mrs. MALONEY. I just wanted to thank the witnesses, and also a particular witness, Glenn Lowry. He is the Director of the Museum of Modern Art in New York. He has done a great deal of work for art museums in resolving the issue. He is from my district, and I am glad he is here.

Chairman LEACH. Let me, as the Chairman, thank you for your great participation on this panel, Mrs. Maloney.

Let me just conclude by saying that I am optimistic that in the near term, we can get a resolution of the Dutch issues, and that I think that will be a very strong step forward, both for the precept

of the commission, but also more importantly, for resolving the underlying issue for which the commission is established.

In any event, on behalf of the committee, I would like to thank you, Secretary Eagleburger, and also your aide, Mr. Share, for his fine work and dedication to this issue.

Mr. EAGLEBURGER. Mr. Chairman, this is unique in my experience. This is the first hearing that I have had in, I don't know how many years, I am not going out black and blue.

Chairman LEACH. No, sir, you are not. You are going out red, white and blue. Let me say that the hearing will be in recess pending the vote. There is a vote on and why don't we set a time certain for when we will reconvene. The hearing is in recess until 12:15.

[Recess.]

Chairman LEACH. If I can ask the second panel to assemble.

Our second panel consists of Mr. Earl Powell, Director of the National Gallery of Art, Washington; Mr. Glenn Lowry, Director of the Museum of Modern Art, New York City; Ms. Lyndel King, Director, Weisman Art Museum of Minneapolis; Ms. Sharon Page, Head of the Secretariat, Tate Gallery, London; Mr. Jonathan Petropoulos, Researcher, Presidential Advisory Commission on Holocaust Assets in the United States, and Mr. Ronald Tauber, President of the Art Loss Register.

If there is no objection, the panel will go in the order of introduction, and we will begin with Mr. Powell, who heads one of the great symbols of Western civilization, and we are proud that it is located in this city.

Mr. Powell.

**STATEMENT OF EARL A. POWELL III, DIRECTOR,  
NATIONAL GALLERY OF ART, WASHINGTON, DC**

Mr. POWELL. Thank you, Mr. Chairman, Members of the committee, good afternoon. I appreciate the opportunity to meet with you again to discuss the subject of works of art seized during the Third Reich and to tell you about some of the National Gallery's initiatives in this area since we last met two years ago. I was also pleased to be a member of the Association of Art Museum Directors Task Force on the Spoliation of Art during the Nazi World War II era. The Task Force's report, issued in June 1998 established important principles and guidelines to which the member museums subscribe.

At the hearing two years ago, I spoke about the National Gallery's role on the Roberts Commission, established in 1943 by President Roosevelt to encourage and assist in the preservation of cultural properties in Europe's war-ravaged areas. Headquartered at the National Gallery, the Roberts Commission proposed the founding of the Monuments, Fine Arts and Archives section of the U.S. Army to assist in protecting and restituting cultural property.

Among its many other tasks was to establish the collecting points in postwar Germany to which works of art and other cultural objects, hidden by the Nazis throughout Germany and Austria, and subsequently discovered by the Allies, were transferred. At these facilities, works were identified, photographed, cataloged, and restituted to their countries of origin eventually. One of the largest

of these was the Munich Central Collecting Point and works that were processed there had come from European museums and private collections, particularly from France and the Netherlands. On extended loan from the U.S. National Archives, the National Gallery currently houses portions of the Munich Collecting Point material—the existing negatives and microfilm of the original inventory cards.

Over the past two years, the Gallery has worked diligently to make these records more accessible and understandable to the public. To that end, a computerized index is being developed by Gallery staff, and is designed to be used as a finding aid for those seeking to use the records. This computerized index cross-references artist, media and presumed owner to the Munich inventory number. The completion of this index will help facilitate locating specific works of art within the collection. This is an extremely valuable tool, as few know the Munich number for the works of art they are researching and studying. And it is a very time-consuming task. Prints are being made of each of the approximately 43,000 glass and film negatives and computer records created for the more than 150,000 objects. The Munich Collecting Point archive is a valuable resource; it is available to the public, and over the years we have welcomed many individuals doing research on this subject, including authors, family members and other art museum staff.

The National Gallery has always been concerned with and has conducted research on the provenance of works of art in its own collection. For example, the Gallery is publishing a projected 32-volume systematic catalog of the entire collection. Written by Gallery curators and other scholars, each volume is devoted to a particular school of painting, sculpture or decorative arts, and includes comprehensive scholarly essays on each work, including details on the provenance, oral history of ownership, of each work of art. Twelve of these volumes have been published since the systematic catalog project began some sixteen years ago.

The National Gallery's collection is one of the finest in the world with major achievements in Western art from the Middle Ages to the present. We are at the forefront of computerized access to information on the collection. The Gallery's website, launched three years ago, features an extensive section on the collection, offering searches by artist or title, numerous tours by school or medium, foreign language tours, and in-depth studies on specific artists and works of art.

The collection is the cornerstone of the website and known provenance information is available online for every painting and most of the sculptures in the collection. In keeping with the AAMD task force recommendations, extensive research has been undertaken in the last several years by Gallery staff on the almost 1600 European paintings in the collection that date from before World War II. In addition, it is routine procedure for the Gallery to conduct ongoing consultation with the Art Loss Register which, as many of you know, maintains an international database of claimed losses.

I am pleased to participate on the panel with its chairman, Ronald Tauber. The Art Loss Register staff has always been very responsive to ours and others' requests. We also work closely and on a continuing basis with the President's Advisory Commission on

Holocaust Assets in the U.S. I am delighted to share the panel today with their Research Director for Art Issues, Jonathan Petropoulos; he and his staff have been very helpful in our ongoing research.

Finding a gap in known provenance of a work of art in any time period is not surprising or complicating in and of itself. When a work of art has been sold at auction or through a dealer, a previous owner's name may have been withheld for any number of legitimate reasons. During the World War II period, the picture is further complicated, since many works which had been looted were restituted to their legitimate owners in the years following the War and records of these returns, many of which are held by foreign governments, have not always been easily available.

Nonetheless, Gallery staff conduct extensive research using materials available at the National Archives and elsewhere to clarify the provenance of the collection. More resources have become available in recent years; these take the form of international websites of this material and those of individual scholars sharing their expertise electronically as well as more European archives becoming accessible. Working groups, such as those at the American Association of Museums annual meeting this coming May, are also contributing to available scholarship. To date, the Art Loss Register review of Gallery works with provenance gaps has found no match with their database of claimed losses, or with numerous published sources of losses from World War II. This extensive research being conducted by the Gallery is ongoing.

I would like to tell you about the research undertaken on one picture in the Gallery's collection that illustrates both the often complicated nature of tracing provenance and the high level of international cooperation the National Gallery has received.

The Gallery's painting "The Marriage of the Virgin" dating about 1491 by the Italian Renaissance Master Luca Signorelli, was owned in 1931 by the Goudstikker Gallery in Amsterdam. No additional provenance information was known, except its purchase in 1955 by New York collector and Gallery benefactor Samuel H. Kress. There was some cause for initial concern as recent scholarship revealed details of the 1940 acquisition of the Goudstikker Gallery and its contents by agents of Hermann Goering. Research by Gallery staff at the National Archives in College Park, Maryland, uncovered an inventory list of the Goudstikker Gallery's contents that had been sold to Goering's agents. Further research showed that the Gallery's painting had not been chosen by Goering himself, but that it had remained in Nazi possession. In attempting to determine its whereabouts between 1940 and 1955, we contacted Charlotte van Rappard-Boon, the Chief Inspector for the Dutch Ministry of Education, Culture and Science, who I understand will be testifying to the committee on a subsequent panel.

Her prompt and extremely helpful response in the end proved that the Signorelli was one of a small number of paintings that had been restituted to the Amsterdam dealer's widow after the War. Dutch archives provided the Gallery with a copy of the actual receipt signed by Desiree Goudstikker in 1949 for the pictures. The provenance could not have been clarified without such international access and cooperation.

The Gallery has always requested full provenance details for proposed acquisitions to the collection, including export licenses where required, and when purchasing a work of art, a warranty of title from the seller that the work is free from any claims. Further scrutiny includes submitting information on proposed acquisitions to the Art Loss Register. In addition, as is customary with many major art museums, the National Gallery publishes annually a detailed list of all works of art acquired during the year and in our case, a description of our collection is available through the Gallery's website.

The Archives of the National Gallery preserves and makes available to researchers and scholars historical materials relating to the National Gallery's past. In response to the great interest generated by this period and subject in recent years, the department has produced a Guide to Research Resources Relating to World War II, which I am happy to make available to anyone. It is on our website also. Subsequently, it was expanded and made available on the website, as I just mentioned. The guide directs users to documents and records relating to wartime activities that are available for study and research at the National Gallery. These records include files, photographs, and oral histories of particular interest to those researching the field. For instance, documents reflect the involvement of Gallery employees and others on the Roberts Commission and the officers of the Monuments, Fine Arts and Archives program, including correspondence, fascinating glass slides of the MFAA's packing activities in Germany, donated personal papers and journals of travels in Europe, as well as newspaper and magazine articles, to name just a few.

In all aspects regarding this subject, the National Gallery adheres strongly to the statement of purpose and guidelines established by the Association of Art Museum Directors.

At this time, Mr. Chairman, I can assure you that we have not received a single claim for unrestituted looted art, but if we did, we would seek to review such a claim promptly and thoroughly.

Similarly, we have not found any concrete evidence through our own research that any painting in the Gallery's collection was illegally confiscated during the World War II era and not restituted, but if we did, such information would be given the same high priority.

I would like to thank you and the committee for the opportunity to discuss this important topic and for your invitation today.

[The prepared statement of Earl A. Powell III can be found on page 281 in the appendix.]

Chairman LEACH. Thank you, Mr. Powell.

Before introducing Mr. Lowry, I would like to make one add-on observation.

The Roberts Commission, which the gallery was so instrumental in forming, created an Officer Corps which was involved at the collecting points in Germany. That Officer Corps, in a famous letter, in fact, a unique protest of the United States Army, suggested after the War, that it would be improper to take any artworks confiscated for permanent display in the United States, although some were sent on a touring expedition.

I only stress this because as we look at this whole issue of looted art as well as the issue of economic crimes committed by the Nazis, it is singularly impressive that the United States not only never attempted to take territory after the War, but never attempted to take valuable objects after the War, in contrast with other countries.

And I think it is very important that it be noted that the National Gallery played an instrumental role in that process of development of procedures, because it was not a unanimous position of the American people, as it would be a natural instinct to want to confiscate certain assets. But the role of the National Gallery was impressive and in continuing to maintain those records is also impressive.

As the National Gallery of the United States, I think it is appropriate that the national legislature extend its accolades for a long history of propriety in this particular area, and your leadership is appreciated.

We will now go to Mr. Glenn Lowry, who is Director of the Museum of Modern Art in New York City.

Mr. Lowry.

**STATEMENT OF GLENN D. LOWRY, DIRECTOR,  
MUSEUM OF MODERN ART, NEW YORK CITY**

Mr. LOWRY. Thank you, Mr. Chairman, distinguished Members of the Banking Committee, and especially Congresswoman Maloney, whose kind, but unexpected, words earlier were heartening.

On behalf of the trustees of the Museum of Modern Art, I want to thank you for this opportunity to discuss the significant progress made by American art museums in resolving the fate of works of art stolen by the Nazis between 1933 and 1945.

Let me begin, as I did when I had the honor of testifying before this committee two years ago, with an unequivocal statement: The Museum of Modern Art does not, and will not, knowingly exhibit stolen works of art. Like our sister institutions, we maintain our collections with scrupulous regard for our professional and ethical obligations.

Within that context, it is crucial to understand the enormous complexity and practical realities of resolving issues of provenance. Questions of provenance are nearly as old as the history of art, and rare is the museum that has never had to address the possibility that someone may lay claim to a cherished work on public view as their personal property. Museums have been able to address conflicting ownership claims responsibly and ethically and these long-standing professional practices will continue. In the unique context of Nazi depredations, museums must be able to assure themselves and the public they serve that they have good title to the art in their collections.

I would like to spend a few minutes describing what the American art museum community has done to address this important question since several of us last appeared before this committee. As we promised you two years ago, the Association of Art Museum Directors, the AAMD, created a task force chaired by Philippe de Montebello, Director of the Metropolitan Museum of Art in New



York. Within a short period, this task force on which I was honored to serve, as did Rusty Powell, developed guidelines that were accepted by all of the major art museums in the United States. These guidelines have also served as the basis for the recommendations of the 1998 Washington Conference on Holocaust Era Assets, and for the additional guidelines promulgated recently by the American Association of Museums, a group representing some 3,000 museums of all kinds.

The guidelines call upon American museums to conduct a comprehensive review of their collections to ascertain if any works were unlawfully confiscated during the Nazi era and never returned. To the extent that problems come to light, the guidelines provide a framework for museums to address them candidly and responsively.

As new information has become available through the efforts of researchers and archivists around Europe and the United States, we have incorporated that data in a systematic review of our collections and we will continue to review our holdings as more information emerges.

At the Museum of Modern Art, we have committed several members of our curatorial staff to provenance research, and we have added additional full-time staff dedicated solely to this effort. We have also greatly increased the level of scrutiny we give to new acquisitions, whether by gift, purchase or bequest. Other American art museums have taken similar measures.

Working with newly available archival and historical resources, museums have added depth and breadth to the understanding of their collections. We have also worked with our European colleagues who are also making efforts to address potential problems with works of art in their collections. Several European governments, too, have taken the initiative to transfer from national collections to their rightful owners looted works that were never returned after World War II. Although much remains to be done, we are seeing an increasing awareness and sensitivity on both sides of the Atlantic, and activity on this issue on a scale that no one could have predicted two years ago. Our staff has met with people involved with research and restitution programs in Germany, Austria, Switzerland, France, Poland, Russia, Britain, the Netherlands and even Australia. We have exchanged information with researchers, art historians, reporters, lawyers, art dealers, auction houses and political leaders. These efforts will continue, because they are an integral part of our educational mission, and because they are part of our relationship with the communities we serve.

It is gratifying and encouraging to be able to report to you that despite the enormous devotion of resources to this issue, American museums have, to date, discovered very few problems with their collections. More important, when problems have appeared, we have squarely addressed them. At the Modern, for example, despite an enormous amount of scrutiny both from ourselves and from the press and others, we are not aware of a single Nazi-tainted work of art in our collection, a collection of more than a hundred thousand objects. That is not to say there are no serious questions, but the key is that following the AAMD guidelines and in cooperation

with our European colleagues, we have the mechanism and the will to resolve whatever questions arise.

By way of illustration, I would like to describe for the committee the process the Modern followed in the single instance to date where we faced the possibility of a problem with a work of art in our collection. About a year ago, I received a letter from the representative of a major European collection. His letter raised the possibility that a painting that the Modern had owned for many years, a gift from a prominent American family, had been taken from his family before or during the Second World War. We immediately responded, and agreed to conduct a full investigation. He made his information available to us: a photograph of the painting hanging in his relative's home and certain transportation records created by the Nazis. With his cooperation, the Museum undertook a huge amount of research in an effort to establish, among other issues, when the photograph was taken, whether the painting in the photograph is the same as the one in our collection and whether the picture was sold before the War to another collector in Sweden.

We made all of this information available to the family. I am pleased to report that in this year-long, ongoing inquiry, we have had the unstinting assistance from a number of European sources, including the Musée National d'Art at the Pompidou Center in Paris and an important Swedish archive. We, and the potential claimant, are working together in good faith, and on a confidential basis, both of us knowing that we will reach a mutually satisfactory result. If the picture turns out to have been taken from his family and never properly restituted, we will act responsibly, appropriately, and promptly.

I do not want, however, to leave with the impression that every problem that arises has an easy solution. Often the issues involved are complex and knotted in difficult questions of inheritance and post-War restitution. Take, for example, the two paintings by Egon Schiele that were part of an exhibition of Schiele's work on display at the Museum of Modern Art from the Leopold Foundation in Vienna.

On New Year's Eve, 1997, the Museum of Modern Art received letters from two families claiming to be the rightful heirs of two different paintings in the exhibition. We had exhibited both of the paintings, along with about 150 others by the same artist, without incident at the Museum for three months. We had no reason to believe that there was any cloud on the paintings' past. Both of the pictures had been exhibited around the world for decades and both had been reproduced frequently in books. The exhibition closed on schedule, but the two paintings remained in New York, because the Manhattan District Attorney subpoenaed the pictures. For the last two years, we have fought a protracted and ultimately successful battle in the New York State courts.

Our point was not that one side or the other was the proper owner—a museum is neither equipped nor empowered to serve as judge and jury in a dispute over other people's property—but rather that the current New York State law protects works of art on loan for public exhibition from any kind of seizure.

Although we had assumed from the start the good faith of the people claiming the pictures, it now appears likely that neither family had a bona fide claim. In the case of one of these two claims, the painting was claimed by a former reporter for the *New York Times*. As it turned out, her claim was based upon her being the widow of a son of the pre-War owner's cousin, who, in turn, was not an heir to the painting.

The other claim is even more convoluted. The man who asserted his family's rights in the painting wrote to us about his vivid recollections about seeing the picture in his aunt's house in Vienna before the War. But, according to the pre-War owner's grandson, the claimant never saw the painting, never set foot in the house in Vienna, and is not, as a matter of fact, an heir, a fact the claimant recently conceded in a British newspaper interview. Despite all this, the U.S. Justice Department has commenced a forfeiture proceeding to reclaim this alleged heir's painting, politicizing our courts and making it almost impossible to engage in the kind of meticulous and dispassionate research required to ascertain the exact history of this painting immediately before and after the Second World War, and who, today, is its rightful owner.

I mention this example not to discuss the merits of the claim or to delve into the extremely sensitive moral and legal questions of who may rightly assert claims and when they should do so, but to demonstrate that the process of determining what, if any, art in American museums was looted by the Nazis and never returned to the proper owner, and then trying to determine who the proper owner might be, is an extremely complex undertaking, and is made even more so when the works in question are loans to, rather than objects owned by, the relevant institution.

Just as we have learned that American and European museums, working with the AAMD guidelines, can play a vital role in reuniting looted art with its rightful owners, we have also learned most emphatically that use of criminal process is not an appropriate way to address this issue. With the immensely valuable participation of groups like the Commission for Art Recovery of the World Jewish Congress, we have seen that the most effective means to resolve problems involving the return of Nazi looted art requires good faith, discretion, and cooperation between museums and claimants, not the blunt instruments of subpoena power and forfeiture proceedings.

For museums and for the public, involvement of criminal process is counterproductive. Take again, for a moment, the case of the Schiele paintings we borrowed two-and-a-half years ago. So far, other than costing hundreds of thousands of dollars and untold hours of time, the paintings have been locked away in storage, inaccessible to the claimants and inaccessible to the public. And because of this, many foreign lenders, both public and private, have raised serious concerns about lending to American art museums—all sobering and unintended consequences of the various legal actions surrounding the case.

The AAMD guidelines, through the rigor with which they have been accepted and put into practices by American museums, repeatedly demonstrate their worth. There is not a single art museum in this country that is not aware of the importance of this

issue and the urgent need to diligently review the provenance of the works of art in their collections. These efforts pay off. The North Carolina Museum of Art just days ago reached the conclusion that a painting in their collection has been taken from an Austrian family before the War and never returned. Precisely as the AAMD guidelines direct, the North Carolina museum carefully considered the factual record, discussed the matter reasonably and respectfully with the family's representatives, and then concluded that the painting belonged to the family in Austria.

I am confident that, should any further issues arise for American museums, they will be addressed and resolved with equal measures of good faith and due consideration. The guidelines, and the spirit of fair and appropriate conduct that motivated us to write them, are deeply ingrained into the operations of American museums.

As this committee concludes its inquiry into this issue, it may draw considerable satisfaction from the fact that America's museums are forthrightly addressing the question in regard to our own collections and in the art we borrow and that we will continue to provide for the American people outstanding exhibitions of fine art.

Thank you very much.

[The prepared statement of Glenn D. Lowry can be found on page 288 in the appendix.]

Chairman LEACH. Thank you, Mr. Lowry.

Ms. King.

**STATEMENT OF LYNDEL KING, DIRECTOR,  
FREDERICK R. WEISMAN ART MUSEUM, MINNEAPOLIS MN**

Ms. KING. Thank you, Mr. Chairman. I am Lyndel King, Director of the Frederick R. Weisman Art Museum in Minneapolis, and I am testifying here today on behalf of the members of the Association of Art Museum Directors, the AAMD. We are grateful for the opportunity to be here, and thank you and the committee for your continued efforts to shine a light on one of the most tragic periods of history in the Western world.

AAMD, which was founded in 1916, has followed the troublesome issue of provenance of works of art since 1963, when we included a section in an issue in our publication *Professional Practices*. In late 1997, AAMD began a serious discussion, specifically about Holocaust looted art, which led six months later, to the publication of *Guidelines on Nazi Looted Art*, which has been mentioned by both my colleagues.

The AAMD greatly benefited from the then-recent work of scholars like Lynn Nicholas and Hector Feliciano. Their research and scholarship provided museum professionals with valuable information and background not easily available. It caused us to look again at what we owned.

As a result of the scholarship, the discussions and the guidelines, American art museums, which may have works that could be Nazi looted, have rededicated themselves to be vigilant and thorough in their provenance research. However, we need to put this in an appropriate context. Approximately 50 percent of all of the museums that are members of the AAMD, and probably a higher percentage of all art museums in the United States, could not have Nazi looted

art, because they either have no permanent collections, or have only contemporary American or regional art.

After the publication of the AAMD guidelines, we surveyed our membership in 1998, and again in 1999 about their progress in researching their collections. In 1998, 80 percent of the survey respondents said they had either completed or were in the process of doing the required research. In 1999 that number was 100 percent. Glenn Lowry made mention of the Cranach painting at the North Carolina Museum of Art which will be restituted. This is an example of a medium-sized museum following the AAMD guidelines and doing the right thing. The point is the system is working.

Museums are researching their collections and they are making information available through print and electronic publications, and when the validity of claims is established, they are returning the works. One of the issues continually cited by museums doing provenance research is cost. This is especially, but not exclusively true for smaller and mid-sized museums, whose research staff and budgets already are stretched.

Because provenance research is laborious, time-consuming, painstaking and requires a multilingual staff and hours of investigative work, the process is exceedingly slow. Let me quote from the experience of one mid-sized museum curator in putting together an international exhibition: "We have been putting a great deal of energy into the issue of provenance, but we are a small museum and have no resources to hire additional qualified hands to do the intensive research that may be warranted. For our recent exhibition, we devoted extraordinary time, sixteen months, and effort to determining that neither domestic nor international loans were likely to be subject to claims. Our immunity from judicial seizure application was successful, but required the peculiar Catch-22 that we guarantee there was no possibility of competing claims of ownership. If we could provide such assurance, we wouldn't need immunity. There were works for which we simply could not get information regarding the crucial years." In this case, her small curatorial staff was stretched to the limit, not only by the provenance research, but also by the hours spent in conversations helping the then-USIA understand that they could not guarantee, as such, that there would be no claims.

However, her greatest challenge came in arranging a loan from a private collector. She discovered that the painting she wanted to borrow had been looted, but she did not know if it had been properly restituted. The collector agreed that she should undertake the provenance research which, as she said, was not easy or straightforward to accomplish. Happily, she was able to determine that the painting had been properly restituted and then resold.

This example gives us insight into several issues facing museum researchers, the most vexing being that there are no short cuts to filling gaps in provenance. It may be relatively easy for journalists or others to establish that a work of art might be labeled as "having suspicious gaps in provenance," but filling in those gaps, providing conclusive evidence one way or the other is the hard part. Even after exhaustive research, it is often concluded that there is no definitive answer to the missing information.

Another museum curator wrote that after reviewing the provenance of 2,100 works, it was found that 800 were acquired after 1933, and of those, 500 paintings needed varying amounts of additional research. She concluded her report by saying, "We have been in contact with dealers, collectors, scholars, curators and auction houses. We have also consulted the staff of the Holocaust Art Restitution Project and the Commission for Art Recovery and other recognized experts in this field. In addition to utilizing the National Archives in College Park, we expect to look into records of various European archives as well. But with 500 paintings to research, the results will not be immediate."

In discussions with large, medium and small museums, they have made a number of suggestions for how to expedite the task at hand. The first two suggestions are the same from all museums: additional resources to do the investigative work and the creation of sophisticated cross-referenced universal databases to assist with the chore. In addition, museum colleagues tell me that it would be useful if there were a better cataloging and cross-referencing system at the National Archives. An example that was given was if a researcher finds a reference for a debriefing that might shed light on a particular painting, there is no easy way to find the transcript of the debriefing. The researcher might be directed to a box that could hold the transcript, as well as hundreds of other pieces of paper, none of which is indexed. The task is daunting.

Another suggestion is that dealers and auction houses, which are often not forthcoming with information, should be obliged to open their records, maybe after a certain period of time. It has also been suggested that there be some organized way to preserve and eventually open the records of dealers who go out of business. When a dealer goes out of business, the records are often lost or destroyed which could mean gaps of provenance would never be known.

Museums understand the imperatives of researching their collections, and as you have heard today, even with limited resources, they have plunged ahead. However, the additional research burdens on the small museums often force them to walk a very fine line: Do additional research and cut important community programming, or do the research, but at a slower pace and maintain programming. Some are still struggling to find the balance, but all are working at it. The important thing is that in spite of obstacles, museums are unquestionably moving forward. If progress appears to be slow, it is not for any lack of will or moral force.

While American art museums are committed to weighing and investigating claims to specific works, it must be recognized that museums hold their collections not for the benefit of the museum, its staff or its trustees, but for the American public. Consequently, we have an obligation to assure the public that any work taken from the public domain is lawfully taken.

As one museum director said, "We only have one chance to do the right thing. If we return a work of art to the wrong party, or return a work of art that should not have been returned, we are not likely to have a chance to undo that." This means that slow, unsensational research must take place. Museums, small and large, are aware of the seriousness and the complexity of the

issues. They do not want Nazi looted art on their walls, and they are doing the right thing.

Thank you for your attention.

[The prepared statement of Lyndel King can be found on page 295 in the appendix.]

Chairman LEACH. Thank you, Ms. King.

We also want to pay particular respect to a British citizen, Ms. Page, from the Tate Gallery in London.

**STATEMENT OF SHARON PAGE, HEAD OF THE SECRETARIAT,  
TATE GALLERY, LONDON U.K.**

Ms. PAGE. Thank you to the Chairman and committee Members for inviting me along. U.K. museums have been doing an enormous amount of work over the past eighteen months to address the issue of looted works that may be in their collections, and it is great to have this opportunity to tell you what we have been doing and maybe share some experience with you.

I am Head of Secretariat to the Tate Gallery in London, and from that perspective, have been involved in the only claim made so far on a national museum collection in the U.K., and hopefully I can share some of my experience from that.

I am also a member of the U.K. National Museum Directors Conference, working particularly on works wrongfully taken during the Holocaust period, and hopefully I can share experience from my work in that working party, too. For people who don't understand, the National Museum Directors Conference is a voluntary organization that represents directors of all of the nationally funded museums and galleries in the U.K., although I am pleased to say that our work has also been picked up by some of the non-national institutions as well, so it is not just the nationals who have been involved in this particular work.

I think the history of the National Museums involvement in this particular issue began in June 1998 when the National Museum Directors Conference decided to set up a working party to look into the issues of works of art looted during the Holocaust, and I was proud to be part of the working party established then. We began our work in the summer of 1998, and in November 1998, completed a statement of actions and principles which was adopted by the National Museums and which I was pleased to be able to launch at the Washington conference here in December 1998.

The initiatives in the U.K. have been driven by the museums themselves, we have had a lot of support from the government, but it has been very much a self-help exercise. The working party was very keen that our statement of actions and principles offered real practical guidance to museums in the U.K. on ways in which they could practically address the works in their collections.

Therefore, our statement focused on carrying out research into existing works and collections, how to deal with acquisitions in the future, how to handle claims, how to be as open as possible with information about works in the collections and also some practical guidance on international loan exhibitions. 1999 really saw the implementation of the work set out in our statement. In April 1999, all of the National museums and galleries published an action plan which set out information about the institutions, about their collec-

tions and about the people that could be contacted in the event of a claim, but most importantly, set out the areas of their collections where they would be focusing their research and the timetables they proposed to stick to in terms of publishing the outcome of that research.

From the Tate Gallery's perspective, our collections database was able to locate those works in our non-British collection which we had acquired post-1932, and which had been made pre-1946, and that identified about 600 works which formed the first tranche of our research. I am pleased to say in April 1999, the non-national museums in the U.K. published their own statements of action and principles, which is very much based on the national version, and they are also now undertaking research into their collections. At the end of this month, we will be publishing the results of that first tranche of research, which will include setting out what research has been carried out and most importantly, publishing on a website the list of all of those works where we have been able to identify gaps or question marks over the provenance in the period between 1933 and 1945.

It is very interesting to hear from my colleague here on the right that the kind of problems faced in the U.S., which have been also faced in the U.K. in carrying out this kind of research. It is extremely detailed, it is extremely resource-intensive, and in some ways, the easy thing is to find the gaps or the question marks. Unfortunately, provenance of works of art is not an exact science. It often revolves around letters from individuals, entries in exhibition catalogs, records in files and archives, and one of the problems that we have encountered is that the first stage of finding the gaps is easy up to a point, although it is labor-intensive. The really difficult thing is to take things on to the next stage, which is to fill those gaps to try and answer questions, and at the moment we are trying, as far as possible, to use our resources sensibly. So for example, fifty museums are not all writing at the same time to Christie's or Sotheby's to say "can you answer a question on this particular gap?"

One of the things that we have also done in the U.K. is to establish an independent advisory committee for U.K. museums and galleries. This committee was established in April 1999, is headed up by a high court judge, and includes representatives from the art world and from Jewish interest groups. We meet with that group regularly to tell them what we have been doing and really seek their guidance as to whether we are doing the right things or heading in the right direction, and to ensure that we are being as transparent as possible about what we are doing, because the ultimate aim of our research is to make available all of the information about the works in our collections, all of the information about works where there may be gaps or question marks, so that people carrying out research and making claims know where to look to.

One of the other things that we have done in the U.K. is published some detailed guidelines to help museums and galleries carrying out this research. It is complicated, and as my colleague has pointed out, particularly for smaller museums, maybe just run by volunteers, not only is it a daunting task, but understanding what they are looking for is a real challenge, and we have tried to set



out some basic criteria so that all of the research that is being done is being done on a similar basis so we can make comparisons, so that people are not making assumptions about things unnecessarily and giving them some guidelines as to the various different databases and research resources so they have some idea as to where to start.

I think I said earlier that the Tate Gallery is the only national institution, in fact, the only museum or gallery in the U.K. so far who has received an actual claim against a work in its collection. The National Museum Directors' Conference work, because it has been a museum-driven initiative rather than a government-driven initiative, has focused on what we can do. But one of the things that this particular claim has highlighted is, once again, the legal framework we are operating within and the constraints that that puts on us in terms of dealing with claims. It has been an amazingly interesting exercise to be involved in. I think it was hugely useful to us, the work that the National Museum Directors Working Party has done, because we were in a position to deal with that claim quickly, to immediately develop a relationship with the claimant and work together with them to look at the details around the claim and try to take it forward.

However what the claim has highlighted is the complex legal situation that exists, and it is not just in the U.K., I think it exists in the U.S. and other countries where one is trying to balance the genuine claim, the issues around a claim and also a museum's constitution. In the U.K., all of the national museums and galleries are founded by acts of Parliament, which basically set out our powers and what we can do and can't do.

U.K. museums are also charities, and so we are working within the constraints of charity law. And we are hopeful that we can work within that framework with the claimant, but also with government to actually balance our responsibilities as trustees of a public collection which we are holding for the British public, but also the very valid and worthwhile claims coming from claimants.

Just to sum up, I think it would be useful to look forward at some of the other initiatives and ways in which this issue can be addressed elsewhere. As part of the guidelines, we have produced guidance to museums in terms of dealing with acquisitions moving forward and we have, in addition to rigorous provenance checking, we have tried to encourage institutions to introduce some form of agreement when they acquire works of art, which seeks basic assurances from the vendor, that they own the work that they are selling, that they are able to sell it and, to the best of their knowledge, there are no third party claims.

Unfortunately, having that form of agreement on the table is one thing. Actually getting it accepted is another. I think museums and galleries find enormous resistance to that. There is still an emphasis in the art world to basically say "Here is a work of art, take it or leave it, we give you no guarantees." I think there is a lot that can be done to try to take forward having a formal rigorous approach to selling works of art and getting a better balance between the risk on the purchaser and having to keep their fingers crossed and some assurances given by the vendor who should have some knowledge about the work that they are selling. We have heard the

problems faced by museums in terms of international loans. We have developed some guidelines which we are hoping to take forward at an international museum exhibition conference this year to try to introduce guidelines for international loans, which, once again, will get the balance right between due diligence on the part of borrowing institutions and basic warranties on ownership from lending institutions.

Finally, in the U.K. there is a House of Commons select committee meeting in the spring of this year which will be looking at trade and cultural property generally, but no doubt will be focusing on issues around works of art looted during the Holocaust. I think all of us involved in museums in the U.K. will look on with interest as to what the outcome of that committee will be and its impact on this particular issue. Thank you very much.

[The prepared statement of Sharon Page can be found on page 304 in the appendix.]

Chairman LEACH. Thank you very much, Ms. Page.

Our next witness is Jonathan Petropoulos. Please proceed.

**STATEMENT OF JONATHAN PETROPOULOS, RESEARCH DIRECTOR FOR ART AND CULTURAL PROPERTY, PRESIDENTIAL ADVISORY COMMISSION ON HOLOCAUST ASSETS**

Mr. PETROPOULOS. Mr. Chairman, Committee Members, it is an honor to be with you here today. My remarks will summarize my written statement. I will divide my comments into four areas and highlight what I consider to be the most important issues. Let me state that the views I am expressing are my own and not necessarily those of the Presidential Advisory Commission on Holocaust Assets in the United States.

The commission's conclusions will be contained in its report to the President and the Congress to be issued later this year.

First, with respect to the number of items of cultural property looted and returned, it is remarkable that the data are so imprecise. Despite intensive engagement with the restitution process by most European states and the U.S. Government, and the research of a number of scholars, we are just not sure how many works were stolen, how many were returned to the rightful owners and how many are still missing. I would stress two points in this regard: First, the research process in this area should be a cooperative one and experts around the world should arrange to share information; and two, the figure for looted works not yet restituted to rightful owners is the most elusive of all and estimates feature the greatest range, from 10,000 to 110,000. We will probably never have a precise number for this last category, although the numbers are startling nonetheless.

It is important to stress that the Nazis systematically looted cultural property not only from the very rich, but also from ordinary people. The real story of the mass theft of a cultural legacy is far more than one of a few extraordinary collections of museum quality paintings. Second, because of the efforts of Congress and the Clinton Administration to focus attention on this issue through events like the Washington Conference on Holocaust Assets, museums and other institutions, at least in this country, are increasingly making their records available to scholars and the interested public of sur-

vivors and their heirs. In addition, through the interagency working group on declassification of Nazi era documents, the United States Government has declassified millions of pages of documents which relate to Holocaust assets in general and art and cultural property in particular. This effort continues.

There is a growing body of scholarship on looted art and the issue has penetrated the consciousness of academics, politicians and policymakers. Nevertheless, if one looks at the restitution cases since the early 1990's, whether it is the Monet exhibit in Boston, the Matisse in Seattle or the Cranach in North Carolina, the information that a work had suspicious provenance almost always came from outside researchers, not from the museums themselves.

There is a need to continue to push for public access to sources of information about provenance, whether in governmental or non-governmental archives in the U.S. or abroad.

My third category concerns works in private collections. My main points are, one, that the majority of works looted from Holocaust victims are not of museum quality and may have been destroyed or ended up in private collections. I would estimate their location, in order of importance, to be Europe first; the U.S. second; and then Latin America and South Africa. Two, that those works that have survived will steadily re-enter the market, especially as a result of generational change. Three, as a result, the art-dealing establishment will play a crucial role in identifying victims' art.

As a historian, I suggest that if we are to truly understand the way in which art flows internationally, we must understand the role of art dealers. This will require greater transparency in the art market than previously was the case.

Finally, with respect to the work of the Presidential Commission, I am pleased to report, consistent with the charge of our chairman, we have undertaken a critical, no-holds-barred study of the role of U.S. forces as they encountered victims' assets, and activities of various Federal agencies as they sought to control the entry of potentially looted art into the United States. We have learned that the United States had a policy of restituted looted art be returned to the country of origin, but that the policy was not always followed.

We have learned that the United States Government established procedures intended to prevent looted art from entering the country to find a market after the War's end. The regime appears to have functioned well, but there were exceptions. We have learned that the U.S. forces, while acquitting themselves in the restitution process, returned more objects than any other nation and seemingly, had the fewest number of problems, did make mistakes.

Finally, we have learned that there were random instances of theft by U.S. soldiers and occupation forces. The reasons for these deviations are varied and complicated and we are still trying to understand them. The commission's report will analyze both the development and the strengths and weaknesses of U.S. restitution policy. It will also assess the nature and scope of policy deviations and mistakes. My written remarks expand on these themes in greater detail.

I thank you once again for your continued attention to this important issue and for the opportunity to contribute to it.

[The prepared statement of Jonathan Petropoulos can be found on page 311 in the appendix.]

Chairman LEACH. Thank you very much.

Our last speaker is Ronald Tauber. He is with the Art Loss Register.

**STATEMENT OF RONALD S. TAUBER, CHAIRMAN,  
THE ART LOSS REGISTER, INC.**

Mr. TAUBER. Mr. Chairman and distinguished Members of the committee, before I begin, I think the committee should take note of the presence in this room of some of those persons who are really on the front lines of trying to identify and recover stolen art.

In addition to Jonathan Petropoulos, who is at my right, my colleague, Sarah Jackson from the Art Loss Register in London; Dr. Constance Lowenthal, who heads the Commission on Art Recovery of the World Jewish Congress; and Lynn Nicholas, who wrote the seminal book that really put us all into this business. I think it is important to give them credit, in addition to the experts on the panel.

Chairman LEACH. Maybe we can have them stand for a second. Thank you very much.

Mr. TAUBER. I am very pleased to report to the committee as Chairman of the Art Loss Register, and I would like to begin by describing our business, which is broader than Holocaust issues, but of which the Holocaust issues comprise an important part. The Art Loss Register is the largest private organization dedicated to the recovery of stolen and missing works of art, to the deterrence and the prevention of the trade in stolen art and to providing a centralized clearinghouse to acquirers of art in order to determine good title.

We maintain a computerized searchable database of 100,000 lost and missing works of art. We are a private company organized and owned, in part, by major companies in the art and insurance markets, and by a not-for-profit company conducting art research. We have a staff of art historians in offices in New York, London and Cologne, and our service is used by 90 percent of the world's major auction houses and by galleries and museums to determine provenance.

In the nearly ten years of our existence, the Art Loss Register has been instrumental in the recovery of \$100 million of works of art. The recovery process begins with the registration on our database of lost items by the victims or their insurers. We then systematically check the offerings of the major auction houses against items listed on our database. Last year we checked more than 300,000 individual auction lots worldwide prior to their sale. We also respond to inquiries and searches from major museums, dealers and galleries, financial institutions and law enforcement agencies around the world. When we match an item searched by us with an item on the database, we always notify the theft victim, the party who has searched and law enforcement authorities. At that point, the work of art is usually detained and the parties either negotiate a settlement, often with our help, or adjudicate their competing claims. We are not the judge and jury. Our job is to try to find the location of items that are lost. Our systematic method-

ology and infrastructure allows loss victims to register their losses with us and provide them with the reasonable hope that their valuable works of art may be recovered. At the same time, and equally importantly, we provide a clearinghouse for acquirers who seek assurance that particular works of art are not stolen.

We have been very effective in recovering stolen items. Our recoveries usually result from matching auction house searches or dealer or police inquiries with items on the database, but sometimes recoveries are made after protracted negotiations by us on behalf of one or both parties. In every case, our recovery process involves notification to and cooperation with law enforcement authorities. Just last year, we recovered a Cézanne still-life stolen in Massachusetts in 1978. It was recovered in Europe and then sold by the family from whom it was stolen for more than \$25 million. We have also recovered several Picassos, a Monet, a Manet, and many other works of art, including those of much lesser value in monetary terms, but which are equally precious to their owners.

In 1998, we organized a special effort to identify the location of World War II looted art. We dedicated some of our most experienced professional staff to this undertaking, and we encouraged the registration of looted art on our database. We do not charge any fees to individual claimants, either for registration of loss or for assistance in identification of location or recovery. This pro bono effort has had the financial support of the major auction houses, particularly Sotheby's and Christie's. We have also invited other organizations active in this area, such as the Commission on Art Recovery, to pass to us their collected claims in order to be included in our records.

I am very pleased to report to this committee that our efforts have borne significant fruit, both in recovery of art works and in helping to mold the standards and perceptions of the art community toward greater openness and a willingness to confront the difficult issues surrounding Holocaust looted art.

Several thousand Holocaust claims have been registered since our initiative began eighteen months ago. We accept claims not only from individuals, but also from organizations, including those representing Jewish communities in Europe. In just the past few months, for example, we have registered a Brueghel painting confiscated and then auctioned in Vienna; the contents of a studio of an artist in Paris; a 15th Century Hebrew manuscript that was removed from a bank vault; a collection of Japanese porcelain confiscated in Hannover, Germany; a group of Dutch Old Masters missing from a Milan warehouse; and a private library that was confiscated in Breslau, which is now part of Poland.

Once an item is registered with us, it is continuously checked against auction house offerings and dealer and other inquiries from around the world. In this way, we can help uncover the location of looted items. At the same time, we also operate as the best source of reliable information to auction houses, dealers and museums on the issue of whether a particular work has a questionable provenance.

Our experience has led us to four basic conclusions. First, the auction houses in the United States and the U.K., and, to a growing extent, the art trade in general, have become sensitive to Holo-

caust issues and are supportive of efforts to find a just resolution of Holocaust claims.

Second, museums and public institutions in the United States and Western Europe have become aware of their responsibility not to hold art with questionable provenance and increasingly are dealing with difficult questions in moral as well as strictly legal terms.

Third, works of art which were looted from Holocaust victims and are now held by private individuals as opposed to institutions continue to be very difficult to identify and competing claims relating to them even more difficult to resolve.

Fourth, the maintenance of a comprehensive registry and the acceptance of due diligence standards which require a consultation of the registry by the art trade and museum community constitute a practical program for the recovery of looted art.

A few examples will illustrate these conclusions. In December 1999, our London office identified a 17th Century Dutch landscape in an Old Masters catalog that was up for sale in London. That picture had been looted by the Gestapo in Berlin and had been placed on our database. This same painting had been sold twice before, and each time the family sought recognition of its rights and to put a stop to the sale. This time the claimant, an American citizen, was informed of the pending sale as was the auctioneer. The picture was withdrawn from sale and negotiations are underway between the claimant, the auctioneer and the consignor. Other identifications at auction include a Sisley painting confiscated in Budapest, a church interior and a genre painting both sold in Brussels during the occupation, and a \$1 million Bonnard painting confiscated from a French dealer that surfaced with a Swiss provenance in New York last year. Each of these works was withdrawn from sale when its history was identified and discussions are underway to achieve negotiated settlements.

An extremely encouraging development in the art trade is the decision of the organizers of Europe's largest and most prestigious art fair held each year in Maastricht in the Netherlands to ask our company to check 4,000 items against our database prior to sale. This brings a very important group of dealers into the same standard of due diligence and responsibility as the major auction houses. These dealers and others seek assurance that works of art are neither subject to contemporary claims of theft nor tainted by spoilation during the War. As you have heard, museums in the United States and in Western Europe have been in the forefront of those willing to accept responsibility for ensuring the integrity of their collections. You have heard about the North Carolina case which is extremely important. Another case which also received a great deal of press involved our company and Jonathan Petropoulos, to my right, who together identified an extremely valuable Monet "Water Lilies" on loan to the Museum of Fine Arts in Boston from the Musée des Beaux Arts in Caen, Normandy, as a picture confiscated from a French dealer during the occupation. Both the Museum of Fine Arts and the French museum cooperated in the return of the painting to the dealer's heirs, who are Americans still active in the art trade.

In general, museums have become active searchers of our database prior to acquisition of works of art. Searches by museums

around the world have increased by more than 300 percent in 1999 as compared to 1998. These searches protect the institutions against unwittingly acquiring or holding works that may have been looted during the Holocaust, or simply stolen from someone's sitting room. I think it is worth a moment to list some of these important museums with the hope that it will encourage others to do the same: The Metropolitan Museum of Art; Museum of Modern Art; Art Institute of Chicago; National Gallery here in Washington, DC.; Baltimore Museum of Art; Museum of Fine Arts, Boston, Massachusetts; Art Gallery of Ontario; Cleveland Museum of Art; J. Paul Getty Museum; Los Angeles County Museum of Art; Philadelphia Museum of Art; Indianapolis Museum of Art; Worcester Art Museum; Saint Louis Art Museum; National Gallery, London; Victoria & Albert Museum, London; and Tate Gallery in London. Museums are also checking prospective loan exhibits, no doubt a positive development from the Modern's painful experience with the Schiele.

Not surprisingly, works of art embedded in private collections remain the most difficult to identify, and claims relating to them are the most difficult to resolve. We have made some such identifications including a Venetian painting by a contemporary of Canaletto confiscated in Vienna and now held by a private collector in France. Thus far, the current possessor has been unwilling to enter into any discussions with the claimant, an American citizen, and the claimant may need to resort to legal remedies.

A similar case involves a major Impressionist painting which was apparently stolen by the Nazi-appointed liquidator of a Paris art gallery and is now in a private collection in Switzerland. On the other hand, we have been able to jump-start discussions between a family in Israel and a London dealer representing a private collector who bought a painting from a dealer in Berlin after it was confiscated by the Gestapo in the 1930's.

In another case, our company was able to match a picture inquired about by a London dealer with a claim for a painting looted in Warsaw, which was lodged with the World Jewish Congress. Settlement discussions are now underway.

I have given you these examples with the intention of demonstrating that practical steps taken by practical people can make a real difference in recovering works of art and in changing the standards of the art world. My message to you is a positive one. The Art Loss Register is identifying works of art one at a time as they reach the commercial marketplace and as institutions check their collections.

Mr. Chairman and Members of the committee, I think that the single most important step a Holocaust victim, or his or her heirs can take to locate a missing work of art, is the free one of registering it on a centralized database. The standards and custom of the art trade are changing to require due diligence checks on a centralized database prior to acquisition or sale. The system of loss registration and due diligence checks can and does work to identify the location of lost works.

Once identified, the Art Loss Register and others, including advocacy organizations, can be effective in achieving just resolutions of difficult situations.

Mr. Chairman, the victims of the Holocaust and their heirs need and deserve the support of the Congress and private and public organizations in keeping the spotlight on their legitimate quest for justice. Those of us working in this area welcome and appreciate this committee's and Congress' continuing interest. Thank you.

[The prepared statement of Ronald S. Tauber can be found on page 326 in the appendix.]

Chairman LEACH. Thank you, Mr. Tauber.

Let me begin with you, Ms. King. At our last hearing on this subject several years ago, the AAMD strongly recommended the creation of a dispute resolution mechanism. Have you proceeded to set one up? Do you find it perhaps unneeded? Was it a factor, for example, in the North Carolina decision?

Ms. KING. The AAMD has not formally moved to set up any dispute mechanism. I think this is probably outside its purview, but it has recommended in its guidelines that other solutions than in a court of law be sought, and I think the North Carolina case is a good example of that. When the claim was substantiated, lots of careful research was done in advance, but when it was substantiated, the museum and the representatives of the heirs worked directly together in mutual conversations to come to a solution. So this is the kind of response that I think the AAMD guidelines would hope would always happen, but no, as to this date there have been no formal body set up. It may be that this will happen in the future, but it has not happened yet.

Chairman LEACH. The only reason I raise it is that one gets a sense from the several museums that have testified, the four of you in each of your museums, that a great deal of due diligence has been applied and given the extraordinary depth of the collections, I don't know your museum as well, Ms. King, but of the three other museum directors, it is extraordinary how few challenges have been registered, not how many.

But I don't know if that is a universal circumstance. Do you have a backup process that you recommend? In effect, I have the sense that it is left to each museum. One has full confidence in the museums at the table, and I think, in general, one would have in most museums. Is there such a thing as—if a museum was perplexed, could they call upon some sort of an institutional mechanism?

Ms. KING. I think that there are a number of places that small to medium-sized museums can go, some of them are represented at this table and in this room, for assistance with their research.

I think certainly the network of colleagues that we have through the AAMD is also a good resource. The number of claims has not been monumental. As museums continue to do their research and start to publish the results of their research more and more, it may obviously increase. But at this point, I think it is possible to handle it on a case-by-case basis.

Chairman LEACH. Mr. Petropoulos and Mr. Tauber, do you have any sense on the magnitude of the Holocaust-era problem with American museums? Do you think that it is extremely modest? Do you think that it is substantial? How would you characterize it?

Mr. Petropoulos.

Mr. PETROPOULOS. I have been in touch with researchers conducting studies at several American museums, and it is my impres-



sion that they are finding works where there are questions. It is very rare to identify a work that clearly has a provenance going back to a Holocaust victim. We have discussed some of the difficulties in doing research and connecting that chain from the victim to the present owner to the museum. It is very, very difficult to do that.

But my experience has shown that museums that are conducting the self studies are finding works where there are so-called red flags. These works usually passed through the hands of art dealers who had collaborated with the Nazis and there are some questions. I think that in cases where museums find art works that belong to victims, they are doing the right thing. They are sensitive to this issue and they are committed to justice, and as Lyndel King said, the process is working. I think the process can work a little bit better and I have some recommendations along those lines. And in this respect, I think the National Gallery is exemplary, and I would single them out for praise. What they are doing on the Internet with their database is something that I hope that other institutions would follow. I think that we need to use the Internet to facilitate research.

I think that in terms of the databases, I would like to see some indication if the works have red flags on them. If there are concerns, I think this would facilitate research so that scholars don't have to go through thousands and thousands of entries. I think it would be helpful if the museums conducting the self studies could be more transparent and let us know when they have issues, when they have questions. And I would also like to see more interfacing among museums with their individual databases. I think there are certainly works in American museums that rightfully belong to Holocaust victims, but I think the process is working, and we are all working together to research the issue.

Chairman LEACH. Mr. Tauber, would you like to add anything?

Mr. TAUBER. I pretty much agree with what Jonathan said.

We don't think of it as a huge problem in terms of numbers in American museums, but each work of art is a separate case, and it is important that public institutions come to understand that the moral issue is at least as important as the question of the size of the problem, and our experience is a very positive one with museums.

Chairman LEACH. Thank you.

One of the differences between the Anglo-Saxon world and much of the continent is the difference between our law, which we derive from your country, Ms. Page, and that is, in America we don't allow, and our legal system is from Britain, the notion that a good faith sale stands if there is an item that has been stolen, and on the continent they do. So it means that the legal circumstances are a little bit different. Are you finding a difference with your other European countries in this regard related to law, or do you find that the museum directors have a synonymy of interest, that is, in effect, above the law on the continent?

Ms. PAGE. I think, to a certain extent, the legal issues we face are similar to the ones in Europe and the U.S. There are two aspects. There is the issue around the passing of title to works of art and the concept of the good faith purchaser and the appropriate

limitation period, and I know that in some European countries there has been primary legislation to try and address this, and I think there have been two approaches; one, to broaden the powers of museums or galleries to give back works in circumstances where maybe the legal position is not strictly clear in terms of ownership.

There have also been moves in terms of extending the limitation period so that particular clock gets to tick longer. In the U.K. the position is clear. If there has been a good-faith transaction and the appropriate limitation period has passed, then the person in possession of the work of art cannot be challenged legally. I think the slightly different position in the U.K. flows on from the fact that all of our national museums are, as I say, bodies created by acts of Parliament, which creates a rather unique set of circumstances, which sets out the powers and the ways that we can and can't do things. One of the particular idiosyncracies of ours is museums' powers to deaccession works from their collections. Some national museums in the U.K. have no powers at all to dispose of works from their collections, which they have title to which obviously has a legal impact on this particular matter. Some museums do, but it is restrained. On top of that, there are charity law issues in terms of charities dealing with assets.

I think the point that you raised earlier about alternative dispute resolution is actually very important, and at the moment the national museums are exploring ways with the government in which they can help museums reach equitable solutions where there are claims, because the issues are enormously complex. If they were cut and dry, then the problem would be very easy to solve. But I think it would be really useful for U.K. nationals certainly to have an independent body to help us reconcile the interest of the claimants with our responsibilities as trustees of public collections.

Chairman LEACH. Let me kind of reraise this in the context of a comment of Mr. Lowry's. Mr. Lowry was very firm in suggesting that the courts have been politicized, and I am wondering if you had a dispute mechanism arrangement that was set up by AAMD, that you would have a clear-cut alternative to the courts that a party would know existed and if that could then serve as a disincentive to seek legal action, because what is clearly presented in this panel, is reputable museums that are absolutely committed to going to the final mile to do the right thing. On the other hand, if one is a claimant, how does one have a sense that he or she is going to have their circumstance looked at in a way that they might have some doubts about an individual museum's judgment with what might be perceived to be an individual museum's self-interest against them. So, if you had an established panel that hopefully would seldom meet, but might be called upon, might that serve as a disincentive, just as we have arbitrations in the commercial arena?

Mr. Lowry, because you have presented a little bit of an aggrieved party circumstance and the dilemma of two significant paintings that are out of public purview, because of a court action, does that strike you as an appropriate circumstance or inappropriate?

Mr. LOWRY. I don't want to suggest that we are an aggrieved party, but I do agree that what we have learned from the experi-

ence that we have gone through is that the court system is a cumbersome one and a blunt one, when in fact what is required is a finer, more sensitive mechanism for resolving these kinds of problems.

I think, in fact, that Lyndel King is right in asserting that the current situation that American museums find themselves in and the framework of the AAMD guidelines provide by and large, and certainly for the moment, a mechanism that seems to be working for museums and for claimants. One has to remember that two years ago, those guidelines did not exist, that the Schiele incident was one of the first really high-profile situations, and there was no path for anyone to follow, and in the heated fray of the moment, a number of initiatives began on the part of the district attorney, with no understanding of the situation, that caused, perhaps, a chain of events that today I don't think would actually have occurred.

I do believe that any time one can find a mechanism, whether through the AAMD or other parties that can diffuse a situation and focus on the problem and avoid a lengthy legal battle that can also be very costly, that has to be a better outcome than going through the courts.

I do think, as well, that several organizations, several which are in this room, are providing that vehicle which can aid a claimant in presenting a case before a museum, the Commission for Art Recovery being one of several, and that I think we should take some heart today as Americans that we have faced this problem squarely, and that, in fact, our museums and potential claimants have an alternative to the court system that seems to be working.

And so I don't know that one has to rush to creating the kind of arbitration mechanism that we thought two years ago would be essential, in part because we had no idea then what the magnitude of claims was going to be, what the rate of claim would be, and I think we are in a much more stable situation today, and a lot of very good work has enabled claimants to know how to make claims, and institutions to know how to respond to those claims.

Chairman LEACH. That raises another philosophical issue that wasn't on the table several years ago, and it is maybe a reason for a court that a museum might prefer. It strikes me that as difficult as it is to do provenance research in some circumstances, because of the enormity of the Holocaust as a tragedy, it is also very difficult to do genealogical research on the claimants' side, and claimants can be very potentially honest in believing that they may be the proper claimant and they may not be. This could be a terrifically honest mistake or a mischievous one. A museum might come to the conclusion that its provenance is imperfect, but it may not know who the proper owner of that particular artwork might be, and I don't know if there is another organization or another approach or another process that has to be brought into the picture if, for example, a museum determines that its painting is improperly provenanced, that does not mean that it knows to whom it belongs.

I don't know if that is a dilemma that is being addressed in this whole circumstance or not, or whether we really have a case of it. I can visualize one of your museums going through basic research

and coming to a conclusion that relates to improper ownership, and yet having not the foggiest idea where to turn. Is that a dilemma or not?

Mr. LOWRY. I would certainly agree that is a problem. Mr. Petropoulos rightly recognizes and suggests that to the degree museums can identify those works where there is a gap in the provenance for this period that we are considering, and can then at least post information about that object on the Internet or through any other widely accessible means, it at least puts out into the public domain the potential object that might form—

Chairman LEACH. Let us say that someone makes a claim and you give it to the person, and then you discover that someone else has a stronger claim, is the museum liable? Where does this take you? Is that a subject of review in your organization?

Mr. LOWRY. Absolutely. In an unrelated issue to the Holocaust, but one that involved a claim for a group of paintings by a well-known Russian avant garde artist, Kasimir Malevich, that we settled amicably with the heirs of Malevich a little less than a year ago, we spent almost three-and-one-half years trying to determine who the heirs were.

Chairman LEACH. Was one of his the Black Square?

Mr. LOWRY. Red Square.

Chairman LEACH. He had a black one. Much like Joseph Albers.

Mr. LOWRY. We never doubted that we had to come to a resolution with the heirs. What was involved, however, was determining who the heirs were and then being sure that they were all of the heirs, and those heirs were scattered in Canada, in Poland, in Ukraine, in Russia, and I believe in Australia, and they didn't know each other, and yet they all, through genealogy, had a legitimate fractional interest in Malevich's work.

Once we were able to get the heirs together and then construct a mechanism that protected the museum in the event that an unidentified heir came forward during a reasonable period of time and asserted his or her claim, and we were able to agree on that mechanism with the existing heirs, we were able to settle the issue very quickly.

The single most important issue for any museum trying to resolve one of these claims is to be absolutely certain that it is, in fact, returning the work to the rightful heir. Inheritance in Europe is more straightforward, as I understand it, than it is in the United States, so this is not an insurmountable problem. It is just one that requires diligent research and the willingness to do that research in an environment that isn't charged where one can actually spend the time to make sure that the information is correct.

Chairman LEACH. Thank you, Mr. Lowry.

Mr. Bentsen.

Mr. BENTSEN. Thank you, Mr. Chairman.

Let me follow up on your line of questioning, because I think there is another dilemma here, and Mr. Lowry raised that in talking about the case that MOMA, the Modern, has been through and the paintings that have been seized by the district attorney.

I applaud the work done by the American Museum Directors Association, but the bigger problem is an international problem, because there will be some heirs who, because of the difference in

laws and laws of possession and rights in different countries, may find that their only court of recourse may be in the United States, and so they have to exercise that option at any opportunity, and I am not talking where it is within the museum's collection, because that is one problem. I am talking more about when shows are put together and exhibits are done and they come from private collections, it may be, and I am curious whether you think this is a problem or not, but it may be that there are some works that may be the only time that those works actually surface, and the art world I have always perceived it, particularly at the higher levels of the fine arts world, as being rather secretive, and so for some, their only chance may be a court in New York or maybe the Federal court system in the United States. And I understand the dilemma of those, such as the National Gallery, such as in my hometown of Houston, because you will find collectors in other parts of the world who will be reluctant to put their works on exhibit for fear that they might not get them back. That has to be weighed against the potential rights of those who might have the rightful owners. Is there any sort of potential for a conference to create some international standard among dealers and museums and auction houses to somehow try to get a handle on this, because obviously, the laws are different, as the person from the Tate was saying, the laws are different in Great Britain than they are in the United States, than they are throughout Western Europe, and certainly Asia as well.

I understand your frustration, but I think if you wanted to look at it from a claimant standpoint, they might say this was our only shot.

Mr. LOWRY. I think there are several factors that come into play here. First of all, there is a group of museum directors from the United States and Europe that now meet at least once a year generally in Europe—sometimes we meet more frequently than that—and where the issue of Holocaust restitution has been a very hot topic, and where we have sought to both establish standards and working relationships among ourselves, the museum group, to at least facilitate some of these problems. Whether or not one could ever establish common laws and common practices across as many countries as are involved and as many different professional entities, dealers, auction houses, museums, individuals, I don't know.

What is I think clear, though, is that the single best way to find potentially lost works of art is to have them on public display. And therefore, by enabling those objects to come on to display as happened with Monet's "Water Lilies" in Boston where they are brought into the public focus, where one can now say that painting, which belonged to my relative, is in that collection, at least the needle in the haystack has been identified. That, to me, is of far greater consequence than in a sense worrying about which will prevail, because now at least we have linked the two together, the potential claimants and the object.

And my fear is that in an overly litigious environment, what happens is that people or institutions won't lend those works of art, they will not surface, and the problem of identification becomes adumbrated manifold. This isn't to say that one should never go to court. I am not suggesting that. What I am suggesting is that

I believe personally that a climate that encourages those works of art to come out of the closet, as it were, and to be seen, documented and identified is an enormous step right now, because that is the greatest difficulty we have.

And we should seek both, I believe, at home and with our colleagues abroad to find mechanisms that when those objects have been identified, then allow a fair process to adjudicate and resolve the ownership situation. That is certainly the way I read it. I think the AAMD and all of the sister institutions in this country have looked this problem squarely in the face.

We have a vehicle now, which we didn't have two years ago, to enable our institutions to deal with these problems and to encourage claimants. And I believe that we have established a very healthy dialog with our colleagues in England, but actually beyond that, in Belgium and France and Germany and elsewhere, where an awful lot of information is being exchanged, and where we are trying to create the best possible case for a potential claimant to come forward. But nothing will be better for that, nothing will encourage it more than seeing those works of art in some kind of public arena, because that is when it happens.

Mr. BENTSEN. Sure.

Mr. PETROPOULOS. I would add on the point of international cooperation that it is my understanding there are now seventeen national commissions representing countries around the world. And the United States, as you well know, now has the Presidential Commission on Holocaust Assets, and there have been concerted efforts to communicate and to share research.

Just last month in Stockholm, Sweden, there was a conference devoted to Holocaust education, but researchers did meet and talk about issues that concern them. And my colleagues, led by our Chairman Edgar Bronfman, went to Stockholm and met with these other representatives, and the executive directors of the Presidential Commission traveled throughout Europe and went to Paris, Vienna, and Budapest and had some very productive meetings with the representatives of the other national commissions. There isn't any institutionalized way of sharing this research other than the periodic conferences convened, such as the Washington conference in December of 1998.

But parallel with the progress that we have seen in the American museum establishment, I think that this is reflected in the international realm as there is much more cooperation today than was the case a couple of years ago.

Mr. TAUBER. I think this is really an area where the Congress and the United States Government can have a constructive role. I think your question is an excellent one. The willingness of claimants in the United States to forego legal claims in the United States at those moments when a picture actually gets here, will depend upon the willingness of the "home" country of that picture, in this case Austria, to adjudicate claims fairly.

If claimants would have as much confidence in their ability to get a fair hearing in that country as they do in the United States, this question wouldn't exist. I think it is perhaps in your power to help that along by making sure that enough pressure is put on those governments to allow fair hearings of these claims.

Mr. BENTSEN. That is my concern. I mean, I am not aware of an extradition treaty that applies to assets or certainly to objects of fine art. And again, I mean, I can see both sides of it. It creates a real dilemma for you, because there is a taint already with the experience that MOMA has been through, I am sure, and that there may be works that you cannot get now for traveling exhibitions that people will say, we are going to keep it out of New York State, or we are going to keep it out of United States as a whole. But on the other hand, a potential claimant may feel that while they might get a fair hearing in Great Britain, they might not get a fair hearing in Austria or some other country.

I don't want to necessarily pick on one country or another, because I am not familiar with their legal structures, but that is something that we need to be concerned about. And certainly if the Congress—and I don't know that this is being advocated—but certainly if the Congress were to consider some sort of—or the U.S. Government, the Executive Branch on its own—to consider some sort of what was called “legal peace” in other earlier hearings we had, giving some immunity, I think we would have to ensure that the rights of claimants were somehow protected and not forfeited in that.

And so it is a very difficult question. And I am not—my training is not in the law. It is in economics, which is much more confused. But I think that that is something that we have to think about. It puts you all in a really a devil of a situation, more so than us. And so I don't know the answer to it.

Let me ask one other question to Mr. Powell. And before I say that, though, I would strongly encourage that the Museum Directors Association perhaps meet with your counterparts. And I don't know if there is international organization, but look at the idea of creating some, at least a discussion about this, a formal discussion about this at the international level of how you might do it, because it could rise to a greater problem. And since we are already engaged in the foundation dealing with reparations in Germany, you heard some of them were here for the earlier discussion related to insurance assets, that it might behoove you to do that.

Mr. Powell, you talked about the work that the National Gallery is doing in creating this database for the public, the worldwide public. Are you—is the National Gallery funding that out of its ongoing appropriations, and are you receiving additional appropriations, or is that coming out of what was your projected amount?

Mr. POWELL. That is coming out of our appropriations. We haven't asked for additional funds for that. We have had a research team in place for quite some years now that have been engaged in this. And, you know, you will hear from all of us, Congressmen, the more resources, the more research. It is a direct ratio. Our initiative has come over the years directly from our regular staff.

Mr. BENTSEN. Is there something—and I don't sit on an appropriations committee, but is this something that is referenced in your annual request that comes up to the Hill?

Mr. POWELL. It is not line-itemed out exactly that way. It is part of our curatorial research program. It is in the budget.

Mr. BENTSEN. Great.

Mr. Petropoulos, in your testimony you said that while you found the museums in the United States and in Great Britain and in Europe are spending a great deal of time and researching their own collections and providing information, that that was not necessarily the case as it related to private dealers and auction houses, is that correct, and gathering information was still difficult?

Mr. PETROPOULOS. Dealers and auction houses are clearly very sensitive to this issue of Holocaust provenance, and larger auction houses have engaged researchers to investigate the provenance of their works. One of the representatives of Sotheby's is here today. And I think Sotheby's and Christie's are making a concerted effort to investigate the works they sell.

It is difficult to know what is happening in our trade more generally though, especially with respect to the smaller galleries. I don't think that the galleries have made as much progress in terms of coming to terms with this issue as have museums. I think that we would all make more progress in understanding this history and restituting works that have never gone back to victims or heirs if we had complete, full cooperation and complete transparency of galleries in our trade.

And, you know, there is just a tremendous variety. Some dealers are quite cooperative. And I would note that in cases where dealers cooperate, that is a very important resource in terms of our research. A scholar like Hector Feliciano was able to use some gallery archives and really find some very exciting results. So I think that this is a crucial research resource, and I hope that our trade will cooperate fully, but it is my impression that they haven't come as far as museums in this respect.

Mr. BENTSEN. And even the dealer organizations, I note there are one or two strong organizations in the United States. I don't know about the rest of the world. Have they been active in the same way that the museum directors have been?

Mr. PETROPOULOS. Yes, they have, in the sense that they have convened symposia and panels and events. They have discussed this issue. But these associations have no regulatory authority, to my knowledge, and there are no guidelines which dealers are obliged to follow other than the U.S. legal code.

So, it is very much voluntary on the part of dealers whether they want to cooperate with researchers and open their archives. And I think most dealers are fascinated with this topic, but there is nothing binding with respect to the art trade.

Mr. BENTSEN. Thank you.

Thank you, Mr. Chairman.

Chairman LEACH. Thank you, Mr. Bentsen.

Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman. And I welcome you all here today. I appreciate the time you have devoted to the committee's work and to helping us with this very important issue.

Mr. Lowry, if you would, the guidelines that are in place that the museum directors have adopted, when does the Modern pursue those guidelines?

Mr. LOWRY. They are in constant existence. In other words, the guidelines frame a course of action that—first of all, the guidelines



call on all American art museums to methodically and continuously and diligently search their collections for provenance.

Mr. FORBES. I understand what the guidelines do. I am wondering when do you begin the process using these guidelines?

Mr. LOWRY. In either of two ways. One, if someone contacts us and says that they believe painting X or drawing Y belongs to them, because they are the legitimate heir of a previous owner, we immediately go into a sequence of events to discuss with them why—what object, what their information is. We on our own immediately convey to them all of the provenance information we have about that object.

And as I related earlier, in the only case that has come up to date like that, by working directly with a potential claimant, who happens to be European, and who shared with us his information, we immediately exchanged with him our information. Neither of us in a sense had absolutely conclusive information. We then identified together—

Mr. FORBES. Mr. Lowry, I appreciate that. You have already shared that with the committee. But what I was trying to get at is does the Museum of Modern Art wait for a family or an individual to contact you before you do this research, or are you looking at, if you will, World War II era acquisitions? Are you working with the art recovery folks and their database? Are you taking the initiative, is my question, to find the ownership, if you will, or title of ownership for the works that are questionable in your position?

Mr. LOWRY. The answer to that is yes.

Mr. FORBES. So you are doing that as well as waiting for people to contact you.

Mr. LOWRY. Yes.

Mr. FORBES. If I may ask, first of all, how many individuals have contacted the Modern to raise the question of ownership of one of your pieces?

Mr. LOWRY. At this stage, one.

Mr. FORBES. Only one.

Mr. LOWRY. Only one.

Mr. FORBES. And how many works of art have been investigated for questionable ownership?

Mr. LOWRY. Well over 300, 400. I don't have the exact number in my head, but we have certainly gone through—we have 3,500 paintings in our collection, of which approximately 420 fall into this period. The rest were made afterwards or were already in our collection before the War. Of those 400, we have gone through them, the records, scrupulously. We have found a couple of instances where the provenance has a gap, and we have begun assiduously working with the colleagues trying to fill the gap. If we actually knew that there was a problem and that we could identify the owner, we would have done so.

Mr. FORBES. It concerns me a little bit. Again, I appreciate all of you and the sensitivity that you are bringing to this issue and your willingness, obviously, to track down the rightful owners of questionable art that has come from that era. But I also think it is fair to say that until we have some kind of resolution dispute to resolve some of these questions—and, again, I think we are talking about 3,000 museums that are part of the directors guidelines

apparatus, if you will—or adopted, or willingness to pursue those guidelines, and you have got 100,000 works of art at the Museum of Modern Art, it would seem to me that we have got a long way to go to resolve perhaps some of those questionable ownerships. Is that fair to say?

Mr. LOWRY. I have a very different opinion on that, if you will give me—

Mr. FORBES. Sure. Please.

Mr. LOWRY. One, as Lyndel King pointed out, the actual number of art museums that might have potentially looted works of art in them is in the hundreds, not the thousands. The 3,000 museums referred to include natural history museums, science museums and so on.

Mr. FORBES. That is fair.

Mr. LOWRY. Two, within that context, the number of works of art in any one of our institutions that falls into this period, that is 1933 to 1945, that were not in our collections before 1933 is a small fraction. I can't tell you the exact percentage across the Nation, but it is a percentage. And consequently I believe that American museums are well equipped to continue conducting the methodical investigation that they have begun. I think we are not going to find the thousands of cases that we thought might be found before. We might, and if we do, we will deal with them.

Mr. FORBES. You said there are about 400 works of art that would fall within the periods that you believe needed investigating and/or had questionable ownership title?

Mr. LOWRY. There are no more than that within our painting and sculpture collection, which is the primary collection where it is easiest to track information.

Mr. FORBES. And you have done a thorough review of all 400 to date?

Mr. LOWRY. Yes, we have.

Mr. FORBES. How many staff do you have doing this?

Mr. LOWRY. We have 42 curators on staff at the museum, not all of whom spend all their time on this.

Mr. FORBES. How many staff do you have dedicated to this?

Mr. LOWRY. There are two full-time staff doing this virtually nonstop plus some part-time staff.

Mr. FORBES. So you had two people who investigated all of these 400 trails of ownership.

Mr. LOWRY. Two people who took the leads in investigating it, but it gets parsed out to other curators.

Mr. FORBES. Have you worked to compare some of your records with the records accumulated at the Munich collection point?

Mr. LOWRY. We have worked with the Munich collection point and other records, including some of the ERR records and beyond.

Mr. FORBES. How many of those 400 have questionable ownership?

Mr. LOWRY. I would frame it how many of them have gaps in their provenance, which is not the same as questionable ownership.

Mr. FORBES. Fine. I understand that.

Mr. LOWRY. I think we are down to at this point somewhere in a dozen, dozen plus, maximum.

Mr. FORBES. If we might, the Schiele work that was derived like the Dead City III from the Grunbaum collection, the article in the *New York Times* a couple of years ago, as you might recall, said that you folks were looking into that one in particular to see if there were Grunbaum works that had been stolen from the Nazis. Whatever happened with that particular investigation?

Mr. LOWRY. I believe you are referring to a painting that belonged to the Leopold Foundation. We were not and did not investigate that work of art, because it did not belong to us.

Mr. FORBES. OK. You did not have that Schiele; that was not owned?

Mr. LOWRY. We did not own that picture. It was on loan to the Museum of Modern Art by the Leopold Foundation in Vienna.

Mr. FORBES. The U.S. forfeiture complaint against the "Portrait of Wally" alleges that the provenance recited in the Schiele exhibition catalogue was inaccurate. What, if anything, has the Modern done differently now to make sure that the provenance is accurately recorded?

Mr. LOWRY. We spend a great deal of time looking at the provenance and studying the provenance of incoming loans, works we borrow from other institutions, certainly do a much greater scrutiny of those loans than we did two years ago. That said, I am not sure that even under those circumstances we would have caught the problem with this painting. It should also be said that it is not at all clear that the Bondi family—in fact, that's now clear that the Bondi family who asserted the claim were not the heirs. They have now admitted it.

Mr. FORBES. But there is a question as to who is the heir; is that correct?

Mr. LOWRY. Well, the heir has not asserted a claim; yet, at least.

Mr. FORBES. Would you be contacting the heir or—

Mr. LOWRY. The heir has contacted the U.S. Attorney asking the question, who is Mr. Bondi? What standing does he have? And then inquiring why this is going on.

Mr. FORBES. But if there is a questionable provenance here with this particular work, do you feel compelled to be in touch with the heir and to make sure to your satisfaction that, in fact, it was not handed down fraudulently?

Mr. LOWRY. Of course.

Mr. FORBES. So you folks have talked with the heir.

Mr. LOWRY. You have to understand this is now in front of the U.S. Attorney. So we have—and we are—what is before the Attorney at this point is who has standing on this issue. And we are—I guess the word is in litigation over who has standing. So we—the heir—what is interesting here, if you will forgive the digression, is the assumption has been that the Bondi family was the heir. And we were in contact with the Bondi family. Now it turns out that the Bondi family is not the heir. And the heir has been in direct contact with Bondi family's lawyers and with the U.S. Attorney. Remember, we are—in this particular instance—we were only the playing field on which this transaction occurred. We did not have ownership or even possession.

Mr. FORBES. No, I appreciate that. It really gets to my concern—or my question—that the museums, not just the Modern, but all

the museums, how aggressively are you being in trying to find out if there are questionable titles of ownership on the works that you hold?

And, you know, there is been great effort here to, frankly, make sure that we in this committee understand that you all—and whatever exceptions I apologize—but that most of you believe that court action is absolutely the wrong way to go. Yet, by your comments, I think you suggest that it may be a very appropriate forum in this instance. For example, had the U.S. Attorney not been involved in those two Schiele works, would they be back in Vienna today? And we would still have a question about, you know, the ownership.

And I think it is fair—I would believe it is fair for any family that was robbed of their precious art to ask the question, you know, that we have this right. And if it needs the courts to be involved—and I appreciate the guidelines. I think the guidelines are good as far as they go. I think in the testimony here this afternoon it was clear that, without a dispute resolution mechanism—and at this point there is none—that maybe the courts are the place to fight this out. Absent that, I am not quite sure where you go.

Now, earlier, Mr. Lowry, you had questioned court action and how it would be a disincentive for people to want to loan their works. I guess I would suggest that maybe they would be concerned about loaning their works if the ownership was questionable. But if there was no question as to ownership and they had the appropriate documentation, then I think every one of you, your institutions requires—taking a great leap here—I am assuming that all of your museums and all those who acquire works do so with some hopeful documentation that suggests that there is no questionable ownership, at least in this day and age.

Mr. LOWRY. Well, I think that, in fact, what has happened in the case of the two Schieles, where a court action was initiated because someone said they were an owner and in the heated politics of the day the district attorney immediately acted on that, what has happened is the person wasn't an owner, wasn't an heir. And so the Leopold Foundation was subjected to a year-and-a-half of having one of their works of art held in this country, and it was finally released.

Mr. FORBES. You are saying that as a conclusive statement. Is that absolutely conclusive? It has absolutely been established that that person does not have any ownership rights? My understanding was that had not been established and that is still very much a question mark.

Mr. LOWRY. As far as I understand, sir, that is only on the second picture, which is the one that was then seized by the U.S. Attorney. And as it transpired after that seizure, and the claimant then had to concede that he was not the heir. So the degree to which our court system has effectively provided victims of the Holocaust access to their works of art, has to be measured against whether they even had the right to make the claim.

I say that only because the lesson here is that the court system is cumbersome, expensive, and I think at the end of the day not fine-grained enough to get to the actual critical issues at heart which have to do, often, with cases of inheritance and ownership, rather than theft.

Mr. FORBES. Well, I appreciate your comments.

I do think that there is call for a heightened sensitivity when you think that we have got fifty years, if you will, of works that have disappeared. And whether it is hundreds or thousands, depending on your point of view, I think that it is fair to say that, you know, if it has to be somewhat of—in your—I guess you would characterize it maybe dramatic action, when you have the court step in and put on hold any movement of those works off of our shores so that we can at least try to rectify ownership. I guess one would—I would certainly suggest that in the end it is good to know whether it was or was not an object that had been taken inappropriately and passed on through the decades. I would suggest that.

Let me just ask this final question. And I have tremendous respect for the chairman of the Museum of Modern Art. He is an outstanding member of the New York community, and he has given much time and effort of his own accord. And I just was wondering if Mr. Lauder had involvement in these issues in the Museum of Modern Art?

Mr. LOWRY. Well, as the chairman of the board, he has been responsible for ensuring that the museum, one, adhere to the AAMD guidelines, and our board has asserted commitment by the institution to do that, too, because this is obviously an issue that he has taken a leadership position in. He has urged the museum to ensure that we have been especially scrupulous in combing our records and in finding equitable and swift solutions should we come up with a problem.

And in the case, although unrelated directly to the Holocaust, of the Malevichs that is precisely what we did do.

I think there is a particularly heightened sensitivity to this question at the Museum of Modern Art. But I would argue there is not a single American art museum that is not hypersensitive to this. There is not a single museum that wants to go through the agony of a court case.

And, therefore, I think we are working, at least in this country, in a very receptive climate to, one, doing the due diligence required to not just search the collection once, but to search it each time new information emerges about potential claimants or potential sources of improper activity. And that information surfaces as archives are being constantly plumbed. And there isn't a single museum that would not make an extraordinary effort to reach an equitable solution with a claimant in this country. I believe we are operating in this country with a claimant that understands the problem, where our public institutions are committed to being as constructive as possible, and we would not tolerate knowingly having—

Mr. FORBES. I think that has been well established, and all of you have said that today, and I appreciate that. Again, you said there were 400 works that you thoroughly reviewed and are satisfied about their provenance, if you will.

Can I ask how much the Modern devotes financially to the review? I know that that has been a concern all of you have raised about the monies it takes to do this work. Would you share with us, Mr. Lowry, the budget that is set aside by the Modern for this kind of work?

Mr. LOWRY. Much like the National Gallery, it is not set aside in a line item budget. It becomes part of curatory responsibility. So we apportion responsibility of individual curators to conduct this kind of research. So it would be very difficult to come up with an absolute figure, because you would have to take the 42 curators on staff, figure out the exact percentage of time each one devotes to this and calculate the cost. But we have absorbed within our budget these additional responsibilities. It just added it onto the work that our curators do.

Mr. FORBES. Would you be willing to make public those findings in the 400 reviews that have been done by the Modern?

Mr. LOWRY. Sure. I don't see—I mean, most of them are very straightforward. They are precisely—that is, they are currently listed in various museum publications.

Mr. FORBES. And one final question, if I might, how many of those works of art continue to have questionable provenance of the 400?

Mr. LOWRY. It is approximately a dozen or so. I don't have the exact number before me. But we will not stop until we have got it down to zero. Although it may take years before it does go to zero.

Mr. FORBES. Mr. Tauber, you had said in your statement that there were several thousand requests from families of Holocaust era victims that had contacted the Art Loss about possible questionable ownership of art. Can you just share quickly here how do you process that? I mean, do you have to track down the work itself and where it is located? And if you can do that—or do you share your full database with some of the folks who are here today in the other museums?

Mr. TAUBER. We treat any Holocaust claim that is registered with us as we do any other theft. We process it by describing it accurately and putting it on a searchable database. We then respond to the fact that it was registered by looking at everything that reaches the commercial market that comes to our attention; that is checking essentially every auction lot that is offered by any of the major auction houses, including Sotheby's and Christie's, and going much further down into smaller auction houses around the world, responding to many dealers who check with us in increasing numbers as they get works to be sold, and museums and other public institutions, when they are about to acquire works or, in the case of some museums like the National Gallery and the Museum of Modern Art, when they are checking their existing collections.

In addition to the 2,000—those weren't 2,000 claims, those were 2,000 works—we also check anything that is inquired of us against the published lists of looted works to see if they match anything on those lists.

Mr. FORBES. So they contact you to say there were 2,000 works of questionable provenance, if you will.

Mr. TAUBER. In the last eighteen months, yes.

Mr. FORBES. How many of those were at the Modern?

Mr. TAUBER. None.

Mr. FORBES. None. Thank you.

Mr. Chairman, thank you.

Chairman LEACH. Mr. Tauber, have you found any question marks about art in the Capitol?

Mr. TAUBER. You mean in taste or in provenance? In this room, we have checked out—

Chairman LEACH. We are not going to allow that. I am tempted to tell you that I have a secret subpoena asking for our first four witnesses to list the five greatest American artists of the 20th Century, but that would be highly classified if it were to be revealed.

Let me thank this very thoughtful panel. Your commentary has not been heard by many Members of Congress, but I will tell you that the record that is set will be available for many people in many different ways. So I am particularly appreciative that all of you have taken the time out of your lives to address the extraordinarily profound subject. Thank you very much.

Our final panel consists of Martha Nierenberg, an art collector; Charlotte van Rappard-Boon, Head Inspector for the Ministry of Education, Culture and Science at The Hague; and Ronald Lauder, who is Chairman of the Commission for Art Recovery.

We will begin with you, Ms. Nierenberg; and welcome to the panel.

#### STATEMENT OF MARTHA NIERENBERG, ART COLLECTOR

Ms. NIERENBERG. Good afternoon, Mr. Chairman—and there isn't anybody else here.

My name is Martha Nierenberg. I am here to tell you about my quest, so far unsuccessful, to recover my family's heirlooms which were lost in the course of the Holocaust. Among those heirlooms more specifically we are talking about ten paintings which are now hanging on the walls of two museums in Budapest, two government-owned museums, and they were part of the Herzog Collection.

Chairman LEACH. Excuse me. If I could ask you if you would bring the microphone very close, and just slightly about chin level is best.

Ms. NIERENBERG. Good. I have an accent—Hungarian accent.

Chairman LEACH. That is respected in this committee. I would tell you Mr. Soros has spoken from this same microphone, so it picks up the Hungarian lilt.

Ms. NIERENBERG. These ten paintings include works by van Dyck, Lucas Cranach, Gustave Courbet and Mihaly Munkacsy and also Velazquez.

The Herzog Collection was assembled by my grandfather, Baron Mor Lipot Herzog, who was a banker in pre-War Hungary. My grandfather selected and purchased the art throughout his life up to his death in 1934. Then the collection was inherited by his three children, oldest of which was my mother Erzsebet—Elizabeth—Herzog Weiss de Csepel and her two brothers, Istvan and Andras Herzog.

This was a very large collection containing hundreds of items, including paintings of Old Masters as well as Modern works by Renoir and Monet and other Impressionists. It also contained one of the largest collections in private hands of El Greco paintings. After my grandfather's death, my mother and uncles divided the collection among themselves.

Unfortunately, in World War II, Hungary was among the Axis Powers. Just as in Germany, laws against Jews and even people

of Jewish origin were gradually introduced. However, the situation in Hungary didn't become desperate until March of 1944 when the Germans marched into the country. Adolf Eichmann was delegated to Hungary with the explicit purpose of exterminating the Hungarian Jews and people of Jewish origin. Eichmann personally led the Waffen SS efforts to exterminate the Jews from Budapest. Some 600,000 Jews were deported from Hungary, and most of them then perished. Many, many perished. My uncle, Andras, was placed in a forced labor unit; and he didn't survive the War. We don't know how he died, we don't know where he died, but it certainly was as a result of the Holocaust.

My mother and father, along with many others, sought to save their art works from the Nazis. The Herzog Collection was mainly hidden in the cellar of one of my father's family's industrial factories. Despite their efforts to prevent the looting of the art, the Nazis—actually the Hungarian Nazis—found the hiding place; and they took it up to the Majestic Hotel, which was Eichmann's headquarters, for inspection. There was a great deal of publicity about that at that time. Eichmann shipped most of the most important pieces of the Herzog Collection to Germany.

Now, fearing for our lives, my father's family, a very large family, agreed with the Nazis on a plan to lease these factories and the equipment for a period of twenty-five years, and then we would be free to go to the West. This is what happened. We left the country in May, 1944. All of that toward the end of the War. My mother and myself and my siblings, we ended up in Portugal. But my father had to stay behind as a hostage. That was part of the deal.

In Portugal, I came to the attention of the American Ambassador, who was Samuel Baruch, Bernard Baruch's brother, at that time, because I played tennis; and he liked to watch tennis. And, anyway, he was very nice to me and then urged me to come to America, which I did, and arrived here on December 27 of 1946. I was very anxious at that point to finish my studies in chemistry, was accepted at Harvard in graduate school and did some work there and then later some other work in biochemical research, then married; and I have four children and ten grandchildren at this point.

My mother and sister and brothers eventually came out also, and even father eventually joined our family, and we were reunited. We all became U.S. citizens. And my mother, who was trained as a doctor and psychiatrist in Hungary, in Budapest, and then later studied in Vienna with Anna Freud, had to take all her exams all over again to be relicensed in this country. And she did it on first try, I want to tell you. She died in 1992.

I inherited that portion of the Herzog Collection which she had inherited from her father. I certainly fondly remember these Herzog paintings in my grandfather's house and also some of them in our own house. Until the fall of the Berlin Wall and the transformation of the former East Bloc countries, little, if any, information could be obtained about the state of the Herzog Collection and other looted properties. For this reason, and because my family had left Hungary, I was unaware of what had become of this collection.

With the opening of Hungary to the West and the rise of the democratic regime in Budapest, we started making inquiries. We



learned that many pieces of the Herzog Collection, both those owned by me now, and those that were inherited by the two brothers and now my cousins' property, were being openly exhibited, hanging on the wall of these museums and identified as the Herzog Collection, in the Museum of Fine Art and in the National Museum. These paintings, while taken to Germany during the War, were shipped back to Hungary in 1946, in the winter of 1946 and April of 1947, by the American forces that had found them. The Hungarian museums then received these paintings, but only for the express purpose of safeguarding them until their owners could be identified and located.

In September of 1995, I retained counsel, and approached the museums and the government about rectifying this situation and returning my paintings to me. There followed many months of negotiations. And in April of 1996, I traveled to Hungary, to Budapest, and met with the Minister of Education and Culture and his assistant. This resulted in the creation of a so-called "Experts Committee," three people from their side and three people from ours, from the legal office, to determine the ownership of the paintings. The Experts Committee met several times over another rather long period of time, concluded that indeed these paintings were my property. Based on the Experts Committee's findings, we then made a friendly proposal to resolve the issue.

Unfortunately, then a new government came into power, and they were unwilling to continue this process. They apparently believed that they could not support anything that was done by the prior government. The new government suggested that we start everything from scratch and have a new committee and go through the whole thing again, and they certainly didn't want to accept what has been done before.

Then, due to endless delays and numerous broken promises as to deadlines and so on, we felt that there was no choice but to commence a lawsuit in the Hungarian courts, which we did in October of 1999 with the assistance of the Commission for Art Recovery. By that point, we had been in contact with the Hungarian authorities for almost four years, and there had been no progress.

These delays are significant in part because of my age. As you look at me, I am going to be 76 in less than a month. And the Hungarians continue to delay. It seems to me that they expect at some point that I will just give up and go away.

Since we believe Hungarian law clearly supports my right to the possession of the paintings, litigation in Hungary was the logical decision. I was told that a lawsuit in the United States was virtually impossible and may well have involved months or years of litigation over jurisdiction, venue, sovereign immunity, and other preliminary matters. We hoped that suing in Hungary would lead to a decision on the basic issue, my ownership rights, more quickly than in the United States, where the merits of the case might never be heard at all.

However, the Hungarian government continues to delay. The defendants have asserted several minor procedural defenses and only yesterday stated in court their position on the basic elements of my case. Even then, the defense statement was lacking in consistency

and detail. The judge required the defendants to file a further statement with their position with regard to each of my paintings.

For example, they have raised formal, petty, invalid arguments about authentication of a U.S. affidavit. They also formally raised an objection because my late brother's estate was not a party to the lawsuit, ignoring the fact that in his will he left all his art to me.

Finally, the Hungarian government asked the court to impose a cost deposit requirement on me as a non-Hungarian litigant, although the government knows that I am a Hungarian citizen in addition to being a U.S. citizen. If the cost deposit were imposed, I would be required to pay the Hungarian court several hundred thousand dollars to secure a claim by the government for legal fees. I believe the government is just trying to scare me away, but it will not, and I don't think it would work. However, most claimants of looted art in Hungary must deposit large sums before asking the courts to decide their case.

Mr. Chairman, I am determined to do everything I can to obtain justice and recover my family's legacy. I would hope that a country clearly wishing to be part of the West—Hungary is a member of NATO and seeking membership in the European Union—would deal with the merits of a claim such as mine for recovery of Holocaust art rather than engaging in old, tired bureaucratic games. The Hungarian government should do what is right. It should accept the conclusion of its own Experts Committee, acknowledge my ownership rights, and negotiate an end to the lawsuit.

Yet this lawsuit is not just about me and my family's legacy, but also on the broader principles of right and wrong. The Hungarian government should do what is right for the owners and heirs of looted art. It should begin by acknowledging that it controls an unknown number of fine art pieces that were stolen from Jews and people of Jewish origin. It should make serious and renewed efforts to identify those artworks and return them to their rightful owners. It should also provide a clear, short, workable process for others who might wish to assert their claims, a process that doesn't require hiring of lawyers and posting large sums of money for bond.

Instead, the Hungarian government has done everything it could to make it impractical and impossible for me to recover my paintings. My attorneys have pressed my claims both through diplomatic channels and lawsuit, but the response from the Hungarian government has been uniformly discouraging. Hungary's position is remarkable in that it differs from that taken of many European countries which have faced the issue and returned looted art. Germany, for example, has renewed its work on the principle that looted art must be returned. And France, in recent years, has made exhaustive efforts to examine its museums and archives to determine what objects were stolen during World War II. Even the Russian Federation has passed laws recognizing victims of Nazi persecution. Hungary, however, continues to benefit from the horror involved in the exploitation of property stolen from Jews and people of Jewish origin during World War II. In effect, they are ratifying Eichmann's actions.

My hope is that Congress and the Administration would intervene in Hungary and advise the government in the strongest term

that its prize collections cannot be founded on stolen art. Thank you.

[The prepared statement of Martha Nierenberg can be found on page 334 in the appendix.]

Chairman LEACH. Thank you very much for a very moving personal story which also reflects the history of the century so poignantly.

Ms. Rappard-Boon.

**STATEMENT OF CHARLOTTE E. van RAPPARD-BOON, CHIEF INSPECTOR FOR CULTURAL HERITAGE, MINISTRY OF EDUCATION, CULTURE AND SCIENCE OF THE NETHERLANDS**

Ms. VAN RAPPARD-BOON. Mr. Chairman, it is a great honor for me to talk today to your distinguished committee on the efforts the Netherlands is making toward research and restitution of art looted and lost during World War II, both on a national level and by individual museums. Just yesterday I had a telephone call from a museum in Amsterdam telling me that they had decided to give back a drawing to the original owners whose name we discovered last week, and I am very touched by this result of our work, because I have talked with the owners and it is the only object which is left from the house of their parents.

In Holland, as in other countries, the last few years have seen a new awakening to the history of the World War II and its aftermath. Where previously the atrocities committed by Nazis occupied the center of interest, nowadays the handling of looting, recuperation and restitution after the War have also become the focus of attention. My short expose on what happened in Holland after the War in matters of restitution and reinstatement of property rights will concern itself only with art as that is the only subject about which I feel that I can speak with any authority. Thus it should be concerned with the larger issue of doing research on the problem of looted property, bank accounts, insurance, and so forth.

Looting of art by the Nazis in Holland was much less done to public collections or famous collections as it happened in Eastern Europe than to private owners of a few cherished paintings or some old furniture and some blue and white Delftware. Of course, there was the looting of synagogues, the Jewish libraries and the Jewish Historical Museum, all perpetrated by the ERR, but to me the image that best illustrated the looting of Dutch homes is the endless list of the Dienststelle Muhlmann, the central organization for the looting of German occupation made.

The thoroughness of the German administrators shines out from the detailed list made by policemen—and often Dutch policemen—visiting Jewish households before they were looted: *Ein tisch, ein stuk balatum, wasche*, and finally, the items which would interest us, *ein bild*. Some weeks later after the family had been deported, some other civil servant would visit the same house and note, *alles ist noch da*, everything is still there and, *alles ist mitgenommen*, all has been taken away.

This looting of the Netherlands was known to the Allies and the Inter-Allied Declaration of 1943 formed one of the measures to offer a solution both to looted property and that sold willingly to the Germans. As has been described extensively, to counter the selling

to the Germans, the government in exile in London had promulgated laws which expressly forbid this.

As soon as the War ended, efforts to track down works of art in Germany and to return them to their original owners were gathered together in a single service called the Netherlands Art Property Foundation, SNK. This service cooperated closely with the Allied forces in Germany, especially the Monuments, Fine Arts & Archives Service. On the basis of detailed lists made up from forms on which the missing works of art were reported by private persons whose art had been looted or confiscated, or by persons and art dealers who had sold works of art to the Germans. Lists were made by the foundation itself based on the administration of the Germans, such as the list I have cited above of transport lists of works of looted art and the records of sales by auction houses.

The Allies tried to find as many works of art in Germany as possible, and one of my colleagues has been talking about the collecting point in Munich where much Dutch art was collected.

Efforts to find back works of art were much hampered and still are today by the fact that only well-known works of art have descriptions detailed enough to recognize them easily or were even photographed. Most works of art had to be recognized and still have to be recognized on the basis of short descriptions, and the attribution to an artist before World War II is much different than we would make today.

As will be clear from what I said before about the looting itself, identification of a work of art listed, for example, as "Farmers Making Merry at a Tavern" by the workshop of van Ostade, without any measurements of further description, is difficult. Hundreds of paintings must exist answering this kind of caption. Thus mistakes in identification of objects were made and not always corrected afterwards.

Also, from the collecting points in Germany, works of art that were difficult to identify, mostly furniture and decorative art, porcelain, were shipped back to the country that seemed to be the most likely country of origin. In this way, most blue and white tiles were sent back to Holland though they might just as well have come from a French collection.

All the same, if you look at how people in the office of the Netherlands Art Property Foundation worked during those years, at a time when Holland was recovering from great War losses, and money and means to run an adequate administration were scarce, one is filled with admiration. Without a computer, but using an endless amount of paper files and lists ordered according to artist names, original owners, art dealers or auction houses, they reconstructed the provenance of many works of art.

The administration was extremely complex as it had to be ordered to these different kinds of artists. Of the 10,000 items which came back from Germany, more than half were works voluntarily sold during the German occupation of the Netherlands by the art trade, thus violating Dutch War laws. These became the property of the Dutch state. The other works which might have been looted or stolen were given as soon as possible back to their original owners.

Because this administration, which we tried to decipher, is very complicated, we don't know exactly how many of these recovered items were given back to their owners, but from an inventory of 1,804 paintings, which we have researched closely, we know that 69 were given back to their owners, 13 were sent back to Germany, because they did not originally come from Holland, two were sent to Belgium and one to Geneva.

After the foundation finished researching these paintings, 469 paintings were sold at public auction. In all, in the 1950's, after the completion of these investigations, about 2,000 paintings were sold and a large number of furniture. These were the works of art where the Dutch state felt that they had researched provenance sufficiently and that they could not be traced back to any Jewish owner.

The details about the work are in several leaflets which I have brought with me and which are available in the press room, and in the first report we published, giving the details of the history of this organization.

Recently, questions concerning the remaining works of art have been asked. The use of databases has recently enabled us to find more information about original owners than was previously possible. A pilot study was done for a hundred works of art, both paintings and decorative art. The results of the pilot study were published in Dutch and English. Because sufficient new details concerning the provenance of these objects were found, the Dutch government decided to enlarge the study to comprise all items which in the state collection were recuperated after the War from Germany.

Four researchers—and I envy my colleagues with 40 curators—but four researchers paid by the state under the direction of the Inspectorate of Cultural Heritage, of which I am the Director, are reconstructing the provenance of all recuperated works in the state collections, using all the means which we have today.

I must say that we are very glad that art dealers in Holland have opened art archives to us, and we have found lost items from archives and German sources. The research is supervised by the independent Ekkart Committee, named after Chairman Ekkart, who is the Director of the Netherlands Institute of Art History. In cases where new facts about owners arise, works can be returned to these owners or their heirs.

Of course, after all of these years much of the documentation which might have helped is lost or destroyed, but by gathering as much circumstantial evidence from catalogs of pre-War exhibitions, of private collections, art dealers, insurance lists, and so forth, links can be found which were lost before.

We discovered, going along, that the most efficient method of reconstructing a provenance is not by going backward from the present, which most museums do, because in doing this one always encounters the black hole formed by the nearly complete lack of documentation during the years of World War II. We try to discover the location of the object in question somewhere during the 1920's and 1930's and work forward in time. By doing this, we are able to narrow the gap of World War II and make a kind of educated guess of what happened then.

Up till now we have researched some 800 items. Though the provenance of many has become much clearer, we will have to countenance eventually that for more than half of the objects all will contain blank spots. Because a work of art can mean an extremely personal tie with the past, as the little example at the beginning of my talk illustrates, and have great emotional value for a family, the Dutch government plans to continue to proceed on a case-by-case basis regarding restitution of works of art.

No general measures are considered, because we believe our method to be a viable one. In each case where new facts come to light, a decision about restitution of these works will be made by the Secretary for Culture. Thus, the works of art about which nothing is found will stay available in the future if new facts come to light regarding their origins.

According to Dutch law, theft and looting committed during the Second World War now fall under the statute of limitations. The Secretary of State can waive the right to the statute of limitations and will do so in those cases where works of art are claimed which were not previously claimed and for which sufficient proof of their original ownership can be found by us.

In cases where new facts come to light which were not known by the parties concerned after World War II and which will alter substantially the evidence on which an earlier decision was based, only if a written settlement of rights was reached between parties after the War, the state will abide by this.

In the same way that a state government is researching its collections, the Dutch museums under the aegis of the Dutch Museum Association are researching the acquisitions made during the War and in the after-War years to investigate whether they acquired knowingly or unknowingly objects which were looted or confiscated from Jewish owners.

Let me say that in contrast to our American colleagues, we do not only research art; one of our most interesting cases concerned a collection of butterflies, so I am very much in favor of doing this kind of research for all museums and not only art museums. The museums are conducting their own research aided by the Inspectorate for Cultural Heritage which checks the museum data and matters of research and add facts which they have found.

Their first report on the 400 museums has just been published. If works of art found in these museums have been stolen from Jewish owners, it is suspected that the governing bodies of the museums which may be local or provincial or private foundations will act in the same way as the Dutch state and return these objects to their owners.

It serves absolutely no purpose to make an unsubstantiated guess about a number of works of art or objects with a dubious past which have been acquired by museums. Circumstances and especially behavior of museum directors have varied widely. Only through research in specific circumstances of an acquisition can a dubious origin be proved. The museum research has already resulted in several paintings and other objects being given back to the original owners and their families, the most recent of which I have just told you about.

On the other hand, in the same report a nearly unknown part of War history has come to light in the stories about how many museums hid works of art for Jewish owners during the War. In this regard, the Municipal Museum of Amsterdam deserves special mention as they found room to house about a hundred Jewish collections. The first report has just been published and the research will be finished in this year.

The state investigation will be finished in three years, and its results will be published during those years in regular reports. We hope in this way to solve most outstanding questions, though truth commands us to say that some of these will probably never be answered. Thank you.

[The prepared statement of Charlotte E. van Rappard-Boon can be found on page 340 in the appendix.]

Chairman LEACH. Thank you very much, and thank you for coming from such a great distance as well.

Mr. Lauder.

#### **STATEMENT OF RONALD S. LAUDER, CHAIRMAN, COMMISSION FOR ART RECOVERY, WORLD JEWISH CONGRESS**

Mr. LAUDER. Thank you very much, Mr. Chairman. As the hour is a little late, I will go through my report more in outline form.

Chairman LEACH. Without objection, your full report will be placed in the record.

Mr. LAUDER. I am speaking as Chairman of the World Jewish Congress Commission for Art Recovery.

First, I would like to thank this committee because, frankly, when you held hearings two years ago, it was a signal to countries throughout the world, as well as museums throughout the world, that the U.S. Congress was indeed interested in this. And I can say that it had a marked effect on them, taking this more seriously, and you made all of our jobs much easier because of this; and we all—and for the tens of thousands of Jewish people out there trying to get claims, we thank you very much.

I myself first came upon the question of stolen art when I was Ambassador in Austria, and in 1986 I went to the Monastery of Mauerbach. There I saw in a room probably twice the size of this room hundreds if not thousands of works of art lying against the wall all covered with dirt. I was told that these were left over and these were basically worthless.

From 1986 until the auction took place in the 1990's, we put a great deal of pressure on the Austrian government until they finally agreed to auction them off. These "worthless" works of art were sold for \$13 million.

I have also been involved in activities with many different Jewish organizations including the World Jewish Congress and the World Jewish Restitution Organization. I am also an active member of the Volcker Commission that oversees the Swiss bank settlement.

Restitution from governments is a simple concept. Return property. No penalties, no interest. Just undo the grievous wrong that was done decades ago. However, among the heinous crimes of the Nazis, art theft is not the worst. No return of art, no material restitution can make the Jewish people whole, make up for the loss

of lives, the destruction of family bonds, the death of the vital culture of Europe's Jews.

I took up the art restitution cause over two years ago, and we decided to concentrate on families here and abroad, and working also with the German government. We now have 160 active cases on behalf of families, families who have been looking for their art for as much as sixty years and have gotten nowhere.

Last week, as you heard before, the North Carolina Museum of Art agreed to return "The Madonna and Child," by Lucas Cranach the Elder, to two elderly sisters in Vienna. The museum received it as a gift sixteen years ago. Until the sisters told the Commission for Art Recovery about the theft, they had been unable to find this painting for sixty years. We found it. We gave the family good documentation, and when the museum in Raleigh saw the information, they did the right thing; they returned it. It took a total of ten months from start to finish. If it was not for the Commission for Art Recovery, these two sisters would still be looking.

Raleigh is a long way away from Vienna. In the 1960's, when this gift was promised to the Raleigh museum, they did not do the necessary research, and maybe if they had, they would not have found the necessary information. This art often has been stolen has been sold and resold again. Again, cases are turning up everywhere—in Leipzig, Berlin, and Chicago. Although Jews who owned art were a minority, they, in fact, put many of their holdings into art and it has been very, very obvious that these works of art were the prized possessions of many, many collections, of many museums throughout the world.

We all read the book by Lynn Nicholas, who is here today, "The Rape of Europa, Giant in Metropolis," about what happened. Before World War II there were Jewish auctions. At these auctions various Jewish property was sold. Although there were some items that were non-Jewish assets, the majority were. One claim, a perfect example that came to the Commission for Art Recovery, was in the heirs of Gustav and Clare Kirstein, prominent citizens of Leipzig.

Gustav was a principal in an art printing firm. He was forced out of his business by the Nuremberg laws and died in the 1930's. His widow stored everything with art dealers in preparation for shipment in the United States. She hoped to join her daughters there, but when the Gestapo took her passport away in 1939, Clare Kirstein committed suicide. The family lawyer, a Jew who was reduced to functioning as a notary and serving a greatly diminished population of Jews, authorized the 1942 auction of the Kirstein collection in Leipzig.

The auction house, still active in Germany, answered the Commission's inquiry and confirmed that the proceeds of the sale went to the Reich. We found more than fifty works from the Kirstein sale in the Museum of Fine Arts in Leipzig, and we have reason to be optimistic about their return. We found another in a museum in Hannover, and because of our efforts, its return to the family is expected shortly.

Ten years ago we also learned that thousands of works of art, missing for fifty years, had survived behind the Iron Curtain. As *Art News* magazine revealed, the Red Army Trophy Brigades took



these home in 1945. They include masterpieces of Impressionism and Post-Impressionism, as well as Old Master drawings and Asian art and the Gold of Troy.

This art is still being held hostage by the Russia Federation. It is caught up in politics. They claim that this is War booty from Germany and they should keep it, but many of these works the Soviets took home did not belong to Germany or even to Germans. Instead, the Nazis had taken them from Hungarian Jews, from Adolf Eichmann's heartless regime, or may have sold the Old Master drawings from Rotterdam claimed by the Netherlands.

And also you have heard from Martha Nierenberg; many of the paintings from her family's collection are in Russia now.

Let me turn back to Austria. As I mentioned in 1998, Austria was doing the right thing under Elisabeth Gehrer, Minister of Culture. However, things have changed since then, and I am not referring to the recent elections. What has changed is that Austria has started to go back, after they returned the 1,000 pieces to the Rothschild family. After the Rothschild family received its paintings and decorative arts, they made the decision to sell them at auction at Christie's. What happened in Austria is they saw how much money these objects brought and they started to change the law.

I think the most flagrant change has been the change about the Bloch-Bauer case. This is the property now of Mrs. Altmann, and she is trying to sue the Austrian courts. It is interesting that for the Bloch-Bauer family the state returned porcelain sets and pencil drawings by Gustav Klimt, but they would not return the major paintings. We have here a collection worth tens, if not hundreds, of millions of dollars; and all of a sudden, Austria changes its laws because of the value.

Maria Altmann's story has been submitted to the committee and it is included in the record. What is interesting is that they have asked for, if she is to proceed with her case, a half-a-million dollars just to get started; again, this half-a-million dollars is used to try to discourage her from getting what is legally hers. The question is what should be done. In this case, there is no question that if Maria Altmann was able to present her case to the Austrian government in a court of law, she would win. They are hoping that the half-a-million dollars will discourage her.

I would now like to turn for a moment to the question of Germany. The Commission for Art Recovery has been in discussion with the German ministry and the Minister of Culture for eight months. Germany also has a group of unclaimed works of art that it calls the "Linz List" in the belief that the works were acquired for the world-class museum that Hitler planned for his boyhood town of Linz.

When Germany's unilaterally determined period of restitution ended in 1962, the art was put on display for museum directors. Over the next twenty years, the art was dispersed, lent to 102 museums and more than 50 government offices. No list was available. And for those of us who know German efficiency, that is impossible. If a claimant imagined that their art survived the War and might be in Germany, it was virtually impossible to determine if it was there.

The art is administered by the Finance Ministry; upon request, they provided the Commission for Art Recovery with a computerized list of 2,200 works of art. This was after a list did not exist. However, the government's press release in November referred to 13,000 works of art, and nobody has been able to explain the huge gap in the numbers. The Commission presented an action plan, as I mentioned before, to create a clear and simple procedure.

We have done the following. We have urged the publication of the Linz list on the Internet. In March, Germany will put this list on the Internet with English translation and titles. At last, claimants whose art is missing may be able to identify it.

We also asked for and got a central office with substantial funding from the Federal government that will be set up with an oversight committee; and the Minister of Culture, Michael Naumann, has written to me. And his associate has written in detail to the commission's director. I believe he will continue to use his influence to bring about major changes in Germany and clear up this unfinished business.

German museums, usually run by municipalities or private foundations, also have many works of art taken from Jews in their inventories. Some are open about it and most have been responsive to our letters on behalf of claimants. The Museum of Mainz published over thirty paintings in one of its catalogs stating that they were "taken from Jewish possession between 1933 and 1945." recently, the Berlin Museum returned art to the heir of Max Silberberg. Others have returned art in the Littman collection to the heirs. A museum in former East Berlin has published a booklet with paintings of doubtful provenance in its collection.

What has happened is that we are starting to see a change, a major change. Our months of negotiations with the Minister of Culture hastened the release in December of a statement issued by all German museums on the tracing and return of Nazi-confiscated art, especially from Jewish property. This is also in the record with my prepared remarks. We were disappointed with the statement's tone, but I believe a new generation dominates Germany's future. This generation also listens, and it understands when government statements sound unfriendly and bureaucratic to a family shut out of the process for fifty years and still haunted by the Nazi past.

This Commission, which we started two years ago, just about the time that I testified here, has been, I believe, extremely successful in helping claimants and extremely successful in working with the German government. One of the things that has been also our policy is that when we do work with claimants—and we do work at times with the German government—we do not do it in public.

One of the things we have found is that more publicity has an adverse effect on the process in the beginning; at the end it has a positive effect. In the beginning, it has a negative effect, and one of the things that we have been very, very careful to do is not to talk about all of the cases except those that are already in the press, moving ahead.

I perceive during the next year there will be many, many more cases like we have seen in Raleigh or in different places, or Berlin or Leipzig or Vienna, and I am extremely encouraged by what I see in the future.

Again, I thank this committee for being among the first people to bring it to the attention of not only the American people, but bring it to the attention of various governments and museums throughout the world that we, as a people, the American people, are vitally interested.

Thank you.

[The prepared statement of Ronald S. Lauder can be found on page 346 in the appendix.]

Chairman LEACH. Well, thank you, Ambassador Lauder.

Yesterday, Secretary Eizenstat told the committee that the new Austrian government made certain overtures to negotiate restitution issues. As a former American ambassador to Austria, do you view this as forthcoming and as something that is adequate and concrete or do you have doubts?

Mr. LAUDER. There is no question that it is concrete. I spoke two days ago with the head of the Jewish community in Vienna, who I have contact with almost daily now; and his question to me was that he just got a note from the new government that they would like to give some money in reparations to the Jewish committee, and the question was "Should we take it?" and they would say, "See, we are not the government that you thought we are, this is our first act."

It is my feeling that this is a very, very large, complex problem. For example, I believe there are 75,000 apartments today in Vienna that were owned by Jews that are now not owned by Jews. And there are many, many more questions. One of the things that I feel, before any agreement is made, we have to look at the entire picture and come to a solution.

I think a second point I should mention, which has nothing to do with art and has a lot to do with the future of the Jewish community in this country, is that Austria used to have its borders open, and it used to be a place that Jews coming from Russia would come through Vienna and go on their way to Israel or Europe or the United States. A couple of years ago, Austria closed its borders; and it is no longer the haven it was.

What this has also done is that part of the growth and the survival of the Jewish community in Austria was this immigrant population. Today, about 70 percent of the Jews in Austria, particularly in Vienna, are of Russian origin. Without people coming through, it will have a detrimental effect to the Jewish community there; and in many ways I believe the decision to stop immigration into Austria was particularly geared to having Jewish people come there. That has nothing to do with our art restitution, but I think it is important.

Chairman LEACH. Yes, it is very important.

You have indicated that you believe that the State Department can do more in art recovery. Do you have any specific suggestions?

Mr. LAUDER. Yes, the State Department can play a very, very vital role. In general, in the past it has been the claimants, for example, here in the United States trying to get a decision against a European government. It is a very daunting case if you are an individual going against a European government. I believe there should be a person in each country in the State Department whose specific role is to help these claimants in their case.

I think that when a claimant came to the government—for example, if Martha Nierenberg was able to come, and I don't know if she was—to the Hungarian government with someone from the State Department with her, I think her case would have been a much stronger case. I believe there is a role and a major role that the State Department can play, and it is not always the most popular role that helps relations, but it is something that guards the properties of those people in the United States.

Chairman LEACH. Thank you.

Let me just say, with regard to Ms. Nierenberg, in our country we obviously have a division between the courts, the Legislative and the Executive Branches, and so it is always awkward to opine, from a legislative perspective, on judicial functions, but you would not have been invited here if there was not a very strong belief that you had a very legitimate claim, and so we are very respectfully listening to your concerns and would express great hope that the government of Hungary listens carefully as well.

Ms. Van Rappard-Boon, let me just say that we in the year 2000 are looking at certain issues, and we are not the first country to review these issues, and of all of the countries on the continent the Netherlands may have led the way on many of these issues. In the early 1950's, your government did more than any other government in certain areas, and we have asked you to come representing a government which has been on the progressive side of these issues when many from America were not looking to them, and so your testimony is very much appreciated.

Ms. VAN RAPPARD-BOON. Thank you.

Chairman LEACH. Mr. Forbes.

Mr. FORBES. Thank you, and I would like to echo those comments as well, Mr. Chairman.

Ambassador, thank you for what you have done on this cause. There are few who have been as involved as you. Frankly, we would not be sitting here today discussing this topic if it were not for the personal time and resources that you have brought to this cause; and I want to thank you on behalf of my constituents in New York and many people around the world for your leadership on this question.

Mr. LAUDER. Thank you.

Mr. FORBES. One wonders whether you can ever, ever get past the tragic events of World War II and the Holocaust. And today, for those generations who follow, to relive part of this heartache, certainly not in the same—diminishes, but reliving part of this heartache by the lost assets of their family, the memories and the personal connections to their loved ones that these works of art and even the bank accounts themselves represent is unbelievable, and I do thank you, and I thank Mr. Rothman and others who joined you in this effort.

If I might, I think we have kind of highlighted throughout the day and certainly the committee did yesterday in some of the discussions the frustrations that all of you have been enduring in trying to work through this process and getting uncooperative nations and uncooperative entities, whether they be other museums around the world or private collectors. The difficulties in trying to get these works back clearly is understood, and I know that the last

panel there was mention that a dispute resolution process would be an important development. I was wondering, Mr. Ambassador, if you might comment a little bit from your vast experience in this effort—and it is vast. I know that you talked in the past about international guidelines and international standards, and maybe if you could comment about where we might be on that effort as well as some kind of dispute resolution so that we can move this process forward?

Mr. LAUDER. This is a legal case, but let us take Austria, for example. Austria also is in the process—I don't know if they have done it or not—of passing an interesting law which says that all unclaimed art, be it Jewish or not Jewish, will be put into a fund called the Austrian Fund which will be able to be used for those Austrian projects.

Now, this is a law that is basically being put on the books that says, "We don't care if it is—we know it is Jewish; we are using it for the Austrian citizens." The question is, what should be the international law? What should be the international law when Russia says, "Even though we stole this not only from Germany, but from Rotterdam or from France or wherever, this is going to be our property because we passed a law." That is the question. And the second question is, what role does the State Department play in these types of situations? Do they come arm-in-arm with us, or where do they stand?

In the case of the Schiele case, which I know you heard about earlier today, I have seen it from different ways. The thing that was the most harmful in the Schiele case may not have been—I am talking now from my vantagepoint from my art recovery, from my viewpoint. What the Austrians are saying is, "Look," and they are finding the information out about the two claimants being not exactly correct, and they are using that as a weapon against us for future claimants.

It is very difficult for me, and I would ask to go on Austrian television, which is something that I don't relish, to explain why these people are making false claims, how that relates to other people making false claims and how do they know. It is a very, very difficult question. That is the danger in the Schiele case.

The other thing is what countries do, be it Austria or Germany or other countries, they will use the one case that may not be a strong case to use it against us in the future.

What we do is we keep coming back and back and back again. What is interesting in many cases is that the press is very, very much for this; and the press has been a great help to us, even the right wing press, which is amazing.

Mr. FORBES. You referenced the Altmann situation. Do you think that the United States Justice Department should possibly be encouraged to take some kind of role in these kinds of cases?

Mr. LAUDER. My opinion would be, if the Justice Department simply says we are interested in it, that is enough to get the piece—what it is now is that—as I mentioned before, they now know that the U.S. Congress is looking at this. That is a major step. If they feel also that the Justice Department looks at this thing, not in the case of seizing art, but the case of questioning what is going on there, I think it plays an even stronger role.

Mr. FORBES. A number of years ago there was talk of legislation to create a pool of money to assist private citizens in recovering some of their assets as well as I think part of that money would also be used to help museums, art galleries and the like to do the kind of research that is oftentimes costly and burdensome on their budgets. Do you think that the Congress ought to be thinking about legislation that does provide that assistance?

Mr. LAUDER. I think it would be very helpful. Because most of these people cannot afford the lawyers and cannot afford certain costs involved. I don't think that it should be a large amount of money. And I think some of these cases, like the Altmann case where they ask a half-a-million dollars, it is nothing more than to say "just keep away."

The other aspect is that, very often, you have two parts of a family. One part lives in the United States; one part lives in Europe. In the case of the Altmann family, you had that also. The result is that it gets very difficult if you have to have both parts of the family to be in agreement, because one part of the family who is living with all of the neighbors around them causes great difficulty.

And another case I mentioned, a case in Leipzig, one of the people who is going to help us had, I believe, brothers in the Waffen SS. It is very difficult for that person to make a decision to help recover Jewish property. That person, believe it or not, agreed to help us; and that is the thing that started the case. But it is a major question, and the real answer is that we are only strong if we have the U.S. Government behind us, plain and simple.

Mr. FORBES. Ambassador, I apologize if this sounds somewhat ignorant, but at the conclusion of World War II when they were trying to document at the Munich collecting point and other efforts to document unclaimed works of art and the like, were procedures set up then to try to get these works of art returned?

Mr. LAUDER. Yes, they were. You have to understand that at the time you had enormous human suffering. You had hundreds of thousands, if not more, of Jewish people who were in concentration camps. You had DP camps all over. You had problems of major starvation within Germany and Austria and different places. Although art was extremely important, it was much less; and there was a feeling of getting it done as quickly as possible.

In the case, for example, of France, they sent back something like 15,000-16,000 works of art at one time. The French government, receiving 16,000 works of art whose owners were unknown, made the decision in 1947-1948 to sell 13,000 of them at auction without having to go through the effort, because there was just so much going on. Yes, procedures were set up, but nobody had the manpower to go in and look at things. The obvious ones were returned, but an enormous amount they didn't know what to do with. Plus the fact that most of the owners were dead. So the result is that there were no records. It has only been in the last few years that we have the type of records that we have.

The thing that I don't understand and I will never understand is what happened to our parents' generation? How come it is only happening fifty or sixty years later? That is the thing that I find the most amazing.

What happened in the 1950's and 1960's and 1970's to all of the different claims? What happened? I look back in our records, and I don't see anything. I see it is like a huge hole from 1948 to almost 1995. It is absolutely incredible.

When I am sitting on the Volcker Commission and I look at the records, I see hundreds, if not thousands, of cases of people asking for money back and being told, "thank you, good-bye. If your father died, we need a death certificate."

The question is, what happened to these people? Where were all of us? And we are putting together pieces, but most of the people we are working with are in their seventies and eighties, and every day people are dying.

I go to the gathering of Holocaust survivors, and I have been doing it now for six years, and you can see the difference over the years. Obviously, it gets smaller and smaller each year.

I wonder what happened. The governments know we are running against time, too; and they know the longer they wait the better chance that they have a person will go away.

You heard in Martha Nierenberg's case what is going to happen. They would love to wait another ten or fifteen years. They don't know that she is going to live another twenty-five years.

Ms. NIERENBERG. I intend to.

Mr. FORBES. Thank you, Ambassador and Mr. Chairman. I appreciate very much the subject matter that we are talking about today, and I want to thank the Ambassador for offering such tremendous hope to so many people. Thank you.

Mr. LAUDER. Thank you.

Chairman LEACH. Thank you, Mr. Forbes.

By way of closing, let me stress that, although they covered different economic sectors and different countries, all of our hearings over the past three years have shared a common theme. Because the crimes were unspeakably heinous and took place in such an incomprehensible scale, the brutality of the Nazi era has obscured for fifty years the degree to which the Holocaust was not just murderous, but also constituted the largest and most unjust theft of wealth and labor in history, grand larceny on a continental scale.

During the decade we have just completed, a convergence of historical forces removed some of the obstacles that have kept the world community from confronting the economic implications of Nazi genocide: the end of the Cold War; the economic reconstruction of Europe, including the reunification of Germany; and a new wave of historical research based on hitherto unexplored documents into the complicity of private citizens and institutions in Nazi crimes. Most importantly, however, it was the effort on the part of the survivors' advocates who refused to let the nations involved, including the United States, shy away from their responsibility to provide belated help.

Taken together, our hearings over the past three years have shown how the economic component of Nazi rule continued Hitler's legacy long after his regime was defeated. It kept survivors impoverished, unable to rebuild their lives, and ensured that their suffering and that of their families would continue. It allowed both complicit and unwitting beneficiaries of the theft to enjoy unfair

economic advantages derived from stolen riches and inhuman treatment of workers.

Although justice can never be adequately attained for crimes of genocidal magnitude, it is important that symbolic efforts at least be undertaken and that a measure of accountability for economic crimes be established. In this context, Deputy Secretary Eizenstat and Dr. Lambsdorff outlined a plan of redress that is more extensive in scope than any other compensation for human rights violations the world has known. While the individual amounts will be modest, the plan envisions compensating a million workers, even in cases where the institution that exploited them may no longer exist.

Deputy Secretary Eizenstat is to be commended not only for shedding light on Holocaust issues, but previously overlooked Nazi crimes against non-Jewish Europeans, many of whom are double victims, first of the Nazis and then the Communists. The relentless integrity the Secretary has exhibited provides a model of public service.

Likewise, the public owes a debt of gratitude to two other distinguished citizens, a former Federal Reserve Board Chairman and a former Secretary of State, who have been called to head banking and insurance panels respectively.

Paul Volcker, the Chairman of the commission that audited Swiss banks, reports that 54,000 names have been found that were likely owners of bank accounts which were improperly closed. Sadly, he concluded that there were surely many others, but the passage of time and the disappearance of records have made it impossible to provide a fuller accounting. A humanitarian fund endowed at \$1.25 billion has been formed as a token of compensation.

Lawrence Eagleburger reported that the consensus has developed that insurance companies need fairly and generously to settle unpaid Holocaust era policies. The international commission he chairs is about to begin processing claims, although considerable work still remains to be done identifying potential claimants.

In the art world, there is a new, rigorous attitude toward provenance and a solemn determination on the part of directors here and abroad to scour their collections and return any tainted pieces to the rightful owner.

What is astounding in all of this is how much progress has recently been made, how many parties have transcended their initial impulse to hide from uncomfortable legacies behind walls of legalistic denial, sophistry and obfuscation. Historical scrutiny and individual conscience have moved us to a new stage in the evolution of this horrible issue, a stage in which key public and private leaders in each country involved now acknowledge that moral responsibility for economic crimes implicit in the Holocaust cannot continue to be ignored.

We must, however, not delude ourselves. Any notion of justice—with crimes so heinous, with so many millions of victims, with redress so long overdue, with so many records destroyed by the ravages of time, with so many stories of inhumanity that will never be told—is elusive at best. The sad truth is that the deepest wrongs cannot be redressed and that hatred's bounty will never be fully disgorged.



Nevertheless, although unconscionably delayed and inadequate to right the wrongs committed, the largely symbolic restitution efforts underway are the only way at hand to bring accountability to bear on the Nazi economic legacy, the only way to give meaning to the Reverend Martin Luther King, Jr.'s assertion that, "The arc of the moral universe is long, but it bends toward justice."

The hearing is adjourned.

[Whereupon, at 3:55 p.m., the hearing was adjourned.]



# **A P P E N D I X**

February 9, 2000



# CURRENCY

## Committee on Banking and Financial Services

**James A. Leach, Chairman**

**For Immediate Release:**  
Wednesday, February 9, 2000

**Contact: David Runkel or  
Brookly McLaughlin (202) 226-0471**

**Opening Statement  
Of Rep. James A. Leach  
Chairman, House Banking and Financial Services Committee  
Holocaust Assets Hearing**

This hearing, and tomorrow's hearing, are a continuation of the Committee's review of efforts in the U.S. and abroad to establish greater accounting and accountability for economic aspects of history's most heinous crime and, belatedly, provide a measure of comfort to its victims and their families.

We began a little over three years ago with a historical look into the role of Swiss banks, including the central bank, in the Nazi war effort. Soon the investigation, propelled by self-generated moral imperatives, was expanded to include the role of other neutral countries, then allies and, not least, the U.S. itself.

Historical inquiries such as these into the nature of evil and how to behave in the face of evil are not normally the subject of congressional hearings. In this case, however, these questions were central to our own moral duties as legislators and public officials to learn from the past so that such unspeakable horrors never happen again. As a Princeton theologian told this Committee, "the map with the help of which we try to orient ourselves as human beings trying to live good and decent lives is a map with Auschwitz on it."

It had been the goal of this Committee and the Executive Branch to conclude these proceedings by the end of the 20<sup>th</sup> century. This deadline has not been met precisely, but the framework for resolution of most of the important economic issues appears to be close at hand.

As I look back through the hearings of this Committee on this subject, at the more than 100 witnesses from more than a dozen countries who have appeared here over the past three years, I am struck by the magnitude of the undertaking. After an unconscionable, stumbling start, Switzerland, where this inquiry began, has reacted by submitting itself to the most profound - and perhaps brutal - act of national introspection in its history. The Volcker and Bergier commissions, which studied the country's behavior in World War II - deserve praise for the rigor of their work.

More than a dozen other countries, including the United States, have formed similar commissions, and two large international conferences, in London and Washington, were devoted to wartime gold transfers and restitution of Holocaust-era assets, respectively. After a hiatus of 50 years, the mass theft aspects of the Holocaust - those aspects which partly precipitated the chambers of murder at camps like Auschwitz, Maidanek, Buchenwald - assumed their rightful place at the forefront of our collective conscience.

Even more important perhaps, several national foundations have been formed and funded, and money has, at last begun to flow to Holocaust victims. And we are in the final stages of two large settlements -

with Switzerland and Germany - which promise financial redress to still more victims.

The monetary compensation to Holocaust victims, however, should not obscure the fact that, in the end, the funds are but a symbol of moral restitution. In a stirring address at the opening of the Washington conference, Elie Wiesel noted, "Usually anti-Semites say about us Jews that we speak about lofty things, but we mean money. Just the opposite. Here we speak about money, but we think of other things."

And so today and tomorrow, we will speak about bank accounts and insurance policies, forced labor and uncompensated work, as well as stolen art works, and how to restitute those things to those who lost them and to their families. We are here because we want to return what has been stolen to its rightful owner. We are here because we want to provide needy survivors with medical care and homes for their old age. But above all, we are here because we remember and because we are convinced that crimes which occur without subsequent accountability are crimes that too easily may be replicated.

It is more than a little ironic that as we strive to bring closure to darkest chapter of the 20<sup>th</sup> century, the specter of intolerance and racism is rising again over a country which has been at the forefront of science, economics and art. Austria, the land of Mozart but also the birthplace of Hitler, appears in recent weeks to have chosen, through the ballot box, to turn xenophobically nationalistic. The European Union's strong reaction to Joerg Haider and his cohorts suggests that civilized Europeans are committed to see that history does not repeat itself. But it also indicates that without a continued commitment to conscience and memory, the threat of mindless extremism will not die.

The Committee's goal in this series of hearings was to bring these issues to the public's attention and to demonstrate for all to see that we in the American people's house will not forget.

Before turning to Mr. Eizenstat and to Mr. Lambsdorff, the joint chairmen of the group negotiating a settlement on slave labor, forced labor and other claims, let me ask if Mr. LaFalce or other Members have opening statements.

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The Honorable Kenneth E. Bentsen, Jr.  
before the House Banking Committee  
Wednesday, February 9, 2000

Mr. Chairman, I want to commend you for holding this critically important hearing regarding issues related to the restitution of assets held by Jewish individuals and families prior to World War II. This is the sixth hearing by the House Banking Committee which will help us to learn more about where these assets are and to ensure that these assets are returned to the families from whom they were taken. This is an issue that we must address and we should be vigilant in finally resolving this matter. For the Holocaust victims and their families, sixty years is already too long to wait for recovery of their assets.

Today's hearing will focus on three main issues. First, the hearing will review the recently announced \$5.1 billion agreement between surviving forced and slave laborers and the German government and German industries. Our first panel will include two major negotiators for this agreement. The second panel will include former Federal Reserve Chairman Paul Volcker who is the Chairman of the International Commission on Eminent Persons. Chairman Volcker will present information about the recently issued report on dormant accounts belonging to Holocaust victims and their heirs in Swiss banks. The third panel will include many representatives from Jewish organization who will give us their perspective on these recent developments. There will also be a second day of hearings tomorrow that will feature Lawrence Eagleburger, the Chairman of the International Commission on Holocaust-Era Insurance Claims and the second panel will include eminent museum directors who will delve into the issue of stolen art from Jewish families.

The \$5.1 billion agreement between Jewish organizations and the German Government and German industries was signed on December 17, but important details still need to be worked out. I am pleased that Deputy Treasury Secretary Eizenstat will be here to testify regarding the role of the United States government in negotiating this settlement. Another important factor to consider is whether the German Parliament will approve the \$2.6 billion share for this agreement. Over 60 German companies will be contributing the additional \$2.6 billion to fulfill this agreement in exchange to immunity for any future lawsuits. There are currently some 50 lawsuits pending against German companies. I will be interested to hear more about what Jewish organizations feel about this agreement. We will need to work together to ensure that the German government follows through on their commitment.

As we know, the Nazis also used many Jewish individuals and their families as slave labor for the Third Reich's war effort. Many of these slave laborers were assigned to private companies which profited from their free labor pool. Some of these slave laborers also included

Prisoners of Wars (POWs) and non-Jewish nationals such as the Polish. After the War, the Conference on Jewish Material Claims against Germany helped to reimburse up to 100,000 of these slave laborers. However, many of these exploited individuals did not have records of their work history and moved away from Germany. During the 1950s and 1960s, Germany made lump sum payments to other governments and Jewish successor groups. More recently, the German government has also provided lump payments to the Russian federation and other former Soviet nations.

We should take this opportunity to examine how the newly elected Austrian government will impact this situation. I am very concerned that some members of the new coalition particularly the Freedom Party appear to have some degree of affiliation with the Nazi party. Mr. Chairman, you are to be commended for holding this hearing at this time because it sends a strong message to Europe and across the world that the U.S. Congress has grave concerns regarding the intolerance in the highest levels of a democratically elected government.

Again, I applaud Chairman Leach for continuing these critically important hearings and look forward to learning more facts that will lead to the truth. There is an implicit moral obligation upon us to get to the bottom of this matter and restore assets to their rightful owners or their heirs. We, in Congress, must ensure that our hearing process produces all the relevant facts for the general public so that Holocaust victims and their heirs can finally recover what is their's by right.



**U.S. House of Representatives Banking Committee  
February 9, 2000 & February 10, 2000  
Hearing on the assets of Holocaust victims and their assets  
10:00 a.m.**

**Opening Statement of the Honorable Michael P. Forbes (D-Suffolk County, NY)**

Thank you, Mr. Chairman. I want to commend you and Ranking Member LaFalce for your sustained efforts on this important issue. Finding and recovering assets from Holocaust victims is a difficult and often thankless task. I would like to take this moment to give special recognition, and special thanks, to the tireless Jewish organizations, many of whom are located in my home state of New York, that have forced the international community to face up to its responsibilities.

In the four years since Congress has raised the issue of assets belonging to Holocaust victims and their heirs, considerable progress has been made toward uncovering the truth and redressing financial losses.

- The Swiss banks were forced to look into their past and uncover hidden thousands of dormant accounts of Holocaust victims. Settlement earlier will, hopefully after the U.S. District Court's recent ruling in December 1999, bring distribution this year.
- Negotiations are ongoing on the topics of forced labor and insurance claims – discussions that were not even occurring over a decade ago.
- Finally, on the topic of stolen art, curators and collectors alike are putting in a good faith effort to determine more than whether the art is "real," but whether the art really belongs to its current owner. This due diligence on the part of the art world and the work done by organizations like the Commission for Art Recovery will continue to help victims recover their lost art.

The fundamental issue here is not calculable in dollars, but in principle. Corporations, individuals, and their governments should not get rich from others' suffering. Moreover, victims should be compensated for their losses.

The Holocaust was a dark, heinous period in the 20<sup>th</sup> century. It seems fitting that the year 2000 marks the sixth and final set of House Banking Committee hearings on retrieving Holocaust assets. Despite the scheduling of our final hearings here in the House, however, I will continue to work diligently with other New York Representatives and Senators, and other Members across the country, to expedite the resolution of claims of too many Holocaust victims and their families. We in Congress and across the world should continue to fight. All the insurance policies must be paid, all the lost art must be returned to its rightful owners, all the banks accounts must be found, the funds returned, and all the companies must compensate the slave and forced laborers.

Thank you.



STATEMENT OF REP. JOHN J. LaFALCE  
RANKING MEMBER  
COMMITTEE ON BANKING AND FINANCIAL SERVICES  
U.S. HOUSE OF REPRESENTATIVES

Hearing on Recovery of Holocaust-Era Assets

February 9, 2000

Today the Committee revisits an issue of great public policy importance, and historical significance -- the restitution of Holocaust victims' assets to their rightful owners. As policymakers, we must take very seriously our responsibility to right the wrongs of the past and to provide financial restitution to Holocaust victims unjustly stripped of their hard-earned assets. It would be unconscionable if we were to ever lose sight of the horrors perpetrated by the Nazi regime. Exercising our responsibility now is the best way to prevent these events from ever occurring again. These hearings, the sixth in a series, contribute to that effort.

Recent events in Europe underscore our moral responsibility to preserve the memory of the Holocaust in our collective consciences. Sentiments that should concern all democratic governments and their citizens are still expressed today. The most recent example comes from Austria, where a coalition government that includes the extreme right-wing, anti-immigrant Freedom Party, with a party leader who has expressed sympathies with Nazism, has reached power. To ease the European Union's, the United States' and other countries' concerns about this development, the ruling coalition issued a statement intended to reassure the world that the new government does not subscribe to Nazi beliefs. However, shortly after the statement's release, the *New York Times* reported that the Freedom Party's leader invalidated the intent and spirit of that statement by indicating that it was an "affront" to Austria to have to sign such statements. The United States has appropriately called its ambassador back for consultation, while citizens all over Europe, including Austria, have taken to the streets to express their outrage and distaste.

Mr. Chairman, I raise this troubling development only to emphasize how important these hearings are. We are honored to have Treasury Deputy Secretary Stuart Eizenstat before us today, who along with his partner in Germany, Otto Count Lambsdorff, has played an important role in mediating a resolution to the forced and slave labor claims of Holocaust victims. I

welcome both of you to the Committee and look forward to your testimony. Today we also welcome former Fed Chairman Paul Volcker, who as the head of the Independent Commission on Eminent Persons, will educate the Committee on the Commission's study regarding dormant Swiss bank accounts. The Committee is honored to welcome the Honorable Avraham Hirschson, a member of the Israeli Knesset and Chairman of the Committee for the Return of Jewish Property. And we will also gain the important perspective of the most prominent Jewish organizations in the U.S. and abroad. The leadership shown by these organizations has been exemplary, and they have worked tirelessly to bring compensation and justice to Holocaust victims. We must heed their call to ensure that the egregious injustices of the past are never forgotten and that just compensation is given.

I recognize that full resolution of outstanding matters, particularly to compensate victims of forced labor and insurance policy holders, continues to elude us. Not all issues have been resolved to everyone's satisfaction, and we will continue to see disagreements. However, the harder we work to provide restitution to aggrieved victims of that period, the more legitimacy we add to victims' claims, and the farther we move along the path of ensuring such horrible events never occur again.

Thank you, Mr. Chairman.

**OPENING STATEMENT OF**  
**THE HONORABLE RICK LAZIO**  
Of New York  
BANKING COMMITTEE  
HEARING ON HOLOCAUST VICTIMS' ASSET  
In the House of Representatives  
February 9, 2000

Mr. Chairman, I am delighted that you called this hearing. Today, we return to one of history's most infamous and horrific chapters. We will hear some of the most despicable acts practiced on our fellow man. We will hear of the theft of the personal belongings of a persecuted people. We will hear of bureaucratic practices that furthered this theft long after the war was won. Finally, we will hear of the efforts to rectify these wrongs.

Mr. Chairman, as a member of the Presidential Commission on Holocaust Assets in the United States, I thank you for letting us speak with our colleagues who have been winning victories for Holocaust victims and their families. Many of the people testifying are in the forefront of the battle of justice; they who are fighting against those who perpetuated slave labor; against those who hid dormant accounts in Swiss Banks; against those who refuse to pay legal insurance claims; and against those who stole and extorted objects of art and cultural property.

Some Americans probably say, "Why do we have a Holocaust Assets Commission." Let me tell you of one New Yorker who is the grandchild of Holocaust refugees. This child's grandparents were lucky enough to escape to the United States in early 1939. Four months after arriving, the Customs Service sent the grandfather notice that several of his possessions had been seized. Among these assets were 12 gold coins, 35 pieces of gold, manufacturer's silver, and a platinum pocket cigarette case. The fate of these assets is unclear; so are the reasons for the seizure.

Were these victims of Nazi persecution victimized again by the policies of the United States government? Was this an unintended consequence, or were there specific reasons for these policies? How routinely, and for what reasons, were the official policies violated? And what were the effects? These are some of the questions to which we need answers. That's the only way this child, the grandchild of Holocaust refugees, will get the peace of mind that comes with closure.

In my home state of New York, there are some perfect examples of what can be done when we work together to return to a family of Holocaust victims what is rightfully theirs. This summer, an Israeli-American who grew up in New York, was delivered his family's heirloom – the painting "The Seamstress" by the artist Lesser Ury. Just last

week, New York State also announced the return of the "Madonna and Child in a Landscape" painting by Lucas Cranach the Elder. This painting was seized from a Jewish family by the Nazis in 1940 and ended up in the collection of the North Carolina Museum of Art.

As Members of this Committee know, I am proud to serve with Deputy Secretary Eizenstat and my colleagues Mr. Maloney and Mr. Sherman on the Holocaust Assets Commission. We are hard at work determining the fate of the possessions of Holocaust victims that came into the control of the United States government. The Committee will hear tomorrow from Dr. Jonathan Petropoulos, who leads the Commission's art research team, and I particularly look forward to his remarks.

I am also proud to have introduced the U.S. Holocaust Assets Commission Extension Act of 1999, which extended the Commission for one year and authorized additional appropriations. This bill was signed into law in December. I want to thank this Committee for its expeditious and favorable consideration of this important legislation and for its continuing strong support of the work of this Commission.

I want to thank all of today's and tomorrow's witnesses for their time and their work. The efforts of so many prominent Americans to pursue justice for Holocaust victims and their families demonstrates irrefutably that we in the United States are willing to hold ourselves to the same high standard of truth about Holocaust assets to which we have held other nations.

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**Statement of Representative Maxine Waters  
House Banking and Financial Services Committee  
Restitution of Holocaust Assets  
February 9, 2000**

Reparations for monumental injustices are necessary. The Holocaust is one such situation. However, as it is with all crimes against humanity that occurred in the past, it is a challenge to determine how reparations should be paid, who should pay, and who should receive.

Commenting on art stolen during the Holocaust before the House Banking and Financial Services Committee two years ago, Stephen Weil of the Hirshorn Museum stated "When the British nephew of the original owner discovers that the painting stolen from his aunt in Brussels now belongs to a New York collector who purchased it in California, which statute of limitation applies?" A similar problem occurs when persons, particularly the heirs of the actual victims, seek to prove their eligibility for reparations. However, the process of determining what should be paid to the victims of the Holocaust has laid an important foundation for all victims of similar crimes.

In the Fall of 1998, the German government sought the involvement of the United States to address the issue of reparations for the forced and slave labor arising out of the Holocaust. This led to negotiations between officials from the United States, Germany, Israel, Ukraine, the Czech Republic, Belarus, Poland and Russia as well as a coalition of German companies that used slave and forced labor. From these important talks emerged the establishment of a foundation to make payments to Nazi era public and private sector slave and forced laborers as well as others who suffered at the hands of German companies during the period. Another significant outcome of the foundation will be to establish a future fund to support Holocaust remembrance, education, international understanding, and the interests of heirs and survivors of Nazi injustice.

Additionally, an audit of Swiss bank accounts—that may have been used by Jewish families as the Nazi threat grew in the 1930s—has been undertaken by the Independent Commission of Eminent Persons (ICEP). The Commission includes Swiss bank executives, Jewish group leaders, and is chaired by Paul Volcker, the former Chairman of the Federal Reserve Board of Governors. After an elaborate auditing process the ICEP found over 50,000 accounts with "probable or possible relationships to victims." As a result of the ICEP efforts and the efforts

of others, the Swiss banks agreed to pay \$1.25 billion to Holocaust survivors.

These multilateral negotiations and auditing procedures are important steps in addressing reparations. The participation of high-level government officials and the commitment of resources are essential to provide reparations for Holocaust victims. This process is important not only for the restitution of assets to victims of the Holocaust but also as a precedent for the reparations to victims of similar crimes.

For example, the Tulsa Race Riot Commission, which was created in 1997 to study the 1921 race riot which destroyed one of the most affluent African-American communities in this nation's history, recently recommended that reparations should be paid. Greenwood—the predominantly African-American section of Tulsa, Oklahoma which had achieved a level of wealth that earned it a reputation as the "Negro Wall Street of America"—became the focus of a mob of nearly 2,000 white men who murdered up to 300 blacks. Alfred L. Brophy, an Oklahoma City University law professor who researched the issue for the Riot Commission, said that even though the historical record was incomplete, there was compelling legal and moral justifications for reparations. Nonetheless, because the issue of reparations

for African Americans often sparks an uncomfortable period of reflection for Americans, the Tulsa Race Riot Commission, who has worked on this issue for two years and concluded that reparations are necessary, faces an uphill battle. Hopefully, what we do here today eases the pain for all of the world's citizens and reinforces the belief that reparations for monumental injustices are necessary.



EMBARAGOED UNTIL 10 A.M. EST  
Text as Prepared for Delivery  
February 9, 2000

TREASURY DEPUTY SECRETARY STUART E. EIZENSTAT  
HOUSE BANKING COMMITTEE

Mr. Chairman, Mr. LaFalce, I want to thank you, and the Members of this Committee, for holding this latest in a series of hearings. Your steady focus on Holocaust related issues has helped elevate them in the moral conscience of the world, and the work of individual Members of this Committee has given important support to our government's actions in this area.

I also want to thank you for inviting my long time friend and colleague, Count Lambsdorff, to join me on this panel. Count Lambsdorff is a dedicated friend of the United States, a man who has done much during his distinguished political career to strengthen the relationship between our two countries. In his current capacity as the Chancellor's Special Representative, he sits with me as Co-Chairman of the German Foundation Initiative negotiations to provide some measure of justice to public and private sector forced and slave laborers and others who suffered at the hands of German companies during the Nazi era. It is evidence of the German government's seriousness of purpose and sense of moral obligation that the Chancellor chose a man of the Count's public stature to represent his country in these talks. In addition, he has the full backing of German industry.

Slave and Forced Labor Negotiations

I turn now to the current negotiations on slave and forced labor. They are focused on the establishment and funding of a new German entity to be called the Foundation for Remembrance, Responsibility and the Future. It will be the mechanism through which those who worked as forced and slave laborers and those who suffered at the hands of German companies during the Nazi era can receive dignified payments.

Since your hearing last September, German industry and government agreed to raise their combined contribution to the foundation's capitalization to DM 10 billion, half from German industry and half from the German government. This was announced on December 17 in Berlin. This offer was a substantial increase over the initial German proposal of DM 6 billion in October and a subsequent offer of DM 8 billion in November.

All the parties to these negotiations -- The Governments of Belarus, the Czech Republic, Poland, Russia, Ukraine and the State of Israel, the Conference on Jewish Material Claims Against Germany, and the lawyers for the victims -- accepted the DM 10 billion offer as the capped amount for the German Foundation and the sum that will resolve the lawsuits in U.S. courts.

The process that led to this agreement has been long and complicated, and all the participants have had to show flexibility and good will. We could not have reached agreement on the DM 10 billion without the personal involvement and leadership of President Clinton and Chancellor Schroeder, as well as other senior officials in the U.S. and German governments. I also want to cite the constant support and personal involvement of Secretary Albright, Secretary Summers, White House Chief of Staff John Podesta, and National Security Advisor Sandy Berger.

I should also mention here the very significant contribution of German President Rau to this process. President Rau has been a consistent voice stressing the moral aspects of these issues. On December 17, in Berlin, and in the presence of Holocaust survivors, he said the following:

"I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering, and for the injustices done to them to be named injustices. I pay tribute to all who were subjected to slave and forced labor under German rule and, in the name of the German people, beg forgiveness."

President Rau's apology provides assurance to many that the last word on the Holocaust will not be about money. Given the significance of President Rau's statement, I would appreciate being allowed to include it in the record of today's hearing.

I want to emphasize that despite the critical importance of what was agreed in Berlin on December 17, final settlement requires subsequent agreements on a number of issues, most importantly on an equitable allocation of the DM 10 billion among various groups and classes of claimants, and on the substance of the legislation that will define the administrative structure and operation of the German Foundation.

### **The Washington Plenary**

Last week in Washington, over one hundred delegates, representing all the parties to the negotiation, assembled at the State Department for our eighth plenary session. Preparations for this meeting included numerous smaller meetings between various sides over the preceding six weeks since the Berlin agreement on the capped amount. The focus of our efforts in Washington were twofold: the issue of allocation, and bringing the draft German implementing legislation into alignment with agreements already reached in negotiations.

### **Allocation**

At the outset, Count Lambsdorff and I agree that it is very important that the "victim side" be actively engaged in finding the compromises necessary to ensure that all elements of the Foundation are appropriately funded. To help focus those discussions, I proposed the following set of principles to guide discussions:

Slave and Forced labor shall have the highest priority in allocating Foundation funds. Payments shall include an inclusive category for personal injury and other cases, including but not limited to, medical experimentation, mothers of "Kinderheim" cases as well as all other personal injury cases directly involving German companies.

An allocation shall be made for aryanized property claims against German companies and for heirless/humanitarian/insurance claims.

An allocation shall be made for the Future Fund for projects of tolerance, taking into account the heirs of forced labor.

Administrative expenses shall be paid from interest on deposited funds.

Decisions on allocations should be made recognizing that the Foundation provides a potential remedy for any possible claim against German companies arising out of the Nazi era.

The United States strongly supports the efforts of the victims' groups to reach agreement on a fair and equitable allocation that can be set into the German law.

Following these principles should ensure an equitable balance between competing requirements for the limited funds available.

I am pleased to report that at the Washington plenary, very significant progress was made on allocation, sufficient for me to say that I believe that we may well be able to conclude this key aspect of the settlement soon.

#### Draft Legislation

The German Foundation will be established under German law. We welcome this for two reasons: first, because it is the vehicle through which the German government will appropriate their half share of the DM 10 billion, and second, because it will subject the Foundation to well established oversight and accountability requirements that charitable organizations in Germany must meet.

But, I will tell this Committee frankly that embodying the results of our nine-month negotiation in the draft legislation, based on a German Government's draft and the German legislative process, is a sensitive and difficult undertaking. I am pleased to say that the German government met intensively with us over the past six weeks, and engaged all parties to the negotiations at the Washington plenary.

To add weight to the German government's commitment to deal fairly with the parties to the negotiation, the German delegation to the Washington plenary included, as in the past, representatives from the five major Bundestag parties, all of whom took an active and extremely helpful part in discussions and will take the lead in the legislative process in Germany. In addition, I am pleased to accept the Bundestag Domestic Affairs Committee invitation to testify next week in Berlin. I believe that the German government fully recognizes the importance of submitting draft legislation to the Bundestag that reflects the commitments and understandings reached during our negotiations.

One of the most difficult tasks we face is to define the scope of the Nazi-era wrongs perpetrated by German industry that the Foundation will cover in its claims process. We are working to ensure that the Foundation's coverage is so broad that the United States will be able to file a Statement of Interest in U.S. courts in all cases brought against German companies arising out of the Nazi era. This Statement of Interest is a central element in the achieving the "legal peace" that the German companies seek. At our plenary meeting last week in Washington, we had a very productive discussion, and I am gratified that the German government has reaffirmed its intention to revisit the issue of the Foundation's scope in light of those discussions.

#### Offsets and "anti-accumulation" clauses

Also contained in early drafts of the legislation was a provision that would "take account of" previous or ongoing payments by the German government to a Holocaust victim but reducing the payments from the German Foundation. I urgently sought German agreement to drop this provision. It would have unfairly reduced the payment of thousands of Holocaust survivors -- many of whom are U.S. citizens -- who were forced to work in unspeakable conditions under the Nazis. Previous German programs, such as the German Federal Compensation Law (BEG), make payments to those whose liberty was taken from them.

There was also an "anti-accumulation" clause that would limit the amount any one individual could receive from the German Foundation. Since, the Foundation will

have accounts to pay for injury and aryanized property loss from banks and insurance companies, as well as for other injuries received at the hands of German industry, such as medical experimentation, this provision was patently unfair, essentially mixing "apples and oranges".

At the Washington meeting, the German negotiators committed to alter these two provisions in accordance with the concerns expressed by delegations.

#### Some Final Thoughts on the Foundation

There has been a good deal lot of expectation and confusion over who will benefit from the successful conclusion of these negotiations. Let me emphasize a few points:

- The Foundation that will be established by these negotiations will not cover all those who were wronged during the Nazi era. It will, however, cover, for example, those who worked for companies not the subject of lawsuits in the United States and companies that have long been out of existence. It will thus likely provide some measure of justice to more than a million victims of the Nazi era, for hundreds of thousands of whom the Foundation is the only possible of relief.
- American citizens who qualify will receive the same benefits as anybody else, and their applications will be process by an organization or organizations in the U.S. Travel to Germany or elsewhere will not be required.
- American taxpayers will be able to exclude their benefits from income under a tax provision in President Clinton's 2001 Budget that provides a clear statutory exemption for Holocaust-related reparations.
- No racial, ethnic or religious group will get favorable treatment. A slave or forced laborer is a victim of the Holocaust, whether he or she is a Czech, Pole, Jew, Romani or another nationality or religion.
- Despite the large price tag, and the hundreds of thousands of people who will eventually benefit, a settlement when reached will still only cover a limited

number of Holocaust victims and a limited number of crimes. Other survivors will not benefit because the crimes committed against them did not involve slave or forced labor or "aryanization" of property, or stolen insurance policies. In short, they were not crimes committed by German industry during the Nazi era.

- I am hopeful, however, that those victims who will not directly benefit, indeed all men of good will, will take real pleasure in the knowledge that at least this group of deserving Holocaust survivors will get recognition for their suffering and at least some small measure of justice.

#### Other Holocaust Related Issues

As I have said, the Holocaust is a compilation of crimes, and we have approached the issue on many fronts. I would now like to review the many other areas in which we are engaged, including art recovery - a subject in which you have taken an especially active role, recovering insurance policies, the Swiss bank settlement, and other issues.

#### Art Restitution

On art restitution, work is going ahead in many countries in line with the principles adopted at the art section of the Washington Conference a year ago December, at which you, Mr. Chairman, presided. Tomorrow you will hear from representatives of the American museum community as well as others with respect to how and to what degree these principles have succeeded in guiding the art world and fostering communication and cooperation among the various players. Major museums, such as the National Gallery and the Metropolitan Museum of Art in New York City, have been researching their collections. I would note that just last week, the North Carolina Museum of Art announced that one of its paintings, Madonna and Child in a Landscape, by the German master Lucas Cranach the Elder, had been stolen by the Nazis and is actually owned by the heirs of a Viennese physician. In keeping with the Washington principles, the Museum researched the question of provenance, working in cooperation with the Holocaust Claims Processing Office of the State of New York and the Commission for Art Recovery of the World Jewish Congress.

Let me take a moment, however, to highlight how the U.S. Government has been working to move this process forward. In my testimony last fall, I noted we had participated in an April 1999 hearing of the Cultural Committee of the Council of Europe in Paris on "Looted Jewish Cultural Property." As a result of that hearing, the Committee prepared model legislation on the return of Jewish cultural property. The Parliamentary Assembly of the Council adopted this resolution last November. This model legislation should initiate new legislation on this subject in European national parliaments, similar in scope to the groundbreaking restitution laws adopted by Austria.

The Lithuanian Government announced at the end of January that, under the auspices of the Council of Europe, it was inviting representatives of the world community to a forum on cultural properties of Holocaust victims to be held in Vilnius in October.

Germany's Cultural Minister recently announced that Germany will inaugurate a web site to help restore Nazi-confiscated art to its rightful owners. All major German museums were called upon to inspect the provenances of the artwork in their possession. Any artwork -- including coin collections and artifacts -- that are found to have unclear provenances will be publicized, with pictures, on the web site. This initiative follows the lead of the web site the French government has posted for many years to display art returned to France after the War but never claimed.

#### Holocaust Issues and Switzerland

Regarding Switzerland the Vice President and I visited Switzerland a year ago in January 1999 and met with then Swiss President Ruth Dreifuss. President Dreifuss reiterated her government's support for completion of work by various commissions on Holocaust-related issues. She also noted that the government remains committed to creating a "Solidarity Foundation" out of Switzerland's gold reserves that would, inter alia, support Holocaust survivors.

In recent months, it has become apparent that the Swiss Government faces some domestic opposition to its proposal for a Solidarity Foundation. The timing for introduction of Foundation legislation remains uncertain; a



referendum would be likely if a bill passes. Many hope that the Government can move forward to present Solidarity Foundation to people for approval this year.

In early December, the Volcker Committee released its final report that was critical of Swiss bank behavior for hindering access by heirs to dormant accounts of Nazi victims after the War. The Committee also revealed that there were more accounts of Holocaust victims than indicated by earlier surveys. The Committee recommends that the Swiss Federal Banking Commission authorize publication of the names of 25,000 account owners that have a strong probability of being related to victims of Nazi persecution. The Swiss are expected to make a decision on this matter in March. The Committee also recommended that 59 Swiss banks consolidate their databases, which are now separate and contain 4.1 million names, to facilitate the process of matching the names of account owners to those who died in the Holocaust. We hope that these recommendations can be acted upon favorably.

The Bergier Historical Committee released in December a report that is highly critical of Swiss government actions during World War II, noting that many refugees were returned to Nazi-occupied countries and sometimes the Swiss authorities confiscated the assets of refugees.

The Swiss Government very courageously welcomed the release of both reports and their forthright conclusions. The Government also apologized for the suffering, deportation, and death caused by Switzerland's World War II policies. (I note parenthetically that other countries, including the United States, barred entry to refugees from the Holocaust) We commend Switzerland's response to the Volcker Committee's and the Bergier Committee's conclusions. It demonstrates openness and a willingness to look honestly at its past.

Despite the August 1998 settlement of the class action litigation settlement entered into between Holocaust victims and Swiss banks, the court has not yet approved a distribution plan, and thus the 1.25 billion dollars to Holocaust victims have not yet been distributed. The procedures inherent in our class actions often require 18 months before distributions can be made to claimants. Judge Korman plans to have a fairness hearing on the settlement on March 15. In recent weeks, the court has

asked the Swiss authorities to provide the information. I understand the Court needs the refugee database and a list of German companies whose assets were frozen in Switzerland during the War. The process for early court approval of the settlement depends on the court having available all the information necessary to final judicial approval, including information from the Swiss authorities. With this information, the Court may be able to approve the distribution plan in March and conclude matters by June.

#### Communal Property

On communal property, we continue to work with the Central European governments on restituting to rightful owners property belonging to Europe's religious communities that both the Nazi regime and subsequent communist governments had confiscated.

When I commenced working on Holocaust issues in 1995, much of my early activity was focused on restituting property to rightful owners. Both the Nazi regime and the communist governments of central and eastern Europe had confiscated significant amounts of property belonging to Europe's religious communities. The new democratic governments had just begun to deal with the issue.

Restituting property is a complex matter. Some of the properties are located in what are now highly developed urban areas and are being used not merely for commercial purposes but also for such social purposes as medical treatment and education. Changing ownership and use after a more than a half century is difficult at best.

At the same time, governments must realize that honoring property rights is a pre-requisite to participating in the international marketplace and in attracting investment. So while initially expensive and politically sensitive, sound property restitution systems are clearly in the interest of all the central and Eastern European countries.

In my discussions with government officials, I have emphasized a number of principles that seem to me to be important to keep in mind in addressing property restitution issues. These principles include:

- Equitable, transparent and non-discriminatory procedures to evaluate specific claims.
- Access to archival records and use of alternative forms of evidence if primary documents no longer exist.
- Implementation of restitution policies at regional and municipal levels.
- Non-discriminatory procedures, without citizenship or residence requirements.
- Clear and simple legal procedures.
- Implementation of court decisions on the basis of equality and non-discrimination.
- Priority of restitution claims before privatization occurs.
- Provisions for the present occupants of restituted property.
- Transfer of clear title including the right of resale, not simply the right to use property, which could be revoked at a later time.
- Restitution or compensation for communal property irrespective of whether the property had a religious or secular use.
- Establishment of foundations, managed jointly by local communities and international groups, to aid in the preparation of claims and to administer restituted property.
- Protection of cemeteries and other religious sites.

As I did in my testimony before this committee last September, I am appending to my written statement a country by country summary of property issues. I want to discuss in some detail, however, the issues of both private and communal property in Poland.

In September, the Polish government submitted to Parliament legislation dealing with private property which was non-discriminatory in terms of allowing former Polish citizens and their heirs who now live outside of Poland to claim their property. This is in line with the commitment made to me by the Polish government. However, this was amended in committee to add restrictive residency requirements for claimants which we believe are discriminatory and are the kind of limitation we are trying to avoid. We are emphasizing the importance of the final act reflecting the Polish government's position. We have raised this issue with visiting Polish officials here in Washington and our Embassy has raised it in Warsaw. In addition, I believe that Chairman Smith of the CSCE Commission sent a letter to the President of the Polish parliament. Polish officials have informed us that they strongly favor the draft submitted by the government and are opposed to the amendments.

The return of Jewish communal property in Poland has been slow because of the difficulty the WJRO and the Polish Jewish community have had in establishing a foundation to prepare claims and administer some of the returned property. Negotiations between the two groups broke down last year. To get the two parties back to the negotiating table, I asked Ambassador Henry Clarke to serve as a mediator to get them going again. The third of his mediation sessions is now underway in Warsaw. In addition, I met last week with the WJRO co-chairman and urged them to give their negotiators the necessary flexibility to finish this important work. I am optimistic that the foundation will be up and running soon so that the restitution process can be accelerated.

### Archives

Archival openness is essential, not only to assist in claims and advancing scholarship, but so that every country can honestly confront its behavior during these difficult years and draw the lessons needed to advance tolerance and social justice. It is important that the Russians open up their archives on Raul Wallenberg, that the Vatican allow research into its archives, and museums allow scholarly and provenance research into their collections. At a conference in Stockholm last month, attended by delegates from 46 nations, a declaration was agreed to calling for opening up archives containing information on the Nazi-World War II

era. In addition, following my request to Count Lambsdorff, he has informed me that many of the companies involved in the German slave/forced labor initiative have agreed to open their archives to legitimate historical research from this era. Some have done so already. We are encouraging the broadest participation of German companies in this effort at openness.

### Education and Remembrance

I had the distinct honor of leading the U.S. delegation to The Stockholm International Forum on the Holocaust, held January 26-28. The Stockholm Forum, appropriately the first major conference of the new millennium, was an outstanding success and built upon the previous Holocaust conferences held in London and Washington. Twenty heads of state and government and delegations from 46 countries attended. Only his prior commitment to deliver the State of Union address prevented the President from attending.

Delegates committed their countries to promoting holocaust education and remembrance, encouraging the study of the Holocaust in schools and universities, and in taking all necessary steps to open relevant archives. As embodied in the "Stockholm Declaration", these commitments, made by national political leaders, are unprecedented, and in the words of holocaust survivors with whom I spoke, "monumental" and "historic". Argentina, Bulgaria, Latvia, and Lithuania requested the International Holocaust Education Task Force to begin liaison projects on teaching the Holocaust with them, and, along with Ukraine, expressed interest in Task Force membership.

The concept of the Stockholm Forum was the personal initiative of Swedish Prime Minister Persson. In addition to the leadership and inspiration he gave to the Forum, he also demonstrated exceptional political leadership in exploring the historical truth of Sweden's wartime neutrality and in remembering the horrible crimes of the Holocaust era.

The work of the International Holocaust Education Task Force continues. It is translating the experience and expertise gained in teaching the Holocaust in countries that are members of the Task Force to other countries, to help them develop Holocaust education and remembrance in

their societies. There has been a successful project in Czechoslovakia aimed at training in the teaching of the Holocaust, and similar projects have been requested by other countries.

To help support such activities, the Task Force last month established an endowment fund, to be administered by the Swedish Ministry of Foreign Affairs. Our government strongly supports this fund, and hopes to be able to announce a contribution in the near future.

In the same Stockholm Declaration of which I spoke, the participating nations committed their countries to promoting Holocaust education and remembrance, and encouraging the study of the Holocaust in their schools and universities.

### Persecutee Fund

The December 1997 London Conference on Nazi Gold established the Nazi Persecutee Relief Fund to provide assistance to needy survivors of Nazi persecution. Seventeen countries have pledged \$61 million. Congress appropriated \$25 million over a three year period. We allocated the first year's tranche of \$4 million to the Conference on Jewish Material Claims Against Germany to provide support to survivors living in eastern and central Europe. We are now in the process of allocating the second tranche of \$10 million. I am suggesting that half go to the German Foundation, \$4.5 million to the Claims Conference and \$500,000 to several Holocaust education and research projects.

### Insurance

You will hear from former Secretary of State Lawrence S. Eagleburger on the progress of the International Commission on Holocaust Era Insurance Claims (ICHEIC). The U.S. Government has strongly supported this international effort to bring justice to victims of Nazi persecution and are pleased that the International Commission is expected to announce the launch of its full-scale claims and outreach program this month.

The ICHEIC claims process will use relaxed standards of proof in dealing with outstanding claims from the Holocaust era and will ensure the opening of companies' files, the cross-checking of names with Yad Vashem's

records of Holocaust victims, and further research into European archives to find names of potential claimants. The International Commission has tested its claims procedures in a "fast-track" process for existing claims previously submitted to regulators cooperating with the Commission. Substantial progress has been made through this "fast-track" process and has resulted in the payment of a number of existing claims to Holocaust survivors and their heirs.

Recent focus has been on the cooperation of the ICHEIC with the German Foundation Initiative. Details of this important linkage are still being negotiated, but we expect that the German Foundation will recognize the International Commission as the exclusive mechanism for resolving insurance claims. As a result, all claims against German insurance companies brought to the Foundation will be processed under the International Commission's rules and procedures. In addition, the German Foundation will have a humanitarian insurance fund that shall be passed through to the International Commission, which shall have responsibility for administering such a fund.

In the most recent discussions of the International Commission's relationship with the German Foundation, representatives of both European insurance companies and Jewish organizations tabled proposals to pay outstanding Holocaust-era German insurance claims, to create a humanitarian fund for nationalized policies, heirless policies and policies against German companies no longer in existence, as well as for social purposes as determined by the ICHEIC. Further discussions to consider these proposals, as well as how to deal with the overall European insurance market, will take place this month.

The U.S. Government has supported the International Commission on Holocaust Era Insurance Claims since it began, and we believe it should be considered the exclusive remedy for resolving insurance claims from the World War II era. As stated in the MOU signed by the five ICHEIC member companies, those companies cooperating with the Commission deserve "safe haven" from sanctions, subpoenas, and hearings relative to the Holocaust period. I recently wrote to the state insurance commissioners in Washington and California, emphasizing my strong support for the international efforts to create a claims settlement process under the International Commission and stressing that, in

their legitimate concern for Holocaust survivors, proposed actions in these states could undermine the work of the ICHEIC. Copies of these letters are available through the State Department's Office of Holocaust Issues.

We strongly encourage all insurers that issued policies during the Holocaust era -- including those in Germany, Austria, and the Netherlands, including Aegon -- to join the International Commission and participate in fully in its claims, outreach, and humanitarian programs. The ICHEIC is the best and most expeditious vehicle for resolving insurance claims from this period, and membership in the International Commission provides the only real way of both ensuring that valid claims are paid and resolving international moral and humanitarian responsibilities, i.e., for heirless and nationalized claims or companies no longer in existence.

Payments made by ICHEIC member companies to individual claimants, as well as their contributions to the humanitarian fund, need to be negotiated within the International Commission. These payments, if credited to the insurance companies, would avoid double payments by those who participate in the International Commission.



**Restitution of Communal and Private Property in  
Eastern and Central Europe  
Supplementary information to Testimony by Deputy Secretary of  
the Treasury Stuart E. Eizenstat  
February 9, 2000**

**BELARUS** -- There is no prospect for appropriate legislation in Belarus for the restitution of communal or private property.

What property restitution does occur, consequently, takes place on an ad hoc basis through agreements worked out with local government authorities, usually -- although not always -- in exchange for some amount of negotiated compensation. Data on property restitution is either unavailable or appears to be contradictory.

No exact data on returned properties is available. According to the Union of Religious Jewish Congregations, only six properties have so far been returned to the Jewish community. A second Jewish organization believes that more property has been returned. Data from Belarusian authorities has so far been unavailable.

Two properties in total have reportedly been returned to the Moslem community. One local Moslem leader claimed that his community is satisfied with this figure given its current size, and does not expect or seek other properties because they were all destroyed during World War II.

The Orthodox Church has reportedly been able to obtain several properties, largely because of support from the central government. The Catholic Church is currently in possession of approximately 300 properties.

**BULGARIA** -- Implementation of existing restitution legislation for both communal and private property continues to be slow as applicants must submit numerous documents and authorities assigned to decide cases often lack sufficient resources to meet deadlines.

Non-Bulgarian citizens are eligible to receive property confiscated during the fascist and communist periods, but if they are not permanent residents of Bulgaria they must dispose of (sell) the property. Forest and farmland can only be returned to Bulgarian citizens.

The Rila Hotel, a valuable downtown Sofia property claimed by the Jewish community, has been a particularly controversial restitution case. The government is also a part owner of the hotel and through a series of legal maneuvers has successfully blocked restitution proceedings. A December 1999 hearing was postponed and no new date set. The government is using the same tactics with respect to a second property (Saborna street) in Sofia.

**CROATIA** --A 1997 law governs restitution of property in Croatia. Croatia's constitutional court in April 1999 annulled six provisions of the January 1997 law on property taken during Yugoslav communist rule. In particular, the ruling eliminates provisions under which restitution or compensation for confiscated or nationalized property was reserved exclusively for Croatian citizens. The Court indicated that Parliament had one year to ensure that the law conformed with the Court's ruling. When implemented, this decision will allow U.S. and other non-Croatian citizens to file for restitution or compensation for property seized during the socialist period.

Immediately after taking power in 1945, the communist Yugoslav government declared null and void government seizures of property, principally Jewish and Serb assets, during the period of the fascist regime, 1941-1945. The communists, however, then nationalized many of those same properties, especially the larger ones. These properties are subject to relief under the 1997 law and the April 1999 Constitutional Court decision.

The Vatican, on behalf of the Catholic Church in Croatia, signed a bilateral agreement with the GOC on October 9, 1998 for the restitution of church property. There are no similar agreements between the GOC and other religious entities or orders. The Serb Orthodox community has received restitution of or compensation for several properties. The Croatian Jewish community's experience has been similar to that of the Serb orthodox community.

In June 1998, the GOC enacted a program enabling persons who fled the former occupied sectors in Croatia after 1990 (i.e. areas occupied by Serbs in the recent conflict and then recovered by Croatia), to reclaim their citizenship and property. However, there are no mechanisms to implement this program. The return of such properties is therefore slow.

**CZECH REPUBLIC** --Widespread skepticism and ambivalence toward the role of the church in society continue to impede progress in resolving outstanding claims for communal property restitution. After a rocky beginning, the current government created two national commissions -- a "political" and an "expert" commission -- to address church-state relations. The commissions, which began meeting in March and May 1999, respectively, are expected to develop legislation in 2000 on the return of church property, primarily income-generating property claimed by the Catholic Church. Only two minor, center-right parties in parliament -- the Christian Democrats and the Freedom Union -- consistently support the restitution of the claimed property.

Most Jewish communal property once in the hands of the Czech national government and the city of Prague has been returned, amounting to about one-third of the 202 properties the Jewish community wants restituted. Much of the remaining two-thirds consists of communal properties held by other local authorities or turned over to third parties. These properties were not covered by the 1994 decree that returned property held by the national government. Whether parliament has the legislative power under the constitution to require local authorities to reconstitute the property has not been decided. Recent press reports indicate that in late January 2000 the Government completed draft legislation concerning Jewish properties, but the legislation has not yet been submitted to parliament.

A separate national commission was formed in November 1998 to examine property restitution issues arising from the Holocaust, including both individual and community real property and other assets held by victims of the Nazis before World War II. Restitution in this context seems to enjoy greater government support.

In August 1999, the Czech president signed a law that permits Czech Americans who lost their Czech citizenship between February 1948 and March 1990 to reapply to become Czech citizens without losing their U.S. citizenship. Additional legislation would be required for these Americans to obtain restitution of their former property. The government maintains that it has already turned over most of the property of these Americans to other claimants, primarily relatives of those who emigrated.

**HUNGARY** -- Hungary was an early leader in passing and implementing legislation for private and communal property restitution and compensation. Several thousand religious community property claims have been resolved through negotiation or by government decisions, and about \$100 million has been paid in compensation. Approximately 800 properties remain under negotiation between the government and the Catholic Church. In October 1998 the Jewish community waived claims to about 150 properties in exchange for annual support payments from the government (which other religious organizations also receive); the Jewish community has actually received four or five buildings in restitution and is negotiating for another 10 to 15.

Private property has been restituted under a 1992 law, amended in 1997, which has no citizenship or residency requirement. Hungarian Holocaust victims receive a modest monthly pension from a foundation that receives government compensation for heirless private Jewish property.

**LATVIA** -- Latvian law provides for the restitution of confiscated property to former owners or their heirs. The law does not discriminate on the basis of citizenship or residency. If the original property cannot be returned, local authorities offer another property or compensation in the form of vouchers. Most communal property cases, Jewish and Christian, have already been adjudicated and property rights restored, although a few long-standing cases are still being negotiated. Private properties now occupied by economically productive facilities have been particularly difficult to resolve. Because of the difficulty in establishing comparative values, claimants are frequently reluctant to accept alternative properties or vouchers. Although agreement is usually reached, six cases this year went to the courts. Two were decided in favor of the plaintiffs.

This month the World Bank will begin a program to assist Latvia in the development of a comprehensive land and title registration and verification system. The goal of this program is to support the development of a real estate market and allow for better market valuation of land and property.

The Latvian Hebrew religious community originally filed for 24 properties of which 13 have now been returned. One hospital was returned this summer. The community has filed for the restitution of a school building in downtown Riga currently controlled by the education ministry and rented out as office space. If negotiations with the government fail, the community will probably take the issue to court. The community wishes to use the building for a Baltic rabbinical seminary.

**LITHUANIA** -- Lithuania has restituted both private and religious property, but the government has not always turned over buildings awarded to religious communities by the courts. The Catholic community has been more successful in having property returned to it than the Jewish community, which is badly splintered. As in other countries, the Jewish community cannot afford to repair or maintain all of the religious property it has received, which includes 26 synagogues. The Ministry of Justice in May 1999 recognized the Chabad Lubavitch as a traditional religious community, a step that allows that group to claim property.

The definition of religious property excludes communal property used for secular purposes. In March 1999, the government prepared a draft law which would redefine communal property to include social facilities, schools and sports clubs, and would be applicable to all ethnic and religious groups in Lithuania. We have long urged such a broader definition of communal property and very much hope this law will receive prompt parliamentary approval.

The Lithuanian government is also considering the establishment of a special foundation to receive property and funds for use of the Jewish community, and to provide protection for cultural monuments.

Lack of funds for compensation and protracted bureaucratic delays are the main obstacles preventing the return of private property. Lithuanian law provides for the restitution of private property to Lithuanian citizens. Those U.S. citizens of Lithuanian origin who have reclaimed their former citizenship qualify, and some of them have been able to make successful claims in Lithuanian courts. However, while the Lithuanian government removed the residence requirement for property restitution, the deadline for filing claims has now passed. Non-Lithuanian citizens cannot claim property.

Statistics on the overall number of properties returned are not available.

**MOLDOVA** -- A number of laws, decrees, judicial decisions and local practices govern restitution in Moldova. There is no citizenship or residence requirement.

Moldova has returned most of the properties of the Moldovan Orthodox Church, mainly through administrative means. The small Jewish community has received property in Chisinau for its current needs, but this amounts to only a small part of

its pre-Holocaust property. Synagogues are located in Chisinau and six other towns.

The Moldovan government does not consider claims of former owners when distributing agricultural land through its privatization program. Forests are public lands and not subject to restitution.

Agudath Israel in late June purchased a property in Chisinau at which it had operated a yeshiva and synagogue since 1991. The synagogue was built in 1886 and operated until 1940. Agudath Israel initially attempted to regain the property through restitution, but eventually agreed to buy the property.

A Baptist church in Chisinau approached the government in 1995 to gain restitution of property it had purchased in the twenties. Because the property now is the site of a kindergarten, an earlier government decision does not allow it to be returned to its previous owner. The church and government are still negotiating.

POLAND --Poland has established four separate commissions to process claims of the Catholic, Lutheran, and Orthodox Churches, and the Jewish community. Establishment of a fifth commission to handle claims by other religious groups, is planned for the fall. About 1850 Catholic properties have been returned or compensated, and another 750 are still under consideration.

Thousands of Jewish communal properties served Poland's 3.5 million Jews before the Holocaust, but only a few thousand Jews remain in Poland. Negotiations have been underway for over a year between the World Jewish Restitution Organization (WJRO) and the Union Of Jewish Congregations in Poland (ZGZ) to form a joint foundation to assist with the reclaiming and managing of these properties. An American diplomat, Ambassador Henry Clarke, has served as a mediator in these discussions since September 1999. The foundation would assist in preparing the documents necessary to file claims, and would also participate in managing some of the restituted property. So far, the local Jewish community has applied for about 500 properties. Without outside assistance, it would be unlikely that all of the Jewish communal property can be claimed before the deadline in 2002.

In September 1999, the government submitted to the parliament legislation for the restitution of private property, or "reprivatization." In mid-December, the special committee on restitution proposed amendments requiring that claimants be

Polish citizens and that they have resided in Poland for five years prior to making the claim. This discriminatory provision would prevent many Polish-Americans from claiming property. Government officials have assured U.S. officials that they will not accept these amendments and will work to restore the original non-discriminatory language. The proposed legislation provides for compensation of up to fifty percent of the value of the property in question.

**ROMANIA** -- Restitution is a highly contentious and politicized issue in Romania. Romania currently lacks comprehensive, nondiscriminatory laws and procedures for the restitution of private and community-owned buildings and urban property. The lower house of parliament debated and passed property restitution legislation in August but the fate of this legislation in the upper house is uncertain. Legislation providing for the return of up to 50 hectares of farmland and ten hectares of forests was signed in January of this year.

Under present laws and practices, private property claims face a chaotic legal situation in the courts. The government has found it difficult to return limited amounts of communal property to religious and ethnic communities by decree, because partial solutions raise questions of fairness. The Greek Catholic or Uniate Church, which was banned by the communist government, has large and serious claims against both the government and the Romanian Orthodox Church. A June 10 emergency ordinance restored 36 buildings to ethnic communities. The Jewish community got back 12 buildings, most of them former educational institutions; the Hungarian community, 15 buildings, mostly former property of the Hungarian churches, (Calvinist, Roman Catholic and other protestant); the German community, four buildings, all former houses of culture; the Greek community, two buildings; the Slovak community one building (an evangelical school), and the Ukrainian and Serbian communities each received one building.

**RUSSIA** -- Hundreds of buildings controlled by the federal government have been returned to religious communities under a Presidential Order of April 23, 1993. Estimates of properties returned at the regional or municipal level range up to several thousand. The large majority have gone to the Russian Orthodox Church, reflecting the relative strength of that religion prior to 1917, when it was not easy for other religions to erect buildings, and its relative negotiating influence in recent years. Synagogues and some other Jewish community properties have also been gradually returned, with cooperation in some regions and disputes in others.

**SLOVAKIA** -- Slovakia has made progress in returning communal property, and has restituted a substantial percentage of Catholic and Jewish claims. State organizations have not always vacated the buildings that were legally restituted, and many claims remain in dispute before the courts. Some properties built upon by the state have not been restituted, and as yet no mechanism for compensation is available for the original owners.

The Jewish community opened a new home for the elderly in November 1998; in a large building in downtown Bratislava that had been restituted and then reconstructed. The reconstruction was financed in part with compensation from the Czech and Slovak governments for gold taken from Slovak Jews in 1940. In 1999, the community also received a hospital building in Bratislava. Many Jewish properties, however, are in poor condition and beyond the means of the small community in Slovakia to restore.

The Catholic community received additional aid from the Government of Slovakia in 1999 in completing surveys of properties that could potentially be restituted. The church, however, has still had difficulty claiming formerly empty properties on which buildings were constructed after the land was taken from the church.

Slovak citizenship is a requirement for private property claims, but we believe Slovak-Americans were generally able to reclaim their citizenship and their property within the deadline set by the 1993 law.

**SLOVENIA** -- Restitution of property seized by Yugoslavia's communist government remains a (one of the most) divisive issue(s) in Slovenia. The question of "denationalization" of property seized by the Socialist Federal Republic of Yugoslavia (SFRY) divides political parties and maintains a barrier between the GOS and the Roman Catholic Church. The Church was a major property holder in the Kingdom of Yugoslavia before World War II. After the war, the SFRY confiscated and nationalized many church properties -- places of worship and associated buildings, residences, businesses, and forests.

After Slovenian independence in 1991, a center-right coalition parliament passed some of eastern Europe's most progressive legislation calling for denationalization (restitution and/or compensation) within a fixed period. However, a subsequent change of government to a center-left coalition in 1992 led to a virtual standstill in denationalization proceedings for



several years as parliament instituted a moratorium on nationalization.

In September 1998, under pressure to reduce a backlog of problematic cases, parliament amended the 1991 denationalization law. However, some of these amendments appeared designed to protect vested interests. In October 1998, the constitutional court annulled several of the amendments, including one which would have barred the Catholic Church from benefiting from restitution of "feudal" property. The court also struck down differential treatment of Slovenes versus non-Slovenes at the time of expropriation, and it permitted those who lost Yugoslav citizenship in the wake of World War II to benefit from the law.

The strong opposition of the current government toward returning large tracts of forest and other property to the Catholic Church is an oft-cited reason for the paralysis of the denationalization process. Restitution of church property is a politically unpopular issue, and the Catholic Church, despite its numerical predominance, does not have the political support necessary to force a faster pace for denationalization.

Private restitution has also been slow and sporadic. As of June 1999, only forty percent of all cases had been adjudicated at the initial administrative level. In April 1999, the Slovene parliament urged completion of the process by the end of 2000 and the government convened an inter-ministerial working group to streamline the denationalization procedures.

**UKRAINE** -- Ukraine has returned some places of worship to all major religions. Only state-owned churches, synagogues, and religious artifacts immediately necessary for religious services are subject to restitution under current Ukrainian law. Returned buildings are generally for the "exclusive use" of the religious community rather than for ownership. In July 1998, president Kuchma issued a presidential decree protecting all cemeteries from misuse or privatization.

Ukraine as yet has no legislation to permit the restitution of secular property that belonged to religious groups, such as schools, community centers or other facilities. However, a draft law is being prepared which would significantly broaden the categories of property owned by religious communities that could be restituted. On February 22, President Kuchma responded to appeals from virtually all

groups by instructing the state property fund to take measures to ban the privatization of property formerly owned by religious communities, which they feared would preclude its eventual restitution.

The decision of whether to return religious buildings or property is made by the regional state administration in which the building is located. Only the local parish -- and not a national or international religious organization -- can petition for the return of a property. Despite the law's provision that the decision be made within one month, the time period involved is usually considerably longer.

The Ukrainian Jewish communities officially lay claim to approximately 3,000 properties of all types, of which only a few have been restituted. However, since current law only permits restitution of synagogues, the proportion of buildings legally subject to restitution that have been returned is somewhat higher. In addition, the pace of restitution of Christian churches has slowed in recent years, since the buildings that remain in state possession tend to be prime properties currently being used as museums, concert halls, or city halls. The Roman Catholic Church has outstanding claims on 48 buildings across the country that have not been returned, some of which already have been partially privatized. The Ukrainian Greek Catholic and Ukrainian Orthodox churches also have reported problems in obtaining formerly-owned properties. These difficulties often are due not only to government bureaucracy, but also to competing claims.

Translation

**Statement**  
**by Federal President Johannes Rau**  
**concerning the agreement on the level of Foundation funding for compensation of the**  
**victims of forced labour**

I am grateful and relieved that agreement on compensation for the victims of forced labour has finally been reached.

I thank everyone who helped bring this about.

The people who were misused by the Nazi machinery of war have had to wait since the end of the war, 54 years ago, to receive compensation.

Negotiations on this issue have only been possible since the division of Europe was repaired.

At the time, many companies profited from the victims of forced labour. Some of them have already publicly accepted the responsibility they bear and have concerned themselves with providing material compensation. It is however only with the Foundation Initiative of German enterprises that this commitment has been given a broader basis. Now as many companies as possible must join the Initiative as quickly as possible, to make clear that German industry will live up to its responsibility. Some companies are participating without themselves ever having used forced labourers.

The German state is making a very significant contribution. In this way all contributors to the Foundation Initiative, both government and business, accept the shared responsibility and moral duty arising from the injustices of the past.

We all know that no amount of money can truly compensate the victims of crime. We all know that the suffering inflicted upon millions of women and men cannot be undone. Nor is there any point in totting up past wrongs.

Slave and forced labour did not merely mean that a just wage was withheld. Such labour meant being carried off, stripped of a homeland and rights, and having one's human dignity brutally violated. It often intentionally served the purpose of working people to death.

This compensation comes too late for all of those who lost their lives back then, just as it is for all those who have died in the intervening years.

It is now therefore even more important that all survivors receive, as soon as possible, the humanitarian payment agreed today. I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice.

I pay tribute to all those who were subjected to slave and forced labour under German rule and, in the name of the German people, beg forgiveness.

We will not forget their suffering.

### Position Paper on Holocaust-Related Issues

Austria reiterates its commitment to continue to cooperate with international institutions and bodies that were formed in the last few years to look into all questions relating to Holocaust assets. In particular, we continue to fully support the principles the International community developed at the London, Washington and Stockholm conferences and will implement and apply those principles. More precisely, in line with the program of the new Government and the declaration of the Federal Chancellor In Parliament on 9 February 2000, the following principles will guide the Austrian policy as regards the various concrete issues now being under consideration:

- As decided when the Historical Commission was instituted last year, access to archives will be made possible where federal institutions are concerned and in line with a resolution by Parliament to that effect every effort will be made to facilitate access where there is no direct control by Government.
- The work of the Historical Commission which was commissioned by the Austrian Government to look into all aspects of Holocaust related issues is well under way and first partial results have already been presented to Government. The Commission will continue to submit Interim reports as work progresses and is determined to stick to the time table agreed upon with the Government. In this connection, the Government is aware of the fact that in view of the age of the Holocaust survivors quick solutions are asked for. We have taken note with interest of the proposal by survivor organizations to adopt interim measures which would benefit the surviving victims and help especially those who live in difficult personal financial circumstances to spend the remaining years of their lives in dignity.
- As far as insurance claims by Holocaust victims are concerned, the Government looks forward to the findings of the historian commissioned by the Austrian Association of Insurance Companies to undertake comprehensive research into the complex historical and legal questions. The Austrian Government will

encourage insurance companies to join international efforts to that effect and to participate in the work of the International Commission under the leadership of former Secretary of State Lawrence Eagleburger.

- ◆ Further implementation of the Art Restitution Law of 1998 will continue. In light of experience, the appropriate authorities will make every effort to improve its practical application, where necessary. Encouraged by the application of the law also by regional institutions, the Government, in line with a resolution by Parliament, will seek further commitments of local and regional institutions to that effect.
- ◆ The Austrian Government is strongly committed to quickly initiate appropriate procedures to solve the outstanding questions relating to forced and slave labour during WW II. In the very near future the Government will announce the appointment of a representative who will lead the Austrian team in the talks and negotiations with the other parties concerned. Austria will in particular also draw on the experience of Germany and the United States in this matter and consult with the appropriate American officials.

Vienna, 8 February 2000

Statement by  
Dr. Otto Graf Lambsdorff  
Special Representative of the German Chancellor  
for the Foundation "Remembrance, Responsibility, and the Future"

before the Committee on Banking and Financial Services  
of the U.S. House of Representatives

Washington, February 9, 2000

Mr. Chairman,  
Mr. Eizenstat,  
Ladies and Gentlemen:

I am honored to testify today before your distinguished committee on the Foundation "Remembrance, Responsibility, and the Future" and related issues in the presence of a longtime friend of mine -- Deputy Secretary Stuart Eizenstat. Mr. Eizenstat and I have worked together in mutual trust and confidence in the past and now are linked in such a way -- in his current capacity -- that we are often taken for twins, despite our obvious physical differences.

So to make sure there's no confusion from the start, allow me a few words to **introduce myself**. My name is Otto Graf Lambsdorff. I was born in 1926. So I am old enough to have witnessed the horrors of World War II and to have suffered physical damage from it. I lived through some of the events we are talking about today.

I served as Federal Minister of Economics for seven years and was a member of the German Bundestag -- our national parliament -- for more than a quarter of a century, from 1972 to 1998. I consider it my good fortune that I have been able to make promoting German-U.S. relations one of my major lifetime endeavors. Last August, Chancellor Schröder asked me, a member of the Free Democratic opposition party, to become his Special Representative for the Foundation "Remembrance, Responsibility, and the Future." I readily accepted, but I admit that at that time I was not fully aware of the complexity and difficulty of the challenge that lay ahead.

Now, I have good reason to believe that we are nearing a conclusion. I am confident that the first payments will reach their recipients within the course of this year.

Ladies and Gentlemen,

In an **exchange of letters** dated December 13 and 14, **President Clinton** and **Chancellor Schröder** expressed the understanding that a German foundation would be set up to "allow a successful and just solution for former forced and slave laborers and others who suffered at the hands of German banks, insurance companies, and other German companies during the Nazi era."

The letter from President Clinton concludes: "It will allow our countries to enter the new millennium together, determined to protect the inviolability of human dignity." Chancellor Schröder responded that "the agreement concerning the Federal Foundation constitutes above all a significant sign of humanitarian belief and responsibility for the victims of Nazi persecution at the end of this century."

Some days later, on **December 17**, the agreement was verbally confirmed in the presence of U.S. Secretary of State Madeleine Albright and German Foreign Minister Joschka Fischer, by delegations from Israel, Belarus, the Czech Republic, Poland, Russia, and Ukraine, as well as by the Claims Conference and groups of American plaintiff lawyers.

Immediately following that meeting, **German President Johannes Rau** took another significant step: He invited the participants of the 7<sup>th</sup> plenary meeting, including many survivors, to his Bellevue Castle residence. On behalf of the



German people, President Rau solemnly asked for forgiveness. He declared that the victims' "sorrow will be acknowledged as sorrow and the injustice that was done to them will be called injustice."

The German people and German business and industry bear a special **moral and historical obligation**. I stress the word "moral," because I disagree with class action lawyers on the question of legal obligations. No amount of money could ever compensate for Nazi atrocities, for the cruel suffering of the principal victims of Nazi persecution. There can never be moral closure to the darkest chapter of German history.

But it is also fair to point out that the vast majority of recipients of payments from the Foundation "Remembrance, Responsibility, and the Future" have previously received **public German compensation** in some form or other, the only larger exception being victims of forced labor who did not return to their native countries after the war but emigrated to third countries, in particular the United States.

Since its founding in 1949, the Federal Republic of Germany has tried to live up to its responsibility. As the first German Chancellor, **Konrad Adenauer**, said 40 years ago: "Unspeakable crimes have been committed, and they demand restitution, both moral and material."

Let me briefly outline **Germany's restitution and compensation programs**, as unprecedented in history as were the German crimes. They built on and expanded programs initiated by the Allied Powers in Germany after the war:

In 1952, the **Luxembourg Agreement** between the Federal Republic of Germany, the state of Israel, and the Jewish Claims Conference brought three billion marks, an enormous amount of money at that time, to the state of Israel and 450 million marks to the Claims Conference.

**The Federal Compensation Law of 1956** is the cornerstone of German compensation to victims of racial, political, and religious persecution. Over four million claims have been submitted under this legislation, which provides for monthly pensions as well as extensive health benefits for injuries suffered as a result of persecution. Today, over 100,000 survivors continue to receive monthly pensions averaging 600 dollars. Most of the 600 million dollars annually provided under this law goes to residents of Israel and the United States.

Under the **1957 Federal Restitution Law**, property remaining in Germany that had belonged to victims of racial and political persecution was returned to its former owners and, in cases where owners had perished, to heirs or successor organizations, specifically the Jewish Claims Conference. For objects that no longer existed and thus could not be returned, compensation and indemnification were paid. In addition, global agreements with the Claims Conference were intended to cover Jewish property of unknown or uncertain origin.

In **1989**, the fall of the Berlin Wall opened up the possibility of **extending restitution and compensation** rights to the residents of the **former East Germany**. I wish to remind you that the East German communist state had lived with the myth of its own innocence and capitalist responsibility for Nazism.

Let me stress that there is almost no **victim's property** in Germany which was not, or could not have been, reclaimed or compensated. And Germany is, as far as I know, the only country in the world which accepted the Jewish Claims Conference as the collective successor organization for heirless property.

In the early nineties, it was the fall of the Iron Curtain that made possible the establishment of "**Reconciliation Foundations**" in Belarus, Poland, the Russian Federation, Ukraine, and a similar institution in the Czech Republic, endowed with German funds totaling 1.8 billion German marks. Within the last decade, these foundations have paid an average of 600 dollars per capita to more than 1.5 million people. Most of the recipients were victims of forced labor.

The overwhelming majority of the **German people support** this German compensation policy which I have described.

Let me now turn back to my main subject, the **Foundation "Remembrance, Responsibility, and the Future,"** to be **equally** funded by the German Government and private enterprises.

Now that, as stated in the **understanding of Berlin of December 17, 1999,** a **capped capital amount of 10 billion marks** has been established for the Foundation, we have proceeded to the implementation phase. I take it as a positive sign that not one of our partners in the discussion cast a shadow of doubt on this agreement during our last plenary meeting in Washington at the end of last week..

Now, details need to be worked out, compromises have to be found, comprehensive legislation needs to be finalized and passed by the German

Bundestag, since half of the funds are being made available by the German Government with taxpayers' money.

Although the German Cabinet had already approved the Foundation bill in principle, it has postponed a final decision until March 1. This will enable the German Government to take into consideration suggestions by German members of parliament and comments offered by our partners during the recent Washington plenary meeting as well as those it anticipates will come out of the forthcoming Berlin plenary meeting on February 17.

Some may ask why we cannot wait with the legislative process until all the details, especially the question of allocation, have been wrapped up. The answer is that survivors and their organizations expect speedy payments and are understandably growing impatient with the process. This impatience is also shared by the German public. But let me assure you that members of all the political parties have agreed to be open to amending the text of the legislation as we proceed with our discussion. That also applies to the question of fund allocation, once agreement has been reached.

Let me explain the **principles of allocation** within the Foundation:

- First, the largest part of the 10 billion mark endowment is intended for direct payments to victims, especially to **former slave and forced laborers**, most of whom live in Central and Eastern Europe. The German Government feels that this amount earmarked for victims of slave and forced labor as well as for victims of certain other personal injuries, medical tests, the Kinderheim cases, etc., should be **7.7 billion marks**. Former slave laborers who were

interned in concentration camps shall receive up to 15,000 German marks; former forced laborers up to 5,000 German marks.

Here, I might add that what makes the Foundation fundamentally different from earlier individual efforts is that it also provides for payments to:

- those who worked in enterprises that no longer exist;
  - those who were employed in the vast public sector of Hitler's Germany;
  - and, finally, those who worked for companies with no U.S. presence and would therefore be unable to pursue their claims in U.S. courts.
- Second, we must ensure that sufficient funds are set aside to compensate for **property**, mostly discussed under the Aryization aspect. It is understood that most of these funds will be used by the Claims Conference for social and humanitarian projects. We propose to set aside **1 billion marks** for property claims, including insurance and bank issues.

On the property side, we have to establish a claims process to cover the few remaining cases not yet addressed under German restitution laws, principally German property belonging to Jewish victims living in Eastern Europe. On the insurance side, some more thought has to be devoted to the way in which the International Commission on Holocaust Insurance Claims -- chaired by my friend Lawrence Eagleburger -- and the Foundation will interlink. It was, however, agreed in the presidential letter that the Foundation shall also cover insurance claims.

- The third component, which is very important to German enterprises, the German Government, and the German public is the **Future Fund**, for which we also propose to set aside **1 billion marks**. This part of the Foundation was contested by those who believe that all the funds should go directly to survivors. We are, and will remain, focused on preserving the values that we share with the American people. By doing so, we will also foster transatlantic relations and lay the foundations for future European and American generations to come. When the survivors have passed away, their memory and their legacy can be kept alive with projects financed by the interest that has accrued on the Future Fund's capital. The Government of Israel as well as the Claims Conference have expressed their strong interest in this Future Fund.
- Finally, **300 million marks** are earmarked for **administration costs**, including lawyers' fees.

The **allocation** among the principal partners of our negotiations, who represent the vast majority of former slave and forced laborers, is a daunting task. This especially applies to the compensation intended for forced labor. The German Government and political parties agree to **follow suggestions made by legitimate representatives of the victims**, provided that sufficient reserves are set aside for forced laborers and other victims not represented in the talks.

Under the welcome auspices of the Polish and Czech governments, discussions are underway to come to a solution. The initial tentative results were not acceptable, because the proposed amounts would have dwarfed the Future Fund and the Property Fund and been made available at the expense of certain victims'

groups. Nevertheless, the ideas and suggestions of the participating Eastern and Central European countries are worth considering and discussing. It is therefore vital that all parties participate in the process of finding a mutually satisfactory solution to the allocation question.

I have said on several occasions and will repeat it today that the best possible solution to be found for the distribution of the funds will be the one that is agreed to by all parties and leaves them all equally "mildly dissatisfied." There can be no winners or losers! All the parties involved in the negotiations must develop a strong sense of fairness and a willingness to compromise. Otherwise, we will fail to reach the main objective of this endeavor, which is to heal wounds, to correct injustice left unremedied for too long, and to promote good relations with the partner governments.

Finally, a word on **legal closure**. Let me again quote from President Clinton's letter of December 13: "The unprecedented steps the United States Government is willing to take underscore the desire both countries share in obtaining all embracing and enduring legal peace."

From the very beginning of our talks, legal peace was accepted as a legitimate interest of German enterprises. The reason for this is that they cannot be asked to pay twice for the same historical acts -- both into the Foundation and before the U.S. courts. We have agreed on what comes closest to legal peace under the U.S. legal system, that is, **Statements of Interest** filed by the U.S. Government in support of German enterprises based on an **executive agreement** between Germany and the United States.

In its Statements of Interest, the U.S. Government is prepared to declare that the Foundation should be regarded as the exclusive remedy for all claims against German companies arising out of the Nazi era and that both countries desire all embracing and enduring legal peace to advance their foreign policy interests.

The U.S. Government is prepared to file these Statements in all cases, both consensual and nonconsensual, provided the claimant at least **theoretically has access to the Foundation**. This is where there are still problems to be resolved. The German Government understandably wants to exclude **property claims** that are **not based on racial persecution**. To reopen a European **reparation debate** 55 years after the war could only have disastrous results for all nations involved.

Secretary Eizenstat proposed some wording for the executive agreement to exclude this possibility, which we still have to analyze. We also want to exclude property claims, where the **objects in question have not been transferred to Germany**. Finally, **property which has been or could have been the subject of compensation claims** under German law has to be excluded, because Germany does **not want to reopen compensation procedures** which have functioned for almost half a century now.

Ladies and Gentlemen,

Believe me, I wish I had **greater funds available for distribution**. But 10 billion marks is what we got and what was agreed upon by all the participating parties after long and arduous negotiations. It is a final step in the successful history of German compensation worth many times that amount. Together with my respected colleague Stuart Eizenstat, I shall continue over the next few weeks to try to arrive



at solutions regarding allocation. The proposed allocations I have explained to you are not meant to be binding.

The German Government made an extraordinary political gesture with respect to the victims when it decided to look at the bill once more after our next round of discussions in Berlin and to incorporate their suggestions. The best way for the Foundation to function is on a basis to which all the victims' groups can agree, and it is exactly that formula for which Secretary Eizenstat and I are striving.

Thank you very much.

Embargoed Until 10:00 a.m. February 9, 2000

STATEMENT OF PAUL A. VOLCKER  
Chairman, Independent Committee of Eminent Persons  
before the  
COMMITTEE ON BANKING AND FINANCIAL SERVICES  
of the  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.

February 9, 2000

I appreciate this opportunity to appear before the Committee on Banking and Financial Services to inform you about the results of the investigation of accounts in Swiss banks of victims of Nazi persecution that was conducted by the Independent Committee of Eminent Persons ("ICEP"). I have been privileged to have been invited on two prior occasions to report on the progress of this investigation, once in December 1996 when the investigation was getting started, and again at the end of June of the following year when preliminary work had just been completed. Our investigation utilizing full scale on-site forensic audits of all relevant Swiss banks, was finished in the middle of last year. ICEP's Report and recommendations were made public on December 6, 1999, at a press conference held in Zurich, Switzerland.

The House Banking Committee has taken a major interest in the ICEP investigation as part of your broader focus on the financial and moral

consequences of the Nazi reign of terror in Europe. These efforts have, in turn, been part of an examination of World War II conduct encompassing the United States, as well as other countries. As you so clearly stated, Mr. Chairman, at the opening hearing in December 1996, the restitution of assets of victims of Nazi persecution is an issue of fundamental equity and justice.

In reporting on the results of the ICEP investigation today, I would like to take you through a series of charts that provide a detailed review of the ICEP Report. Before beginning this review, I will put things in context by briefly summarizing the findings of the report and evaluating the significance of these findings. Then I will conclude my initial remarks by describing the ICEP recommendations and the steps that are necessary to implement them.

The ICEP investigation was a remarkable project. It was initiated by an agreement between private parties, the Swiss Bankers Association and the World Jewish Restitution Organization (together with the World Jewish Congress and allied organizations) with the aim of getting to the bottom of the controversy that has surrounded this subject for so many years. The three members and two alternates from each of the two appointing groups then selected me to serve as their Chairman. Auditors from five of the

largest international accounting firms were mandated to carry out a comprehensive investigative strategy developed by ICEP. The strategy basically involved the establishment of a documentary record of the accounts in Swiss banks that were open or opened during the period from 1933 to 1945. This comprehensive record could then be examined to determine which of those accounts were "probably or possibly" opened by victims of Nazi persecution and the ultimate disposition of these accounts.

The auditors estimated that a total of 6.8 million accounts existed in Swiss banks during this period. Of this estimated total, some 4.1 million names of account holders and, in many cases, other relevant information, were identified. The end result of an elaborate filtering process was the determination that 54,000 accounts were identified as "probably or possibly" related to victims, a number many times as large as that emerging from previous Swiss investigations.

I emphasize the words "probably or possibly" because, except in a relatively few cases, after more than half a century, we were not able to identify with certainty an irrefutable relationship between victims and account holders. As explained in the charts forming a part of my presentation today, in the absence of sufficient personal data in the now available records to make positive identifications of account holders, we

used various forms of evidence to establish reasonable connections between account holders and victims of Nazi persecution. These connections warrant the evaluation of these accounts in a claims resolution process. About three-fifths of them had been closed under circumstances that deserve greater scrutiny in this process.

As another important task of the investigation, we examined and assessed the treatment of accounts of victims by Swiss banks. Intensive investigation by our auditors did not find general evidence of systematic destruction of records of victim accounts, organized discrimination against their accounts, or concerted efforts to divert the funds of victims to improper purposes.

Nevertheless, we did find confirmed evidence in individual banks of questionable and deceitful actions in the handling of the accounts of victims, including withholding of information from Holocaust victims or their heirs about their accounts, inappropriate closing of accounts, the failure to keep adequate records, many cases of insensitivity to efforts of victims or heirs of victims to claim dormant or closed accounts, and a general lack of diligence -- even active resistance -- in response to earlier private and official inquiries about dormant accounts.

When our work began, in this room there were some doubts stated

about our ability to get the job done. There was concern expressed about the lack of subpoena power, the structure and funding of ICEP, the scope of access to relevant documents, and about responsibility for reporting any impairment of access. I can now tell this Committee that the ICEP investigation was thorough, probing, and relentless in its search for relevant information.

I can also tell you that on the whole we had sufficient cooperation to allow us to do as complete a job as is now possible after sixty years. In most cases we found willing cooperation, including the large internationally active commercial banks. One measure of this cooperation can be found in concrete form in the full funding of the investigation by Swiss banks in an amount of about \$200 million. I particularly would like to express my appreciation for the cooperation extended by the Swiss Federal Banking Commission ("SFBC"), and its Chairman, Mr. Kurt Hauri, especially by designating our investigation as a "special audit" under Swiss banking law, underlining the clear official support for our effort. In concluding our Report, all members of ICEP expressed their confidence that this subject has now been fully investigated and analyzed. In that sense, ICEP's work is completed.

There is, however, still much that has to be done to satisfy legitimate

claims to dormant accounts in Swiss banks. The Claims Resolution Tribunal ("CRT"), which is supervised by a Board of Trustees composed of some of the members of ICEP including myself as Chairman, was established in 1997. Composed of seventeen distinguished arbitrators, the CRT is finishing its work on the 5,570 dormant accounts identified by Swiss banks in 1997 and prior years, and published at the urging of ICEP in 1997.

The work of resolving claims to the 54,000 accounts identified in the ICEP investigation, in fact of all claims of victims of Nazi persecution to accounts in Swiss banks, must now go forward promptly. ICEP has always proceeded on the assumption that the accounts identified in its investigation would be adjudicated in the CRT as an independent and impartial forum, and has proposed that the established CRT provide that forum.

ICEP has made important recommendations on how this should be done.

- The SFBC should promptly authorize consolidation of the existing but scattered auditor workpapers and databases (established during the ICEP investigation) relating to 4.1 million accounts open in the 1933-1945 period, and assembly of them into a central archive that can be used in a claims

resolution process;

- The SFBC should authorize publication of the names of holders of approximately 25,000 accounts having the highest probability of a relationship to victims of Nazi persecution.
- Any person with a claim to a dormant account of a victim, whether or not the name is published, should be provided facilities for resolving such claims through the CRT. Existing claims compiled by the New York State Holocaust Claims Processing Office and others should be matched against the centralized database of accounts, and resolved by the CRT; and
- To provide a fair return to victims (and their heirs), whose accounts became *de facto* illiquid, individual account values should be adjusted on the basis of long-term Swiss rates of interest, involving multiplying 1945 account values by 10 times.

The decisions on the centralized archive and on the publication of account names need to be taken promptly so that the claims resolution process can begin. Those who have waited so long for accounts to be identified should not have to endure a long wait for the commencement of claims adjudication. These decisions on archive centralization and



account publication are in the hands of the Swiss Government. We understand that a consultation process has begun and that a decision is scheduled for next month.

The precise role of the CRT in the resolution process has been a matter for discussion with the U.S. District Court overseeing the settlement of the class action suit against the Swiss banks brought in the United States. I believe there is a clear sense that the ICEP recommendations should be implemented. On that basis, plans are being made by the CRT for the mechanics of publication of account names, the preparation of claim forms, and the development of systems for the processing of these claims.

What remains is a decision on the funding of the CRT. While not specified in the original memorandum establishing the ICEP investigation, the thrust and spirit of the effort strongly suggests substantial Swiss bank participation in this funding. Clearly, the bottom line cannot finally be drawn under this entire problem until the claims resolution process is successfully completed, a matter, it seems to me, at least as important to Switzerland and the Swiss banking community as to any other interested party.

Finally, before beginning the chart presentation, I would like to note the close relationship between the work that needs to be done to adjudicate claims to individual accounts of victims of Nazi persecution in Swiss banks

and the class action settlement of Holocaust victims claims now being administered by Judge Edward R. Korman, U.S. District Court for the Eastern District of New York. The class action settlement sets the upper limit of \$1.25 billion on the liability of Swiss banks to Holocaust victims. Under the settlement, claimants to deposit accounts have a priority among the various classes of eligible beneficiaries of the settlement, and awards made by the CRT to claimants for deposits in Swiss banks will be deducted from the payments made by the defendant Swiss banks towards fulfilling their \$1.25 billion obligation.

In the judgment of ICEP, claims of victims or their heirs entitled to awards can be satisfied within the settlement amount agreed in the Court proceeding. However, the work of the CRT needs to be closely coordinated with the other elements of the administration of the settlement. To this end, we are working closely with Judge Korman, with the Special Master, Mr. Judah Gribetz, appointed by Judge Korman to develop a plan of distribution of the settlement, and with the Parties to the settlement.

# *Independent Committee of Eminent Persons*

## **Summary of Findings & Recommendations**

### *Membership*

*Chairman,  
Paul A. Volcker*

### *Appointed by Swiss Bankers Association*

*Dr. Curt Gastegger  
Dr. Peider Mengiardi  
Mr. Klaus Jacobi*

### *Alternates*

*Mr. Hans Baer  
Mr. René Rhinow*

### *Appointed by Jewish Organizations*

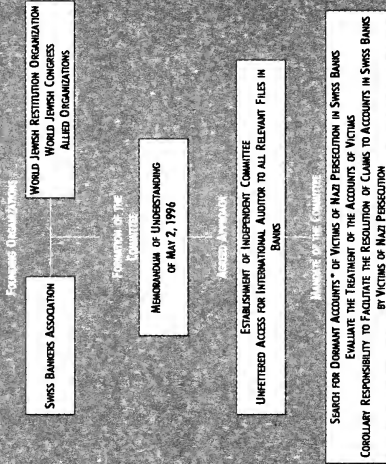
*Mr. Ronald Lauder  
Mr. Avraham Burg  
Mr. Ruben Beraja*

### *Alternates*

*Mr. Zvi Barak  
Mr. Israel Singer*

INDEPENDENT COMMITTEE OF BARRING PERSONS

# Organization of the Committee



\*For the purposes of this IICP investigation, "dormant accounts" is broadly defined to include, not only accounts that have not been active since 1945, but also accounts that closed long before that time but for the last time funds in the accounts are irretrievable, or because other third parties in the original deposits or their legal representatives.

Seite 2

# Background -- Past Searches for Dormant Accounts

- More than Fifty Years After World War II, the ICEP Investigation Reflects a Renewed Interest in Resolving Holocaust Related Issues
- In Particular, There Were Concerns About The Comprehensiveness of Previous Searches for Dormant Accounts
- The Following Table Summarizes These Searches:

| Year | Number of Accounts               | Value<br>(SFr. 000's) |
|------|----------------------------------|-----------------------|
| 1947 | unknown **                       | 48.2                  |
| 1956 | 86 **                            | 86.2                  |
| 1962 | 739 **                           | 6,219                 |
| 1995 | 775 **                           | 38,700                |
| 1997 | 5,570 foreign<br>74,496 domestic | 74,496<br>12,850      |

Note: ICEP has identified 53,886 accounts of probable or possible victims of Nazi persecutions.

\* Searches are not precisely comparable because of differences in search criteria

\*\* Vaguely Defined Accounts of Victims of Nazi Persecutions

## *Approach of ICEP*

- Retain Forensic Accountants (Eventually Five Major Firms)
- Achieve Full Access to Swiss Banking Records (Assisted by SFBC)
- Identify all Accounts in Swiss Banks in 1933-45 Period
- Match Account Names Against Lists of Victims of Nazi Persecution
- Use Other Forensic Techniques to Identify Victim Accounts

## Bank Coverage

- Of the Swiss Banks that Existed in 1945, 481 Still Exist Although Many Have Been Merged Into Other Surviving Banks
- ICEP Auditors Investigated 254 Banks that Existed in 1945 that are Now Incorporated into 59 Presently Existing Banks
- The Banks Investigated Represent 80% of On-Balance-Sheet Liabilities of Swiss Banks in 1945
- The Remaining 227 banks that existed in 1945 and that Continue to Exist Today are Mainly Small, Domestically Oriented Banks or Quasi Banks with Only Limited Contacts with Foreigners

*Accounts Coverage*

## ACCOUNTS COVERAGE

|                                    |            |
|------------------------------------|------------|
| ESTIMATED TOTAL ACCOUNTS 1933-1945 | 6,858,100  |
| ACCOUNTS WITH NO SURVIVING RECORDS | 2,758,000* |
| ACCOUNTS IN DATABASES              | 4,100,100  |
| PERCENTAGE OF COVERAGE             | 60%        |
| COVERAGE BY TYPE OF BANK           |            |
| LARGE COMMERCIAL                   | 72%        |
| CANTONAL                           | 48%        |
| PRIVATE                            | 83%        |

\* Absence of these records means that some Holocaust-related accounts are missing from review by the ICEP investigation. Most of these accounts, in in Cantonal Banks, have only returned to a domestic retail business.



# Preliminary Database Analysis

## PRELIMINARY DATABASE ANALYSIS

|                                   |             |
|-----------------------------------|-------------|
| ACCOUNTS IN DATABASE              | 4,100,100   |
| DOMESTIC ACCOUNTS                 | (1,850,400) |
| ACCOUNTS FOR MATCHING             | 2,249,700   |
| UNMATCHED ACCOUNTS                | (1,972,795) |
| ACCOUNTS MATCHED TO VICTIM LISTS* | 276,905     |

\* Victims Lists Obtained from Yad Vashem, the Israeli Holocaust Memorial, and from the U.S. Holocaust Museum.

# Accounts Researched

## ACCOUNTS RESEARCHED

|   |           |
|---|-----------|
| ACCOUNTS MATCHED  | 276,905   |
| OTHER ACCOUNTS SELECTED FOR RESEARCH                              | 76,491    |
| TOTAL MATCHED AND OTHER ACCOUNTS SELECTED FOR RESEARCH            | 353,396   |
| ACCOUNTS WITH NO IDENTIFIED RELATIONSHIP TO VICTIMS               | (299,510) |
| TOTAL ACCOUNTS WITH PROBABLE OR POSSIBLE RELATIONSHIPS TO VICTIMS | 53,886    |

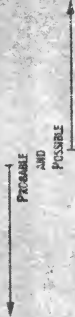
# *Accounts with No Identifiable Relationship to Victims*

## ACCOUNTS WITH NO IDENTIFIABLE RELATIONSHIP TO VICTIMS

| ACCOUNTS EXCLUDED  | NUMBER<br>OF ACCOUNTS |
|--|-----------------------|
| DETERMINED DOMESTIC THROUGH RESEARCH   | 117,898               |
| NOT OPEN IN THE RELEVANT PERIOD  | 60,090                |
| CLOSED TO AN AUTHORIZED PARTY  | 16,036                |
| ACTIVE AFTER 1945  | 26,283                |
| CLOSED BEFORE ABIS OCCUPATION OF THE RESIDENCE<br>OF THE ACCOUNT HOLDER            | 12,640                |
| ULTIMATE DISPOSITION UNKNOWN ACCOUNTS<br>(NOT MATCHED OR RESIDENT IN ABIS COUNTRY) | 56,873                |
| OTHERS EXCLUDED  | 9,740                 |

INDEPENDENT COMMITTEE OF EMMENT PERSONS

# Accounts Probably or Possibly Related to Victims of Nazi Persecution



|  |   |
|--|---|
| <p>CATEGORY 3</p> <p>ALIENED<br/>         CITY RESIDENCE<br/>         PROXIMA ACTIVITY</p> | <p>CATEGORY 4</p> <p>UNMATCHED<br/>         UNKNOWN RESIDENCE<br/>         UNKNOWN ACTIVITY</p> |
|--|---|

1171      296      1678      1046      12,205

Total Categories 1-4 = 53,865

Accounts Identified by Researcher

Stat. 10

# Accounts Probably or Possibly Related to Victims of Nazi Persecution

| Category 1   | Category 2  | Category 3  | Category 4   |
|--|---|---|--|
| <ul style="list-style-type: none"> <li>Foreign</li> </ul>  | <ul style="list-style-type: none"> <li>Foreign</li> <li>Resident in Axis Countries</li> </ul> | <ul style="list-style-type: none"> <li>Foreign</li> <li>Resident in Axis Countries</li> <li>Matched</li> <li>Unknown whether active after WWII</li> </ul> | <ul style="list-style-type: none"> <li>Foreign</li> <li>Residence Unknown</li> <li>Unmatched</li> <li>Unknown whether active after WWII</li> </ul> |
| <ul style="list-style-type: none"> <li>Matched</li> </ul>  | <ul style="list-style-type: none"> <li>Unmatched</li> </ul>                                   | <ul style="list-style-type: none"> <li>Matched</li> </ul>   | <ul style="list-style-type: none"> <li>Unmatched</li> </ul>  |
| <ul style="list-style-type: none"> <li>Inactive</li> </ul> | <ul style="list-style-type: none"> <li>Dormant for at least 10 years after WWII</li> </ul>    | <ul style="list-style-type: none"> <li>Unknown whether active after WWII</li> </ul>   | <ul style="list-style-type: none"> <li>Unknown whether active after WWII</li> </ul>  |

Note: Category 4 is comprised exclusively of accounts that were not eligible for public review by the Society because of the presence of information that could identify the individual.

*Classification of Accounts Probably or Possibly  
Related to Victims of Nazi Persecution*

|                               | Category 1 | Category 2 | Category 3 | Category 4 | Total  |
|-------------------------------|------------|------------|------------|------------|--------|
| Total                         | 3,191      | 7,280      | 30,692     | 12,723     | 53,886 |
| Open                          | 196        | 509        | 0          | 2,021      | 2,726  |
| Suspended                     | 1,088      | 1,184      | 0          | 9,908      | 12,180 |
| Closed                        | 1,907      | 5,587      | 30,692     | 794        | 38,980 |
| <i>Closed to Profit</i>       | 195        | 551        | 0          | 23*        | 983    |
| <i>Closed by Fees</i>         | 228        | 916        | 0          | 178        | 1,322  |
| <i>Paid to Nazis</i>          | 199        | 214        | 0          | 4          | 417    |
| <i>Closed Unknown by Whom</i> | 1,285      | 3,906      | 30,692     | 375        | 36,258 |

## *Probable or Possible Accounts of Victims of Nazi Persecution in Perspective*

- The Accounts Identified as "Probably or Possibly" Related to a Victim Vary Widely in the Degree of Probability Attached to Them, and There Is Now No Way of Determining the Number of Accounts That Will Be Claimed or That Will Be Recognized for Payment by the Claims Resolution Process.
- Identification of Accounts as Having a Probable or Possible Relationship to Victims of Nazi Persecution Means Only That a Sufficient Question Has Been Raised by the Facts and Circumstances Surrounding the Accounts to Warrant a Claims Resolution Process in order to determine more definitively whether the account holder was in fact a victim of Nazi persecution.

INDEPENDENT COMMITTEE OF EMINENT PERSONS

## *Evaluation of Banks' Conduct*

- The auditors have reported no evidence of systematic destruction of records of victim accounts, organized discrimination against the accounts of victims of Nazi persecution, or concerted efforts to divert the funds of victims of Nazi persecution to improper purposes.
- There is, however, confirmed evidence of questionable and deceitful actions by some individual banks in the handling of accounts of victims, including withholding of information from Holocaust victims or their heirs about their accounts, inappropriate closing of accounts, failure to keep adequate records, many cases of insensitivity to the efforts of victims or heirs of victims to claim dormant or closed accounts, and a general lack of diligence -- even active resistance -- in response to earlier private and official inquiries about dormant accounts.
- The Report discusses at length various factors influencing individual banks' behavior. These factors include the absence of a law defining the responsibility for the disposition of unclaimed accounts.



## *Possible Intermediaries & Potentially Looted Assets*

- A Difficult Area for the Investigation Involved Identifying the Accounts of Intermediaries Who Acted for Victims of Nazi Persecution. Similar difficulties were Encountered in Identifying Looted Assets.
- In the course of the investigation, some potentially looted assets were identified.
- Information that was Developed from Matching and Other Forensic Techniques on Possible Intermediaries of Holocaust Victims and on Potentially Looted Assets are being Made Available to the Bergier Commission.

## *Committee Recommendations*

Committee Recommendations cover:

- The Publication and Adjudication of Claims.
- Follow-up on the Identification of Potentially Looted Assets and Possible Accounts of Intermediaries Acting for Victims of Nazi Persecution, and
- The approach of the Swiss Government to Develop Legislation on Unclaimed Accounts, Together with a Clarification of the Law on Records Retention, is desirable.

## *Recommendations on Publication & Adjudication of Accounts*

- ① The Committee recommends that the Swiss Federal Banking Commission ("SFBC") promptly take steps to consolidate the existing but scattered accounts databases into a central archive. Adjudication of claims will require centralization and consolidation of the ICEP databases of accounts to identify meritorious claims.
- ② The Committee recommends that the SFBC authorize publication of the names of approximately 25,000 account holders in Categories 1, 2, and part of Category 3. These accounts have a higher probability of relationships to victims of Nazi persecution. This will allow victims or their heirs to identify more easily the accounts to which they have a valid claim based on plausible evidence.
- ③ The Committee recommends that any person with a valid claim to a dormant account of a victim, whether or not the name is published, should be provided facilities for submitting such a claim. Claims already submitted to ICEP, new claims submitted to the Claims Resolution Tribunal ("CRT"), claims filed with the Class Action Settlement, and claims from the New York State Holocaust Claims Processing Office should be matched against the centralized database of accounts and resolved, as appropriate, by the CRT.
- ④ To provide a fair return to victims (and their heirs), whose accounts became *de facto* illiquid, individual account values should be adjusted on the basis of long-term Swiss rates of return. This would involve multiplying 1945 account values by 10 times.
- ⑤ The present Claims Resolution Tribunal, created through the initiative of the Committee, is the recommended body for the adjudication of claims, taking advantage of their experience and using expedited procedures.

INDEPENDENT COMMITTEE OF EMINENT PERSONS

## *Concluding Comment -- Drawing a Bottom Line*

- The ICEP Investigation Can Be Justified by Only One Fact: The Need, at the End of the Century, to Bring a Sense of Justice and Closure to One Part of the Horrific Experience of the Holocaust.
- The Committee Is Satisfied That its Work Has Now Developed the Record of the Swiss Banks with Respect to the Funds of Victims of Nazi Persecution with as Much Detail, Objectivity, and Accuracy as the Passage of Time Allows.
- A Framework Can Be Established for Providing a Measure of Justice to Those Whose Claims Have for Too Long Been Denied.
- In That Sense, the Committee Believes this One Chapter in the Long and Sad Story of the Consequences of Nazi Brutality Can Be Drawn to a Close.

Israel Singer  
Secretary General, World Jewish Congress

Testimony Before the Committee on Banking and Financial Services  
U.S. House of Representatives  
2/09/00

Mr. Chairman,

It is a distinct honor once again to appear here and testify before this distinguished committee. It is also an opportunity to convey to you our deep sense of gratitude and, may I say, for you as well to take pride in the extraordinary achievements you have effected since your first hearings on this subject some three years ago.

You might recall at those initial hearings dealing with Swiss banks, not one survivor had yet received compensation and no humanitarian needs had yet been addressed. The proposal for a humanitarian fund which was made at that hearing was realized. Mr. Chairman, I can report to you today that nearly one quarter million Holocaust survivors have received funds as a direct result of your efforts; survivors in need from Argentina to Zimbabwe, from Iowa to Israel. It is a lasting tribute to you and this Committee. Thank you, Mr. Chairman.

The larger Swiss bank settlement as you know is in the final stages of completion before the federal court in Brooklyn and the distribution of the \$1.25 billion fund is on track for later this year.

But as we have repeatedly said, the importance of financial restitution must not overshadow the priority of moral restitution - the honest confrontation and accounting of the past. In the case of Switzerland the dramatic revelations on Swiss refugee policy as enunciated by the Bergier Commission is the explicit expression of the obligation to seek historical truth.

Indeed the current world outrage directed at Austria because of Mr. Haider is, in our view, largely attributable to the moral tone that this committee has striven so successfully to inject into the discourse of world affairs and expectations of international conduct. I doubt very much if the Haider phenomenon would have elicited such universal condemnation just a few short years ago; that is, before the work of this Committee and so many others came to bear on world consciousness.

There is much yet to be done in Austria in so far as Holocaust-era assets are concerned. The recent settlement with Bank Austria was limited to that institution, and did not encompass the larger remaining claims against the Austrian government and Austrian industry. That settlement, however, demonstrated once more our insistence that the moral component must be addressed. Bank Austria not only made financial redress but also issued a statement of apology and responsibility for its actions during the Holocaust period.

So too in Germany we have seen an honorable expression of moral restitution. From the president of Germany, words of apology and the desire for forgiveness were expressed coincident with the creation of the 10 billion deutschemark foundation. Although, there are still difficult weeks of negotiation to finalize the terms of the foundation - and we should be wary that we have yet to succeed - the words of the German president must be understood as a powerful reaffirmation that this is a process whose centerpiece is not money but rather historical justice.

Tomorrow you will hear from Secretary Eagleburger on the painstaking efforts that are being made with respect to insurance claims. Let me express our unqualified support for the International Commission on Holocaust-Era Insurance Claims and the onerous responsibilities they have assumed. With all the difficulties - and there continues to be great difficulties - we wish to commend those insurance companies that are members of the Commission and are seeking to work things through.

Conversely, those insurance companies and particularly the Dutch insurers who have refused to join are displaying rank insensitivity to the memory of those who were victimized. When we say Dutch insurers it touches us also here in the United States as, for instance, the case of Aegon which owns the Transamerica insurance company. Globalization of industry has given Dutch insurers a wonderful market here in the United States. But in refusing to join the International Commission, they have not adopted global standards of behavior.

We appeal to our public officials to send a message to a company like Aegon. We should make it clear that their continued expansion into the United States market is an affront while they refuse to deal honestly with the responsibilities arising from the Holocaust era.

Make no mistake about it. The record of Holland during the Holocaust is sharply at odds with the popular conception. Holland had the worst record in Western Europe during the Holocaust - some 80% of its Jewish population was murdered. They were handed over by Dutch police. The Dutch were not the Danish.

The perception of Holland has been colored by the tragic Anne Frank story. But Anne Frank who was betrayed and died in a Nazi concentration camp had her furniture in the hidden annex removed by a Dutch moving company. So the failure of Aegon and the Dutch insurance companies is clearly bound up in the unwillingness to face the past - a failure of moral restitution.

Mr. Chairman, allow me to conclude with a specific proposal. This, the last of these hearings have had an extraordinary impact. I am sure you agree therefore that the issue must continue to be pursued. May I therefore suggest that this committee consider issuing continuing progress reports - say at six month intervals - so that the public at large remains informed and that the institutions involved knows that they are still held accountable. This we believe would not only produce practical results but can serve as a lasting legacy of this committee's work.

Mr. Chairman, again let me express my thanks to you and the committee and with your permission I wish to be able to call on you in the future to help shape a world in which decency and fairness prevail.



Testimony of  
Gideon Taylor, Executive Vice-President of the  
Conference of Jewish Material Claims Against Germany to the  
Banking and Financial Services Committee of the  
US House of Representatives

February 9, 2000

On behalf of the Claims Conference I would like to thank you for the opportunity to update you on the developments during the last few months relating to the negotiations with German banks and industry within the framework of the German Foundation Initiative and the discussions with certain European insurers within the framework of the International Commission on Holocaust Era Insurance Claims.

The Claims Conference, comprising twenty-three Jewish organizations, including the American Gathering of Holocaust survivors, represented today by one of the members of the negotiating delegation of the Claims Conference, Roman Kent, and the Centre of Organization of Holocaust Survivors in Israel, has participated in negotiations with the German Government on issues of restitution since the 1950s. After the announcement of the establishment of the Foundation in February last year, the Claims Conference continued its traditional role as the party negotiating on behalf of the Jewish side with the German Government and German Industry. We work very closely with the State of Israel and we note the presence of Avraham Hirschson, Chairman of the Knesset Committee on Property Restitution who has been a most significant figure in this effort. After many months of negotiations, the Claims Conference welcomed the announcement in Berlin on December 17, 1999 that German Industry had agreed to contribute DM 5 Billion and that the German Government had agreed to contribute DM 5 Billion to the German Foundation Initiative, as a long overdue measure of justice for holocaust survivors.

We are most grateful to Deputy Secretary Stuart Eizenstat and Graf Otto Lambsdorff for the way in which they have led the negotiations regarding the Foundation.

Undoubtedly, the most significant and moving aspect of the ceremony in Berlin on 17 December 1999 was the apology of President Rau on behalf of German people quoted earlier today.

However, the generalized announcement in Berlin left many significant issues unresolved. In welcoming this announcement, the Jewish participants had already made many difficult decisions and agreed to many compromises. We have numerous concerns about the form of the final agreement and hope that the agreement will be on which reflects the fundamental principles on which we have negotiated. In particular, slave laborers must receive a dignified payment from the German Foundation Initiative and just as significant, the issue of the responsibility of the banks for their participation in the aryanization of Jewish property **must** be seriously and appropriately addressed by the Foundation.

During the last six weeks, there has been much discussion on the draft legislation to be presented to the German Parliament to implement the German Foundation Initiative. We have been in constant communication with the German Government and the United States Government and we very much hope that the final version of the legislation that emerges will be reflective of our concerns.

We are particularly concerned to ensure that the major details of how the Foundation will operate be spelled out clearly in the legislation and not left to be resolved in the future. We believe that such clarity is most important if the Foundation is to succeed.

In this regard, we strongly believe that the unique role of slave laborers – those who suffered

unimaginable horrors in concentration camps and ghettos – must be appropriately recognized by the Foundation.

The "Vernichtung Durch Arbeit" or "Destruction Through Work" program of the Nazis was truly horrific. Those who were subject to it have been described as "slave laborers" but in reality the goal of the Nazis was their destruction as much as it was the use of their labor.

The structure and details of the Foundation must reflect such terrible history. It should be noted, Mr. Chairman, that the overwhelming majority of the funds of the Foundation will go to non-Jewish persons who were forced to work – either as slave laborers or forced laborers. On February 16, 1999, when German Chancellor Gerhard Schröder announced the establishment of the German Foundation Initiative he specifically stated that the purpose of the Foundation was "to meet the moral responsibilities of German companies" – including German banks – "arising from the use of forced labor, [A]ryanization and other grave injustices committed under the National Socialist dictatorship." "Aryanization" was the Nazi program of the confiscation of assets of Jews. The inclusion of an Aryanization "window" in the Foundation was a direct consequence of the discussions between the Claims Conference and various German Banks regarding the Banks' responsibility for their participation in the Aryanization of Jewish property. These discussions were suspended as a result of the Banks participation in the Foundation.

It is an established, historical fact that the Banks profited from Nazi racial programs through their active involvement in the Aryanization process – this fact was established and documented in the Omgus Report of the U.S. Military Government published in 1946.

We believe that the amount allocated to this section of the Foundation should reflect the magnitude of the moral and financial culpability of the Banks.

We believe that the aryanization component of the Foundation should have one section to enable individual claimants to make claims as well as a second major section which will be to benefit the neediest Nazi victims on a humanitarian basis. This latter section will benefit the very many persons who, because of the unique circumstances of the Holocaust, have no documentation of their claims or are unaware that they might have a claim. This humanitarian section would also acknowledge the fact that many of those who might have had claims relating to the role of the Banks in the Aryanization of Jewish property perished in the Holocaust.

Once again, if the Foundation is to succeed, it must be reflective of the historical realities of that terrible period.

Regarding insurance, we welcome the launch of the Claims Process of the International Commission of Holocaust Era Insurance Claims scheduled for next week. We participated actively in the work of the International Commission and we pay tribute to the role of Chairman Larry Eagleburger in overseeing the process.

A number of outstanding issues remain to be resolved. For example, some doubt has been cast on the willingness of insurance companies to take responsibility for claims for policies issued by their subsidiaries. We hope that issues such as these will be resolved rapidly.

We are most concerned about insurance companies – both German companies and others – which have NOT joined the International Commission. We would urge this Committee to take all steps possible to encourage them to do so. We appreciate the commitment of the State insurance regulators to press these companies. We believe that the International Commission process is one which will ensure that lists of unpaid policies are published and that legitimate claims are paid in an open and transparent manner with access to an independent appeals panel.

We also believe that the relationship between the German Foundation Initiative and the International Commission on Holocaust Era Insurance Claims needs to be resolved in a way which appropriately reflects the understandings so far and the proper financial responsibilities of each. Agreement has not been reached on this matter.

Although much has been achieved in the areas of the German Foundation Initiative, the International Commission on Holocaust Era Insurance Claims, and during other restitution negotiations, the path before us is nevertheless long and time is not our friend. We not only want to see a measure of justice achieved – but we want those who suffered indescribable horrors to be alive to see that a new generation in a new century has not forgotten them.

TESTIMONY OF  
UNITED STATES HOLOCAUST MEMORIAL COUNCIL CHAIRMAN  
MILES LERMAN

Before the  
HOUSE COMMITTEE ON BANKING AND FINANCIAL SERVICES

on Issues Related to the Restitution of Nazi-Looted Assets

February 9, 2000

Mr. Chairman:

I have recently returned from Sweden, where I co-chaired the U.S. delegation to the Stockholm International Forum on the Holocaust. This was an absolutely unprecedented gathering of representatives from 48 countries and several intergovernmental organizations to discuss means of further Holocaust education, remembrance, and research. The heads of state or government of 21 countries participated. All the representatives of governments at the Stockholm International Forum declared the importance of the lessons of the Holocaust for contemporary society. They pledged to promote Holocaust education and remembrance, including an annual Day of Holocaust Remembrance in their countries, and to facilitate the opening of archives in order to ensure that all documents related to the Holocaust are available to researchers. Countries pledged to work cooperatively with the intergovernmental Task Force for International Cooperation on Holocaust Education, Remembrance, and Research in which U.S. government participation is led by the Department of State and the United States Holocaust Memorial Museum. I have included a copy of the formal Declaration of the Forum and a description of the Task Force with my written statement.

There are many reasons why so many countries on such high levels participated in this unprecedented gathering: concern over the growth of neo-Nazism; public opinion polls showing that young people in some countries know little of this history; the events in Bosnia, Kosovo, Rwanda, East Timor, and elsewhere; concern for human rights; the hopes for the new century and new millenium; and other factors, not the least of which is the early vision of the United States government in establishing the United States Holocaust Memorial Museum.

Much of the push towards greater efforts worldwide in Holocaust education, remembrance, and research has been the indirect result of the activities of this Committee on Banking and Financial Services of the U.S. House of Representatives in particular and of the United States government generally concerning Holocaust-era assets. As a result of this Committee's investigation into the question of bank accounts in Switzerland and the expansion of that inquiry in the Congress and under the guidance of Deputy Secretary Stuart Eizenstat to encompass insurance, real property, art, and forced and slave labor, attention has been focused as never before not only on the need for financial restitution to survivors but also on the great need for the world to understand the tragic history of the Holocaust. Perhaps even more important ultimately than this Committee's outstanding work regarding the assets themselves has been the way in which governments and the general public have come to understand the need to know the truth concerning the Holocaust, however painful it may be.

The efforts of this Committee have also spawned an entire new area of research. Previously, scholarship on the Holocaust concerned itself primarily with the murder. There was relatively little work on the tremendous theft that accompanied it. Because of the need during the past few years to examine bank, insurance, and other corporate records a younger generation of scholars has developed expertise on the economics of the Holocaust.

The last word on the Holocaust must not, however, be money. Ultimately the issues discussed by this Committee are about memory and justice. And planting the seeds of a better future. I urge the Committee to pursue its inquiries until they are fully settled, but to continue your efforts with the understanding, that I know you have, that what you are really examining is historical truth and humanity's aspirations for a better tomorrow.

Thank you.

## Declaration of the Stockholm International Forum on the Holocaust

We, High Representatives of Governments at the Stockholm International Forum on the Holocaust, declare that:

**1. The Holocaust (Shoah) fundamentally** challenged the foundations of civilization. The unprecedented character of the Holocaust will always hold universal meaning. After half a century, it remains an event close enough in time that survivors can still bear witness to the horrors that engulfed the Jewish people. The terrible suffering of the many millions of other victims of the Nazis has left an indelible scar across Europe as well.

**2. The magnitude of the Holocaust,** planned and carried out by the Nazis, must be forever seared in our collective memory. The selfless sacrifices of those who defied the Nazis, and sometimes gave their own lives to protect or rescue the Holocaust's victims, must also be inscribed in our hearts. The depths of that horror, and the heights of their heroism, can be touchstones in our understanding of the human capacity for evil and for good.

**3. With humanity still scarred** by genocide, ethnic cleansing, racism, anti-semitism and xenophobia, the international community shares a solemn responsibility to fight those evils. Together we must uphold the terrible truth of the Holocaust against those who deny it. We must strengthen the moral commitment of our peoples, and the political commitment of our governments, to ensure that future generations can understand the causes of the Holocaust and reflect upon its consequences.

**4. We pledge to strengthen** our efforts to promote education, remembrance and research about the Holocaust, both in those of our countries that have already done much and those that choose to join this effort.

**5. We share a commitment** to encourage the study of the Holocaust in all its dimensions. We will promote education about the Holocaust in our schools and universities, in our communities and encourage it in other institutions.

**6. We share a commitment** to commemorate the victims of the Holocaust and to honour those who stood against it. We will encourage appropriate forms of Holocaust remembrance, including an annual Day of Holocaust Remembrance, in our countries.

**7. We share a commitment** to throw light on the still obscured shadows of the Holocaust. We will take all necessary steps to facilitate the opening of archives in order to ensure that all documents bearing on the Holocaust are available to researchers.

**8. It is appropriate** that this, the first major international conference of the new millennium, declares its commitment to plant the seeds of a better future amidst the soil of a bitter past. We empathize with the victims' suffering and draw inspiration from their struggle. Our commitment must be to remember the victims who perished, respect the survivors still with us, and reaffirm humanity's common aspiration for mutual understanding and justice.



The Stockholm  
International Forum  
on the Holocaust

A conference of the  
International Holocaust  
Remembrance Foundation

20-24 January 2000

TASK FORCE FOR  
INTERNATIONAL COOPERATION  
ON HOLOCAUST EDUCATION,  
REMEMBRANCE, AND RESEARCH

In the spring of 1998 the Task Force for International Cooperation on Holocaust Education, Remembrance and Research was initiated by the Swedish Prime Minister Göran Persson. The working group consists of personal representatives of heads of state and government. A total of nine countries are represented on the Task Force: France, Germany, Israel, Italy, The Netherlands, Poland, Sweden, United Kingdom and USA. Professor Yehuda Bauer, head of the Yad Vashem Institute in Jerusalem, is the Task Force's independent advisor.

The group's purpose is to place politicians' and social leaders' support behind the need for Holocaust education, research and remembrance. One means of doing so is through collaboration with experts and non-governmental organizations in the field.

Countries that have not intensively developed Holocaust education programs and those wishing to develop their existing information materials and education are invited to cooperate with the Task Force. To this end "liaison projects" can be established with countries for long-term co-operation. The first liaison project, with the Czech Republic, started during the summer 1999. Within the project's framework, Czech teachers have visited the Anne Frank Foundation in Amsterdam, the United States Holocaust Memorial Museum in Washington DC and the Yad Vashem Institute in Jerusalem. The Czech teachers and teacher trainers have been informed of various approaches to Holocaust teaching. Pilot seminars for some 40 teacher trainers will be arranged by the Czech Terezin Museum (the former Theresienstadt concentration camp) in cooperation with experts from Task Force countries.

At the Task Force meeting in Jerusalem in October 1999, it was emphasized that the experience of cooperation with the Czech Republic could serve as a model for future work in other countries.

The Task Force identified as one of its first priorities the development of an International Directory of Holocaust education, remembrance, and research efforts currently underway worldwide. The Directory provides basic information on over 1000 institutions throughout the world concerned with Holocaust education broadly defined. In an electronic searchable version that is regularly updated, the directory is made available on the web site of the Task Force [<http://taskforce.ushmm.gov>]. The Task Force has also placed suggested education guidelines on that web site.

The governments comprising the Task Force agree on the importance of encouraging all archives, both public and private, to make their holdings more widely accessible. This will facilitate further research and encourage greater understanding of the Holocaust and its historical context.

The Task Force also encourages appropriate forms of Holocaust remembrance, including an annual Day of Holocaust Remembrance, in each country and internationally.

Task Force countries:

France  
Germany  
Israel  
Italy  
The Netherlands  
Poland  
Sweden  
United Kingdom  
USA



Miles Lerman, Chairman  
 United States Holocaust Memorial Council

March 8, 2000

The Honorable Jim Leach  
 Chairman, House Committee on Banking  
 and Financial Services  
 2129 Rayburn House Office Building  
 Washington, DC 20515

Dear ~~Mr. Leach~~, *Jim*

Thank you very much for inviting me to testify before the House Banking and Financial Services Committee on February 9. I appreciated the opportunity to speak to the Committee about the United States Holocaust Memorial Museum's vital mission of Holocaust education and remembrance.

I would like to follow up on a question you raised during my testimony in which you inquired into whether the Museum had ever sponsored or had planned to sponsor an exhibition on degenerate art. Please allow me to provide you with more information.

In February 1991 a major exhibition opened at the Los Angeles County Museum entitled "Degenerate Art: The Fate of the Avant-Garde in Nazi Germany," curated by Stephanie Barron. After a six-month run in Los Angeles the exhibition traveled to Washington, DC where it was on display at the Smithsonian Institution's S. Dillon Ripley Center from October 1991 to January 1992. Although the United States Holocaust Memorial Museum was still under construction, we did co-sponsor an all-day educational program for the public during the exhibition's run in Washington. The program explored the extraordinary cultural explosion in Germany in the 1930s, and the fate of free expression during the cultural purges of the Nazi dictatorship. The exhibit was groundbreaking and widely reviewed. In addition to being seen at other venues, the exhibition also included the publication of a highly regarded catalogue.

Because a major exhibition on this topic has already been done and because the Museum's exhibition schedule is complete through 2008, we would not be in a position to consider this topic for exhibition purposes at this time. We will keep your interest in mind and naturally will inform you of programs or new developments in connection with this topic.

I hope this information is helpful. Please feel free to contact me if I may be of further service.

Sincerely,

A handwritten signature in black ink, appearing to read "Miles Lerman".

Miles Lerman





Rabbi Andrew Baker  
Director of European Affairs  
The American Jewish Committee

Testimony Before  
The United States House of Representatives  
Committee on Banking and Financial Services  
February 9, 2000

Mr. Chairman, Members of the Committee, thank you for this opportunity to appear before you this afternoon.

The efforts in these past few years to identify and recover Holocaust-era assets have been quite remarkable. Questions concerning looted Nazi gold, stolen art, dormant bank accounts, unpaid life insurance policies and long-rejected claims for forced and slave labor have all been addressed and appear to be on the way to resolution. Surely, no observer or participant to these developments imagines that this could have been possible without the active interest and intervention of the United States government.

At the same time, significant problems still remain in each of these areas, and delays and new stumbling blocks have increased frustrations.

The court-certified settlement in the matter of Swiss banks has promised the possibility of additional help and benefits to Holocaust survivors beyond those with claims to actual accounts. But the process of uncovering these accounts has been a difficult one, and recent disclosures of new lists will delay further any final determination of how much money can be allocated to survivors and possibly even the distribution itself. The inability of parties to the agreement to reach a common understanding on distribution at the time has already added months of delay.

The creation of an international commission to resolve Holocaust-era insurance claims was thought to offer a collaborative means of joining companies, regulators and victims' representatives to find a swift and equitable solution. Former Secretary of State Lawrence Eagleburger deserves much credit for his work as chairman, but he presides over a divisive and argumentative process where progress is now measured in small, small steps, and the number of participating insurance companies is decreasing rather than growing.

A year ago this month a representative of the German Chancellor announced that within ninety days a fund would be established to make payments to former slave and forced laborers. After much difficulty, but before the end of this past calendar year, an agreement was announced for a total payment of 10 billion DM (\$5.3 billion), and Deputy Treasury Secretary Stuart Eizenstat should be recognized for shepherding this

very difficult negotiation toward a final settlement. But, there are several different claims which must be satisfied by this total sum, and the actual payments to individuals as well as the number and categories of forced laborers to be covered still remain to be decided.

People who are involved in these various negotiations have worked tirelessly, and no one would dispute that a whole host of details must be completed before such complicated final settlements are put in place. But the news of these various agreements has often been trumpeted long before claimants or survivors are able to see any tangible result. Naturally, it has produced frustration and increased suspicion on their part.

Now we are about to face a new set of questions and problems. How will we divide and how will we distribute these funds? I am not speaking of those cases such as a bank account or an insurance policy or a work of art where there is an identifiable heir or claimant. Rather, it is where we will have humanitarian funds as compensation for heirless or unclaimed assets or where we will have lump sum payments for large numbers of victims. Even among the most severe victims of the Holocaust, it is not easy to determine an equitable system of distribution or even to know if such a system is possible. Do we consider the experience and suffering during the war as the major factor? Do we take into account the financial needs and conditions at the present time? Can we find ways to approach fairly the very different situations today in which Holocaust survivors live in Israel, in America, and in Eastern Europe and the states of the former Soviet Union?

Add to this the fact that, at least in the current slave and forced labor negotiations, we have expanded the group of victims to be addressed. It will include people who surely suffered during the war, but in the main were not concentration camp inmates nor, like Jewish victims, targets for extermination. Justice is served by addressing the claims of these victims, too. But, we must now contend with an overall settlement that virtually pits victim groups against each other to fight for their share of a fixed amount.

Even as these problems demand answers, we should keep in mind some larger, more long-term questions. Throughout these months, many people have spoken eloquently and repeatedly about the lasting legacy of these asset debates. We have been reminded that they must not be viewed as only matters of money, but rather of justice, of morality, of history, of education. Yet, I fear that when we look at these things--at the still tangled, unfinished business of the Holocaust--we address each important issue in isolation from the next. It is as though the recovery of stolen assets, the pursuit of Nazi war criminals, the advancement of Holocaust education and research, the revival of Jewish life in Central and Eastern Europe, and the dynamics of the current bilateral relations with the countries affected are all separate. In fact, the truth is quite the opposite, and we need to find ways to see that they are connected and able to re-enforce each other in positive ways.

For many years and continuing to the present day, the Conference on Jewish Material Claims Against Germany has conducted direct negotiations with the German government on behalf of Jewish Holocaust survivors. However, recent developments have now

grouped the Claims Conference together with the representatives of other, non-Jewish Nazi victims. The experiences of these victims during the war and the Holocaust were very different, and they do not see each other as having shared grievances or the solidarity of a common suffering.

But, the representatives of Jewish victims do recognize that there is merit in the others' claims, even as they resist efforts that set these claims against each other. In the end, I believe it is important for both moral and practical reasons that the many non-Jewish victims of Nazi forced labor and their respective governments will come to recognize that Jewish representatives shared and helped advance their efforts for redress, too. Many of the most needy of Jewish Holocaust survivors live among the remnant communities of Central and Eastern Europe and in the former Soviet Union. The way in which these negotiations play out can either serve to ameliorate the relationships between these Jewish survivors and their neighbors and governments or serve to increase tensions and heighten resentment.

Great emphasis has been placed on the importance of Holocaust education, and last month's Stockholm International Forum on the Holocaust was an unprecedented step to encourage government involvement in dozens of countries. Quite obviously, an understanding of the Holocaust in all its dimensions should contribute to a better understanding and appreciation for these efforts to recover looted assets, even as it makes evident that money was only a small part of the story. But, it should be pursued in such a way that the study of the Holocaust--particularly in the former Communist bloc countries--will foster the introspection and self-examination that was impossible before 1989. With prodding from the West, several of these countries have created National Historical Commissions to investigate the events of the Holocaust on their own territories. Now we need to find the financial means to help them undertake the research and archival work, which may, in many cases, take them to the U.S. Holocaust Memorial Museum here or to Yad Vashem in Jerusalem. But, in doing this, let us also find ways to help educate a new generation of scholars, by creating opportunities for young researchers and interns from Poland, from Latvia, from Lithuania, and from elsewhere in Eastern Europe to be involved in these efforts. At the end, there should be not only completed reports, but teachers, as well.

And the issue of education should not focus exclusively on the twelve years of the Holocaust. During the past eighteen months, the American Jewish Committee has conducted a review and analysis of secondary school textbooks in seven Central and Eastern European countries. Even where the subject is addressed, all too often the centuries-long history of Jewish life in these countries is virtually absent. Thus, it is as though Jews appear on the landscape only to be deported and exterminated by the Nazis. Correcting this omission is important for several reasons. It will inform new, post-Communist generations of students that their own national histories are intertwined with Jewish history, and it will strengthen the efforts of remnant communities as they seek to revive Jewish life and recapture their own histories.

And the revival of Jewish life in this part of the world is one of the miracles we have witnessed. Despite very limited resources, small numbers, resurgent anti-Semitism, and the internal disputes that seem to accompany all Jewish communities, they are actively engaged in the process of rebuilding. They need help in caring for their aged and indigent--the majority of whom are Holocaust survivors--and these negotiated settlements should bring welcome relief. But, they also need help in educating their children, even as they educate themselves to make up for the decades when such Jewish learning was not possible. Help for this, too, should come from these agreements. As I remarked the last time I was invited before this Committee, the Jewish communities themselves are also "survivors."

Mr. Chairman, in these last half-dozen years, I have had the opportunity to travel frequently to the countries of Central and Eastern Europe. In every place there are those who would minimize the Holocaust, who view Jews past and present with distrust and suspicion, whose own sense of being a victim of the Soviet horrors cannot permit an acknowledgment that their own countrymen might have collaborated in Nazi crimes. Encounters with these people can be a chilling and depressing experience.

But, it is equally true that in all of these places there are also people--mostly young and idealistic--who hold different views. They tend to the care of abandoned Jewish cemeteries. They dig through long-forgotten local archives to retrieve pictures and documents of pre-war Jewish life. They organize seminars on teaching the Holocaust. They monitor newspapers and television broadcasts for anti-Semitic and racist expressions. They want to know their country's past, and, in particular, its Jewish past. They want to link their country's future with the civic and pluralist values of the West.

Quite frankly, I think this second group is much smaller than the first. But, I believe and I hope in their future. Who will be the ones to preserve the legacy of the Holocaust in Central and Eastern Europe, if not they? The local Jewish communities are too few, and we are too far away. These are the people whose eyes have been open to the possibilities and responsibilities of building a new society on the values we also cherish. You know them. They are the people who came here on government study visits, who staff the Open Society Foundations, who have created Atlantic Councils and advocated for NATO membership and human rights. Some of them even sit around the negotiating tables. In our efforts to recover Holocaust assets and preserve Holocaust memory, they are not our adversaries. They should not be our competitors. They need to be our partners.

Thank you.

## Statement of the Netherlands Government

### Hearing on Restitution of Holocaust Assets

February 9 and 10, 2000

Committee on Banking and Financial Services.

#### Introduction

During the German occupation of the Netherlands (May 1940 - May 1945), the occupying forces not only persecuted Jews and other groups in the Dutch society but also robbed them of their property. After the German capitulation in 1945, all the measures the Germans had instituted during the occupation were annulled and restitution of legal rights began. The Netherlands government in exile in London had already established a **Council for the Restitution of Legal Rights** with the aim of returning the property of the dispossessed. The Council was installed in August 1945. The restitution of legal rights in the Netherlands went on until the late 1960s.

In the 1970s the Netherlands government passed legislation designed to compensate Holocaust victims and persecutes. This led to an internationally unparalleled **income support programme for Dutch Holocaust survivors** throughout the world. Among them fourteen hundred survivors residing in the United States receive support through this programme.

In 1997 The Netherlands received 22.5 million guilders (USD 11 million) from the **fourth tranche of the gold pool**. This money is made available to the Dutch jewish community for projects in the field of health care and other social services and for educational and cultural projects. The Netherlands government contributed another 20 million guilders (USD 10 million) to the international Nazi Persecutee Relief Fund. 10 million guilders (USD 5 million) have been earmarked for projects for Dutch war victims in Israel and 10 million (USD 5 million) are being spent on jewish projects in Central and Eastern Europe. An independent board advises the Minister of Health, Welfare and Sports on the allocation of these funds.

#### Committees examining the restitution of World War II assets

In 1997 and 1998 five independent committees were established in the Netherlands to investigate various aspects of the restitution of assets and property. Most of these committees have by now published their reports. The Netherlands government is now in the process of preparing its position on the conclusions and recommendations in the various reports.

In 1998 **the Kordes Committee** issued a report on its investigation into movable property. The committee was for the

most part positive about the restoration of legal rights after the war. The process of restitution was thorough and precise and great effort went into it. However the committee did come to the conclusion that the Netherlands government could have shown greater sympathy for the needs of the jewish community after the war. On the basis of a recommendation by the committee the Netherlands government has decided to carry out a large scale historical study of World War II reception of victims in the Netherlands. This study is being carried out by an independent study group and will be completed in 2001.

**The Scholten Committee** investigated financial assets held in the Netherlands and examined the role of insurance companies, banks and government and particularly the structure of the post war restitution process. It issued its report at the end of december 1999.

With respect to the restitution of insurance policies, no serious failures were identified. The general opinion of the committee was that the redress in insurance was successful. The same goes for banking where no credit-balances were found. The committee recommended nevertheless that the Dutch Association of Insurers and others should make a substantial contribution to the jewish community. The insurers should offer redress in two areas: the cases where policy-holders had died during the occupation and no heirs claiming the value of the policies, and incomplete restitution of rights with regard to funeral insurances. In the meantime the Dutch Association of Insurers reached an agreement with the Dutch jewish community covering both outstanding or future claims, as well as additional funds for the jewish community for policies which are not claimed. The Dutch association of Insurers has made 50 million guilders (approximately USD 25 million) available. To calculate the present value of the unpaid policies a factor of twenty-two is used. 20 million guilders (USD 10 million) for individual payments to title holders of the policies and 25 million guilders (USD 12.5 million) are earmarked for objectives to be determined by the Jewish community in the Netherlands. An additional 5 million guilders (USD 2.5 million) will be provided to the project to create an "internet-monument" to the Jewish community.

The Netherlands banking Association is discussing at present a similar agreement with the jewish community. The committee is critical with respect to the role of the dutch Stockbrokers Association during and immediately after the war. The redress after the war may ultimately have been satisfactory in material, but the manner in which the redress took place was not always consistent with the basic tenets of the legal system in the Netherlands. The committee recommended that the successor to the Association should offer redress to the jewish community. This is now subject of discussion between the parties concerned.

**The van Galen Committee**, established by the Minister of Health, Welfare and Sport, has investigated bank accounts and insurance assets owned by private individuals in the former Dutch East Indies, which were occupied by Japan during the war

and the restitution of rights to these financial assets and any other confiscated property to Dutch individuals. The report was made public in January 2000. The committee concluded that the Second World War and the Japanese occupation of the Dutch East Indies did not result in loss of bank accounts and insurance assets. However, the committee found that measures of post-war governments made it difficult for owners to regain power of disposal to their accounts or insurance assets. This led to problems after their return to the Netherlands or emigration to other countries. Restoration of legal rights and other rehabilitation measures provided solace, but not a remedy in all cases.

**The Ekkart Committee** is investigating the provenance of works lost in the war that have come into the possession of the State of the Netherlands since that time on the grounds that no title-holders could be located. The investigation focusses mainly on tracing the original owners or their heirs of the looted works. The committee will issue its final report in 2002 and is issuing interim reports on a regular basis.

**The van Kemenade Committee** examined developments outside the Netherlands with the aim of filing Dutch claims to World War II related assets in other countries. In addition the committee gave an overall view on the looting and the later restitution of legal rights, following on to the reports of the Kordes- and Scholten Committees. The report was made public at the end of January 2000.

The principal findings of that investigation are that the then government carefully planned and organized the restoration of rights, but that the implementation, certainly in the beginning, was wanting in terms of organization. The restoration of rights was extremely time consuming and engulfed in legal and administrative red tape. The concerned individuals were often left in uncertainty for many years. They found the system painful and lacking in understanding and compassion for their suffering.

Moreover particularly in respect of the restoration of securities rights by the securities trade and by the government itself, the restitution process had various serious shortcomings and faults. The victims may ultimately not have suffered any adverse financial consequences but they were nevertheless treated unfairly and in many cases did not recover their rights until far later than possible or necessary.

The committee further investigated the extent of the theft and the restitution of the property of Jews in the Netherlands. The report's main conclusions are that the relevant basic material is of such quality that it is hardly possible to make reliable statements about the extent of the theft and of the restitution, let alone about any difference between the two.

The Committee has drawn the following main conclusions:  
 - At the time, society and the government had insufficiently woken up to the horrors inflicted on the Jews, and the

necessity, for this reason alone, to come to a swift and efficient restoration of rights;

- The restoration of rights, with the exception of the restoration of securities rights, has generally been lawful and painstaking, but was nevertheless characterized by various shortcomings, which have had unreasonable and unfair consequences for many persons concerned. Moreover, some aspects of government action were objectionable;
- No reliable statements can be made about any difference between what was stolen and restituted on the basis of the currently available relevant data; and
- An insufficient share (ca. 50%) of the monetary gold stolen was restituted to the Netherlands government.

In the light of the above, the Committee recommended to the government:

- to frankly acknowledge towards the Jewish community that, despite the good intentions of the then government, parts of the restoration of rights and some aspects of government action have had consequences which must be considered unfair and unjust;
- that therefore, on moral grounds, it should as yet make a financial contribution to the Jewish community in connection with the shortcomings in the restoration of rights and other aspects of government action and the adverse consequences on the Jewish community after the war;
- that, because of its nature, such an amount cannot be determined in any conventional manner, but that the Committee is unanimous in its opinion that an amount of 250 million guilders (USD 125 million) to the Jewish community would be fair and reasonable;
- that a fund should be established under public law in which to deposit this sum. The actual use, both collectively and individually, of this fund, which is exempt from tax, should be decided by a board, at least the majority of which would be representatives of the Jewish community.

#### **Reaction of the Government of the Netherlands**

The Government of the Netherlands considers the reports of the committees very valuable. In a first reaction the Netherlands Government recognized and regretted the length of the post war restitution process, the cumbersome and inflexible procedures and above all the chill reception and lack of understanding that awaited those returning from the camps. In various occasions the restitution of rights worked out in an unfair and unjust manner. The Netherlands government deeply regrets this, realizing however that no wrong intentions at the time are supposed in most cases.

On the main conclusions and the recommendations of the reports, particularly of the van Kemenade Committee, the Government of the Netherlands will consult representatives of the Jewish community and representatives of other persecuted groups in the weeks to come. A full reaction of the Government on the conclusions and recommendations is expected in March of this year.



## **A P P E N D I X**

February 10, 2000



# CURRENCY

Committee on Banking  
and Financial Services

**James A. Leach, Chairman**

For Immediate Release:  
Thursday, February 10, 2000

Contact: David Runkel or  
Brookly McLaughlin (202) 226-0471

**Closing Statement  
Of Rep. James A. Leach  
Chairman, House Banking and Financial Services Committee  
Holocaust Assets Hearing**

By way of closing, let me state that, although they covered different economic sectors in different countries, all our hearings over the past three years share a common theme. Because the crimes were so unspeakably heinous and took place on such an incomprehensible scale, the brutality of the Nazi era has obscured for fifty years the degree to which the Holocaust was not just murderous, but also constituted the largest and most unjust theft of wealth and labor in history - grand larceny on a continental scale.

During the decade we have just completed, a convergence of historical forces removed some of the obstacles that had kept the world community from confronting the economic implications of Nazi genocide: the end of the Cold War; the economic reconstruction of Europe, including the reunification of Germany; and a new wave of historical research based on hitherto unexploited documents into the complicity of private citizens and institutions in Nazi crimes. Most importantly, however, it was the effort on the part of the survivors' advocates, who refused to let the nations involved, including the U.S., shy away from their responsibility to provide belated help.

Taken together, our hearings over the past three years have shown how the economic component of Nazi rule continued Hitler's legacy long after his regime was defeated. It kept survivors impoverished, unable to rebuild their lives, and ensured that their suffering and that of their families would continue. It allowed both complicit and unwitting beneficiaries of the theft to enjoy unfair economic advantages derived from stolen riches and inhuman treatment of workers.

Although justice can never be adequately attained for crimes of genocidal magnitude, it is important that symbolic efforts, at least, be undertaken and that a measure of accountability for economic crimes be established. In this context, Deputy Secretary Eizenstat and Dr. Lambsdorff outlined a plan of redress that is more extensive in scope than any other compensation for human rights violations the world has known. While the individual amounts will be modest, the plan envisions compensating a million workers, even in cases where the institution that exploited them may no longer exist.

Deputy Secretary Eizenstat is to be commended not only for shedding light on Holocaust issues, but previously overlooked Nazi crimes against non-Jewish Europeans, many of whom are double victims - first of the Nazis, then the Communists. The relentless integrity Secretary Eizenstat has exhibited provides a model of public service.

likewise, the public owes a debt of gratitude to two other distinguished citizens, a former Federal Reserve Board chairman and a former Secretary of State, who have been called upon to head bank and insurance panels, respectively.

Paul Voleker, chairman of a commission that audited Swiss banks, reported that 54,000 names had been found that were likely owners of banks accounts, which were improperly closed. Sadly he concluded that there were surely many others, but that the passage of time and disappearance of records had made it impossible to provide a fuller accounting. A humanitarian fund endowed at \$1.25 billion has been formed as a token of compensation.

Lawrence Eagleburger reported that consensus has developed that insurance companies need fairly and generously to settle unpaid Holocaust-era policies. The international commission he chairs is about to begin processing claims, although considerable work still remains to be done indentifying potential claimants.

In the art world, there is a new, rigorous attitude toward provenance and a solemn determination on the part of museum directors, here and abroad, to scour their collections and return any tainted pieces to their rightful owner.

What is astounding in all this is how much progress has recently been made - how many parties have transcended their initial impulse to hide from uncomfortable legacies behind walls of legalistic denial, sophistry, and obfuscation. Historical scrutiny and individual conscience have moved us to a new stage in the evolution of this horrible issue: a stage in which key public and private leaders in each country involved now acknowledge that moral responsibility for economic crimes implicit in the Holocaust cannot continue to be ignored.

We must not delude ourselves, however. Any notion of justice - with crimes so heinous, with so many millions of victims, with redress so long overdue, with so many records destroyed by the ravages of time, with so many stories of inhumanity that will never be told - is elusive at best. The sad truth is that the deepest wrongs cannot be redressed and that hatred's bounty will never be fully disgorged.

Nevertheless, although unconscionably delayed and inadequate to right the wrongs committed, the largely symbolic restitution efforts underway are the only way at hand to bring accountability to bear on the Nazi economic legacy - the only way to give meaning to the Reverend Martin Luther King Jr.'s assertion that "the arc of the moral universe is long but it bends towards Justice."

The Committee is adjourned.

#####

STATEMENT OF REP. BARBARA LEE  
HOUSE BANKING COMMITTEE  
FEBRUARY 10, 2000

**Good Morning Mr. Chairman, Members of the Committee, and welcome to our distinguished witnesses. I look forward to the testimony of Mr. Eagleburger, and believe that his insights into Holocaust era Insurance claims will be an educational experience for this committee. Moreover, the testimony we will hear today with regard to stolen and looted art objects will add to the overall discussion and understanding of the many wrongs committed against countless victims during World War II.**

**Mr. Chairman, I have been a committed advocate for human rights throughout my political career. The residents of the 9<sup>th</sup> Congressional District of California have voiced a moral conscience for nearly thirty years. We believe that there are universal human rights that must always be respected by governments. Through the lens of history, my constituents recognize that the Nazi atrocities represent the antithesis of**

these beliefs, and are outraged by the repugnance the Nazi regime represented.

What these hearings accomplish, Mr. Chairman, is to focus that lens beyond the obvious. The concentration camps, the slave labor, and the disgusting policy on extermination have been well documented. The recent studies, investigations, and hearings like these have shifted attention to the other aspects of the holocaust that have left a devastating scar on history. These new deliberations indeed continue to educate us, and serve as vehicles to remind us of our obligation to ensure that atrocities against groups based on race, religion, ethnicity, national origin, or political belief never happen again.

So Mr. Chairman, I commend you for convening this hearing, and look forward to hearing from today's witnesses.

Thank you.

THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

1300 L Street, NW • Suite 1150 • Washington, DC 20005  
202-289-4100 • 202-289-4101 fax  
www.ICHEIC.org

January 19, 2000

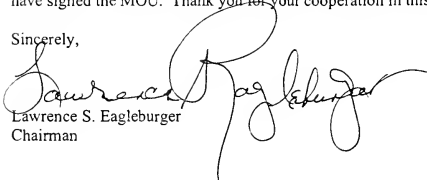
Mr. Glenn Pomeroy  
Insurance Commissioner  
North Dakota  
600 East Boulevard Avenue  
5<sup>th</sup> Floor  
Bismarck, North Dakota 58505-0320

Dear Commissioner Pomeroy:

As you know, we have asked AEGON, CGU, Gerling, Munich Re, Sorema, Royal & Sun Alliance, Swiss Life, and Prudential to become members of our Commission and sign the Memorandum of Understanding. This issue was raised by several of our members at our last meeting in London. It has been my consistent position that companies which join and cooperate fully with the ICHEIC process – and only those companies – should enjoy safe harbor and protection from the state regulators. Inasmuch as these companies have not joined the ICHEIC, it is my view that they and their affiliates are not entitled to the safe harbor protections contemplated by the Memorandum of Understanding. As other insurance companies in circumstances similar to these companies come to my attention, I will identify them to you with a suggestion for similar treatment.

I would greatly appreciate your distributing this letter to each of the regulators who have signed the MOU. Thank you for your cooperation in this matter.

Sincerely,



Lawrence S. Eagleburger  
Chairman

**MEMORANDUM OF UNDERSTANDING**

1. It is agreed by the undersigned European insurance companies, United States insurance regulatory authorities, and Jewish and survivor organizations that a just process shall be established that will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust.
2. It is agreed by the undersigned that an International Commission ("IC") will be established. The parties to this Memorandum of Understanding ("MOU") agree to actively and voluntarily pursue the goal of resolving insurance claims of Holocaust victims through the IC. The IC will be composed of twelve persons or their alternates: six persons designated by the United States regulators and the World Jewish Restitution Organization, together with the Conference of Jewish Material Claims Against Germany, and the State of Israel, and six persons designated by the undersigned European insurance companies and European regulators. Each group above that is a member of the IC will designate two alternates to attend in observer status. In addition, there will be three additional observers designated by the World Jewish Restitution Organization, together with the Conference of Jewish Material Claims Against Germany, and the State of Israel, one observer designated by the European Economic Commission and one observer designated by the United States Department of State. The twelve representatives will appoint an additional member who shall serve as the Chairperson. The Chairperson shall be independent and not affiliated with any of the persons, or groups represented on the IC. Members of the IC shall serve on a volunteer basis and without remuneration. The IC shall attempt to resolve all issues within two years from its formation.
3. Following the creation of the IC, insurance companies or their successors that issued policies to persons who were subsequently victims of the Holocaust and were not original signatories to this MOU will be given the opportunity to become signatories to this MOU and participate in the IC process. The IC process, at the discretion of the signatory companies, can be extended to affiliates of the signatories.
4. The IC shall initiate and conduct an investigatory process to determine the current status of those insurance policies issued to Holocaust victims during the period of 1920 to 1945 for which claims are filed with the IC. To assess the remaining unpaid insurance policies of Holocaust victims, a reasonable review will be made of the participating companies' files, in conjunction with information concerning Holocaust victims from Yad Vashem and the United States Holocaust Memorial Museum and other relevant sources of data. The IC or its participating companies shall retain one or more internationally recognized auditing firms that operate in those countries where the above-referenced insurance companies are based and other experts as needed.
- a. The IC shall promulgate an audit mandate implementing the goal of this MOU. This mandate shall outline a work program for the audit firm(s). In addition to establishing a framework for an overall work plan, the mandate shall also establish a mechanism whereby any investigatory or audit work already performed by the various insurance companies in this area is reviewed to determine whether it is consistent with the standards and goals of the mandate and if so, shall be incorporated into the work plan of the IC auditors. The insurance companies and insurance regulators that are parties

to this MOU shall ensure that the respective auditing firm(s) and other experts have complete and unfettered access to any and all of their relevant books, records and file archives as is necessary to their audit activities. Such access shall be in cooperation with and in accordance with local insurance authorities and laws. Any documents reviewed or received by the IC will be maintained as strictly confidential.

b. As part of the audit mandate, the IC will address the issue of a full accounting by the insurance companies and publication of the names of Holocaust victims who held unpaid insurance policies. In addition, the IC shall establish a toll free mechanism to aid survivors, beneficiaries and heirs of Holocaust victims in the submission of claims and inquiries.

5. The IC shall establish a claims and valuation process to settle and pay individual claims that will be of no cost to claimants. The initial responsibility for resolving claims rests with the individual insurance companies, in accordance with guidelines to be promulgated by the IC. The signatory companies shall submit to the IC all claims received directly by the company within 30 days of receipt. The IC shall endeavor to integrate data already collected by the various U.S. states into the overall process. Such process shall include the establishment of relaxed standards of proof that acknowledge the passage of time and the practical difficulties of the survivors, their beneficiaries and heirs in locating relevant documents, while providing protection to the insurance companies against unfounded claims.

6. Such claims process shall also include the valuation of policies, including, but not limited to the establishment of standards and formulae to account for currency reforms, currency conversions and interest. In the case of insurance claims that were previously submitted for resolution through a post-war governmental restitution program, the IC shall examine the program, payments and payment calculations to determine if they were equitable and adequate. To the extent an insurance policy was subject to a post-war governmental restitution program, the insurance company will receive credit for the amount paid out for the insurance policy against the value of the policy as determined by the IC. The IC process shall constitute an exclusive remedy. Claim awards shall be compensatory only.

7. Each insurance company that has agreed to voluntarily submit to this process shall establish its own dedicated account, sufficiently funded, to be used exclusively for the immediate payment of Holocaust related insurance claims which have been submitted to the IC and which are determined by the IC to be valid and attributable to each specific insurance company. No signatory insurance company shall be required to pay any claim that the IC determines to be attributable to an existing insurance company that has not signed this MOU.

8. The IC shall establish and administer a Special Fund consisting of two sections. Each signatory company will make an initial contribution to the two Specific Humanitarian Sections.

#### A. Specific Humanitarian Section:

( I ) This section shall provide relief to claimants who seek relief under policies that cannot be attributed to a particular insurance company as, well as to claimants who seek relief under policies issued by companies no longer in existence. These funds shall be separately maintained.



(a) If the audit process develops additional claims and if additional claims are received that fall into the category of paragraph (8) (A) (1) of this section and there are insufficient funds remaining in the segregated (8) (A) (1) account, each signatory company shall make additional contributions as the IC deems necessary to be assessed on an equitable basis taking into account both historic and current involvement.

(2) In addition, each signatory company agrees to make an equitable contribution to this section, to be used to satisfy claims on any of its policies that were nationalized or any of its policies that were paid, as required by local law, to a governmental authority that was not the named beneficiary of the policy. The monies contributed by each signatory company shall be used to satisfy claims awards only against that company. These funds shall be separately maintained.

(a) In the event the audit process develops additional claims and if additional claims are received that fall into paragraph (8) (A) (2) and there are insufficient funds remaining in the segregated (8) (A) (2) account, each signatory company shall contribute an additional amount to pay any monies awarded by the IC on that signatory company's paragraph (8) (A) (2) policies.

#### B. General Humanitarian Section:

This section shall be used for the benefit of needy victims of the Holocaust and for other Holocaust-related humanitarian purposes. It is understood that the contributions made under this section give due consideration to the category of "heirless claims," i.e., unpaid policies issued by the signatory companies to Holocaust victims as to which there is no living beneficiary or other living person entitled to receive the proceeds. Each signatory company shall make an initial contribution to this fund, with subsequent contributions to be determined by the IC to be assessed on an equitable basis taking into account both historic and current involvement.

9. Upon execution of this MOU, the insurance companies will establish a fund to cover the expenses of the IC. Each signatory company shall make an initial contribution of \$250,000.00. Thereafter, as the IC deems necessary, subsequent contributions will be assessed based on an equitable basis. The cost of auditing an individual company's books and records and any expenses relating to the processing or investigation of claims against an individual insurance company shall be borne by that insurance company. There shall be an annual budget for the operation of the IC administered by the Chairperson and an annual audit of the IC's expenses.

10. The IC signatories will work to achieve exemptions from related pending and future legislation and will work to resolve all pending litigation for those insurers that become signatories to this MOU and which fully cooperate with the processes and funding of the IC.

11. Upon agreement to the terms of this MOU, the respective parties shall announce the members of the IC and the Chairperson.

THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS  
INFORMATION PACK

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DIE INTERNATIONALE KOMMISSION  
FÜR VERSICHERUNGSANSPRÜCHE  
AUS DER HOLOCAUST-ÄRA  
DOKUMENTENMAPPE

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הנציבות הבינלאומית לתביעות ביטוח על תקופת השואה  
חבילת מידע

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MEZINÁRODNÍ KOMISE PRO VYŘIZOVÁNÍ  
POJISTNÝCH NÁROKŮ Z OBDOBÍ  
HOLOCAUSTU  
INFORMAŠNÍ BROŽURA

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COMMISSION INTERNATIONALE POUR  
LES DEMANDES D'INDEMNISATION  
DE L'ÉPOQUE DE L'HOLOCAUSTE  
DOSSIER D'INFORMATION

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A HOLOCAUST-KORABELI BIZTOSÍTÁSI  
IGÉNYBEJELENTÉSEK NEMZETKÖZI  
BIZOTTSÁGA  
TÁJÉKOZTATÁSI CSOMAG

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MIĘDZYNARODOWA KOMISJA  
DS. ROSZCZEŃ UBEZPIECZENIOWYCH  
OKRESU HOLOCAUSTU  
PAKIET INFORMACYJNY

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МЕЖДУНАРОДНАЯ КОМИССИЯ  
ПО СТРАХОВЫМ ПРЕТЕНЗИЯМ,  
ОТНОСЯЩИМСЯ К ПЕРИОДУ ХОЛОКОСТА  
ИНФОРМАЦИОННЫЙ ПАКЕТ

---

די אינטערנאַציאָנאַלע קאָמיסיע  
פֿון אַסעקוראַנציע-מאַנונגען פֿון דער צייט פֿון חורבן  
אינפֿאָרמאַציע-פּעקעלע

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THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

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Dear Claimant

The International Commission on Holocaust Era Insurance Claims has set up a claims process to handle insurance claims of Holocaust victims, survivors, and their heirs and beneficiaries.

Lawrence Eagleburger, former United States Secretary of State, serves as the Commission's Chairman and members are drawn from:

- United States insurance regulators;
- representatives of the State of Israel and international Jewish and Holocaust survivor organisations; and
- representatives from European insurance companies.

Observers include officials of the United States and other governments, as well as European and Israeli insurance regulators.

In this package, we would like to tell you about how the process works. This pack sets out:

- how to file a claim;
- how we handle your claim;
- frequently asked questions;
- helpline numbers;
- claim form;
- Declaration of Consent.

We have designed the process to handle your claim fairly and to make it as easy as possible for you to claim. The process will not cost you anything.

We can help you throughout the claims process. We provide a list of free helpline numbers with this pack.

**The International Commission on  
Holocaust Era Insurance Claims**

THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

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HOW TO FILE A CLAIM

To file your claim, please follow the steps below.

- 1 If you believe that you may have a valid claim, and you need more help to fill in the claim form, you may call our helpline (see the contact numbers at the back of this pack.)
- 2 Please fill in the claim form giving as much information as possible. You must answer each question marked with a black box (for example **2.1**) so we can deal with your claim. Responses such as "don't know" or "not applicable" or "can't remember", for example, are acceptable.
- 3 It will help us to process your claim faster if it is completed in English or German. However, you may fill in the claim form in any language and we will arrange for it to be translated.
- 4 Please complete the attached 'Declaration of Consent'. If you do not, we cannot investigate your claim for you. It is a requirement of European data protection laws and, without a signed Declaration of Consent, we will not be able to send all the information provided in your claim to insurance companies and other relevant organisations.
- 5 Please use the envelope we have provided to return your completed claim form and Declaration of Consent together with copies of any relevant documents you have.

**Do not send original documents.**

*You must make sure you send your claim so we receive it by  
31 January 2002.*

THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

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HOW WE HANDLE YOUR CLAIM

- 1 As soon as we receive your claim form, we will go through it. We will mail you an acknowledgement letter within 14 days of our receiving it. If there is any information missing, we will contact you by phone or mail to see if we can help you to complete your claim.
- 2 When we have all the information we need, we will send your claim form to the insurance company you named in your claim.
- 3 If you did not name any company in your claim, we will send your claim form to all member companies of the Commission that could have sold the insurance covered by your claim. The Commission will also include your claim in a research process to help us match your details with information available from appropriate archives that may assist in the investigation process.

**If your claim names a member company of the Commission**

- 4 The company will investigate your claim according to standards agreed and audited by the Commission. The company will write to you with their findings within 90 days of their receiving your claim from us. If the company has not resolved your claim in that time, they will provide you with a status report on their investigation. We will also receive copies of their letters.
- 5 Whether the company makes an offer or declines your claim, they will send you an explanation of their decision together with any documents relevant to your claim that are traced in their investigation. They will also include advice on the arrangements for appeal against their decision, and the forms for making an appeal.
- 6 If the company makes you an offer, it will be based on uniform standards of valuation and currency conversion agreed by the Commission. All offers will include a valuation sheet showing how the amount has been worked out.
- 7 If the company makes an offer on your claim, which you decide to accept, they will ask you to sign a form, which will release the company from any future liability for your claim.
- 8 All claimants will have a right of appeal on the decision of any member company of the Commission.
- 9 If the company makes an offer on your claim but you wish to appeal, you will need to sign a Declaration of Exclusive Remedy. That document will be your undertaking to use the Commission's independent appeal process to resolve your claim and not to take legal action against the company whatever the result of your appeal.
- 10 Appeals will be considered by independent panels set up by the Commission. Panels will examine all documents relating to any appealed claim decision and verify whether the company acted in accordance with the Commission's standards. Claimants who appeal will have no obligation to attend the Appeal Panel but they will have the right to do so at their own expense.

**If you do not name a company in your claim**

- 11 We will send your claim form to all member companies of the Commission that could have sold the insurance covered in your claim.
- 12 The companies will investigate your claim in accordance with all the arrangements set out above for processing a claim by a member company.
- 13 If any member company traces a policy matching your claim and decides either to make an offer or to decline your claim, they will write to you, attaching:
  - any documents traced in their investigations
  - advice on the arrangements for appeal against their decision
  - and the form for making an appeal.
- 14 Member companies that find no trace of any policy matching your claim will inform us. If no member company finds any policy matching your claim, we will write to advise you as soon as all member companies complete their investigations.
- 15 If the Commission's research process identifies a possible match between your claim and a named insurance company, we will send your claim to that company for further investigation whether or not it is a member of the Commission. While the chances of such matches are limited, we will advise claimants when matches are made.
- 16 If investigations fail to produce any further evidence of an insurance policy with a particular company, you may, subject to the information you provided, be eligible for a payment from a specific fund established by the Commission. There will be no right of appeal.

**If your claim names a company that is not a member of the Commission**

- 17 We will send you a letter acknowledging your claim within 14 days of our receiving it.
- 18 We will send your claim to the company asking them to investigate it fully. While we will ask all companies that are not members of the Commission to process claims according to the same standards as those agreed with member companies, we will not be able to assure claimants of this.
- 19 There will be no right of appeal against any decision made by a company that is not a member of the Commission.

**If the insurance company named in your claim is no longer in existence**

- 20 The Commission has established a specific fund for claims on insurance companies which were not taken over and have no successor company. If your claim falls into this category, you may be eligible for a payment from that fund, subject to the information you provided and any information obtained through the Commission's research process.

**If the proceeds of the insurance policy you are claiming against were confiscated**

- 21 The Commission has established a specific fund for claims against policies issued by member companies on which proceeds were confiscated. If your claim falls into this category, you may be eligible for a payment from that fund, subject to the information you provide and any information obtained through the Commission's research process.

ENGLISH

THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

DECLARATION OF CONSENT

FOR OFFICE USE ONLY  
CLAIM NUMBER

DATE

The undersigned hereby authorise the International Commission on Holocaust Era Insurance Claims (the "Commission"), any insurance company designated by the Commission (including the members of each insurance company's group) and their respective auditors and other professional advisors (the "Insurance Companies") to investigate the claim described below (the "Claim") and further authorise them to make and use copies of documents containing personal data and to use such data to investigate the Claim as is further described in the "information pack".

The undersigned acknowledge that in order to carry out these investigations, it may be necessary for the Commission and the Insurance Companies to process personal data including sensitive personal data (as defined in European Directive no 95/46 and the Data Protection Act 1998 (U.K.)) and to disclose such data to third parties and to

transfer such data to jurisdictions outside the European Economic Area and/or Switzerland (even if such jurisdictions do not provide the same level of protection for personal data as exists in the European Economic Area and/or Switzerland) and hereby consent to such processing, disclosure or transfer providing that in so doing, the Commission and the Insurance Companies each take such steps as they consider reasonable to ensure that such data are used only for these investigations and otherwise remain confidential.

The undersigned also authorise investigations in all relevant governmental authorities, non-governmental organisations and relevant archives and for such authorities/bodies/organisations to give all requested information to the Commission and designated insurance companies.

**THE CLAIM**

NB: All lines must be completed. If answer unknown, write in UNKNOWN.  
If signature omitted, write in reason - e.g. DECEASED, LOST CONTACT.

**1. Name of Claimant**

Date of Birth DAY /MONTH /YEAR

Place of Birth

Address of Claimant

Signature

Date signed

Place signed

**2. Name of Policyholder**

Date of Birth DAY /MONTH /YEAR

Place of Birth

Claimant's relationship to Policyholder

Address of Policyholder

Signature

Date signed

Place signed

or reason for omission of signature

**3. Name of Insured**

Date of Birth DAY /MONTH /YEAR

Place of Birth

Claimant's relationship to Insured

Address of Insured

Signature

Date signed

Place signed

or reason for omission of signature

**4. Name of the Beneficiary**

Date of Birth DAY /MONTH /YEAR

Place of Birth

Claimant's relationship to Beneficiary

Address of Beneficiary

Signature

Date signed

Place signed

or reason for omission of signature

**SIGNATURE OF CLAIMANT'S REPRESENTATIVE**

If you have a representative (eg attorney) he/she should sign this Declaration of Consent below.

**5. Name of Representative**

Signature

Date signed

Place signed

THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

HELPLINE TELEPHONE NUMBERS

| COUNTRY         |                   | TELEPHONE NUMBER  |
|-----------------|-------------------|-------------------|
| Argentina*      |                   | 1-212-462-7850*   |
| Australia       |                   | 1-800-706-922     |
| Austria*        |                   | 1-212-462-7150*   |
| Belarus         |                   | 375-017-263-45-53 |
| Belgium         |                   | 0-800-77-058      |
| Brazil          |                   | 00-817-452-1360   |
| Bulgaria*       |                   | 1-212-462-7100*   |
| Canada          | - English         | 1-800-496-1974    |
|                 | - French          | 1-800-498-2091    |
| Chile*          |                   | 1-212-462-7850*   |
| Croatia*        |                   | 1-212-462-7100*   |
| Czech Republic* |                   | 1-212-462-7700*   |
| Denmark*        |                   | 1-212-462-7800*   |
| Finland         |                   | 0-800-111-165     |
| France          |                   | 0-800-914-842     |
| Georgia         |                   | 995-32-94-26-83   |
| Germany         |                   | 0-800-180-2032    |
| Greece*         |                   | 1-212-462-7800*   |
| Hungary         |                   | 06-800-13908      |
| Israel          | - Hebrew          | 1-800-93-00-011   |
|                 | - Russian         | 1-800-93-00-012   |
|                 | - Yiddish/English | 1-800-93-00-014   |

\* Ask your operator to place an international reverse charge (collect call) to this number. You will not pay for the call.

TNT International Mail  
LHR / LCY / 690547 / 001  
Int. Antwoordnummer  
C.C.R.I. Numero 5120  
3000 VB Rotterdam  
Pays - Bas  
Nederland



THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

HELPLINE TELEPHONE NUMBERS

| COUNTRY        | TELEPHONE NUMBER  |
|----------------|-------------------|
| Italy          | 800-875-021       |
| Latvia         | 371-7-28-9580     |
| Mexico         | 00-1-800-559-1989 |
| Moldova        | 373-2237-245      |
| Netherlands    | 0-800-022-0285    |
| New Zealand    | 0-800-442-035     |
| Poland         | 00-800-111-3242   |
| Portugal*      | 1-212-462-7800*   |
| Romania*       | 1-212-462-7750*   |
| Russia         | 7-095-204-17-49   |
| Serbia*        | 1-212-462-7100*   |
| Slovakia*      | 1-212-462-7100*   |
| South Africa   | 0-800-997-961     |
| Spain*         | 1-212-462-7850*   |
| Sweden         | 0-207-966-77      |
| Switzerland    | 0-800-834-503     |
| Turkey*        | 1-212-462-7800*   |
| Ukraine        | 380-44-216-53-96  |
| United Kingdom | 0-800-169-8318    |
| Uruguay*       | 1-212-462-7850*   |
| U.S.           | 1-800-957-3203    |
| Venezuela      | 800-1-2692        |

\* Ask your operator to place an international reverse charge (collect call) to this number. You will not pay for the call.

TNT International Mail  
LHR / LCY / 690547 / 001  
Int. Antwoordnummer  
C.C.R.I Numero 5120  
3000 VB Rotterdam  
Pays - Bas  
Nederland

CONTINUED  
FROM  
PREVIOUS  
PAGE

ENGLISH

THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

## FREQUENTLY ASKED QUESTIONS

**1. General questions***Do I need a lawyer?*

No, you do not need a lawyer, although you may use one if you wish, or you may elect to be assisted by any person of your choice. We have designed the process to be as easy as possible. If you cannot fill in the form, we will help you and answer any questions you may have.

*How long should I wait to receive a reply?*

Within 14 days of receiving your claim, we will write to you to acknowledge it, and will send it on to the relevant insurance company or companies for investigation. Please call our helpline if you have not received a letter from us acknowledging your claim within 14 days plus the mailing time.

Within 90 days of your claim being received by the company or companies, you will receive a decision or a status report on the investigation of your claim.

The above times may be shorter in some cases but some claims may take longer to resolve, particularly if we receive a very large number of claims. You should allow at least the above times plus time for mailing before expecting the result of your claim.

*What if I already made a claim through another process or directly to a company?*

You can still claim with us, but you should let us know about any other claim on your claim form.

All unresolved claims held by United States insurance regulators and member companies of the Commission will automatically be taken over for processing by the Commission. If you have one of these claims, we will write to you to let you know that the Commission is taking it over.

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*What if I made an insurance claim as part of a compensation or restitution programme?*

If you applied to the BEG (the Bundesentschädigungsgesetz – the German government compensation programme) you will not be able to apply through the Commission programme if you received a payment, or a part payment, or even a denial. That is because all BEG decisions are regarded in German law as final, either because they were not challenged in court or because they were affirmed or altered by a court.

However, you can still apply to the Commission if you received a payment as part of another compensation or restitution programme. Please provide details on your claim form. Please also indicate whether any payment was specifically related to your insurance claim. The Commission will determine whether you are eligible to receive any further payment.

*What if my claim has been turned down by an insurance company in the past?*

Even if an insurance company has turned down your claim in the past, you may still claim with us. Please include copies of any relevant correspondence you had with the insurance company. **Do not send original documents.**

*What if an insurance company has settled a claim in the past?*

If an insurance company has settled a claim in the past, you cannot claim again, even if your claim would have a higher valuation under the Commission's standards.

*What if more than one entitled person makes a claim on the same policy?*

If more than one person is entitled to the money from an insurance policy, by law they must share it. If you accept an offer on a claim, you will have to sign a Declaration of Responsibility towards Other Entitled Persons, which is your undertaking to share the payment with any other entitled person.

*If I have any questions, who can help me?*

If you have any questions, call our helpline (see the contact numbers at the back of this pack.)

## 2. Filing a claim

*What is the Declaration of Consent?*

The Declaration of Consent allows us to send all the information provided in your claim to insurance companies and other relevant organisations including archives. It is a requirement of European data protection laws and we will not send your claim form to any other person or organisation without your permission. **You must sign this form so that we can handle your claim.**

*What if I need help filling in the form?*

If you have problems filling in the claim form, call our helpline (see the contact numbers at the back of this pack.)

*If I don't have enough information to fill in the claim form, what should I do?*

Please give us as much information as possible. You must answer each question marked with a black numbered box (for example **2.1**) so we can deal with your claim. Responses such as "don't know" or "not applicable" or "can't remember", for example, are acceptable.

*What if I find more information after sending in my claim?*

If you find more information after you have sent the claim form to us, please send us that information. Please be sure to provide your name and address together with the Claimant Reference Number we will provide with the acknowledgement of your claim. We will acknowledge any extra information you send us within 14 days of receiving it.

*What kind of documents should I send?*

You should send us copies of any documents that can support your claim. For example:

- copies of insurance policies;
- receipts for premiums paid;
- letters to and from insurance companies or agents;
- letters to and from other organisations that refer to the insurance policy;
- statements from yourself or any other person about the insurance policy;
- compensation and restitution application forms and correspondence;
- narrative descriptions, family histories or family trees;
- diaries and letters relating to the policy or insurance company;
- birth or death certificates; or
- employment, school or military records.

The Commission will use relaxed standards of proof in reviewing claims, to acknowledge the passage of time and the practical difficulties of locating relevant documents. Anything that can help to demonstrate your claim will be taken into consideration. **Please send only copies of relevant documents. Do not send original documents.**

*Should I make a claim if I have no documents?*

If you have a good reason to believe that you or one of your family members are entitled to the proceeds of an unpaid insurance policy issued to a Holocaust victim, please complete the claim form and send it to us. Please give as much relevant information as possible. Even if you have no supporting documents, your information will be used in the Commission's investigation and research processes and may produce evidence to support your claim.

### 3. The claims process

*What if I cannot name the company that issued the policy I am claiming against?*

If you cannot identify the insurance company but have provided enough other significant information in your claim, we will forward your claim to all member companies of the Commission that could have sold the insurance covered in your claim. They will investigate your claim in accordance with all the standards agreed by the Commission.

If a company traces a valid policy that matches your claim, they will write to you to make an offer. Companies that find no trace of any policy matching your claim will inform us and we will let you know. We will also include your claim in the Commission's research process, including the possibility that relevant insurance associations may be able help us trace the responsible company.

If investigations fail to produce any further evidence of an insurance policy with a particular company, you may, subject to the information you provided, be eligible for a payment from a specific fund established by the Commission. There will be no right of appeal.

*What if I can name the insurance company, but it no longer exists?*

The Commission has established a specific fund for claims on insurance companies, which were not taken over and have no successor company. If your claim falls into this category, you may be eligible for a payment from that fund, subject to the information you provide and any information obtained through the Commission's research process.

*What if I can name the insurance company, but it is not a member of the Commission?*

If the insurance company that you have named is in existence but is not a member of the Commission, we will send your claim to them and let you know.

*What if the insurance company that issued my policy was nationalised?*

If a member company accepts responsibility for your claim, the company will make an offer based on valuation standards agreed by the commission.

*What if the proceeds of the insurance policy covered by my claim were confiscated?*

The Commission has established a specific fund that will consider claims on policies issued by member companies on which proceeds were confiscated. You may be eligible for a payment from that fund.

*How will the insurance company decide if my claim is valid?*

Member companies will investigate claims in accordance with uniform guidelines agreed by the Commission.

*How will I know the insurance company has investigated my claim fairly?*

The investigation process of each member company will be verified by independent auditors appointed by the Commission.

*How will the insurance companies decide how much my claim is worth?*

Member companies will use uniform standards of valuation agreed by the Commission. If a member company makes an offer on your claim, they will also provide you with a valuation sheet showing how the amount has been worked out in accordance with Commission standards.

*Will I have the right to appeal if I disagree with the insurance company's decision?*

You will have a right to appeal against the decision of an insurance company that is a member of the Commission. You will need to contact us within 120 days from receiving the insurance company's decision. You will receive further information on this when you receive the findings on your claim. If you appeal an offer, you will have to forego your rights to pursue your claim in another forum.

Appeals will be considered by independent panels set up by the Commission. Panels will examine all relevant documents and will verify whether the company acted in accordance with the Commission's standards. Claimants who appeal will have no obligation to attend the Appeal Panel but they will have the right to do so at their own expense.

*Will I have to pay the costs of handling my claim?*

No. The insurance companies that are members of the Commission will meet the costs of investigating claims.

ENGLISH

THE INTERNATIONAL COMMISSION  
ON HOLOCAUST ERA INSURANCE CLAIMS

FOR OFFICE USE ONLY  
CLAIM NUMBER

DATE

CONFIDENTIAL CLAIM FORM

Please fill in this form as completely as possible and to the best of your knowledge. *You must answer each question marked with a black numbered box (for example **1**) so we can deal with your claim.* Responses such as "don't know" or "not applicable" or "can't remember", for example, are acceptable. If you need more space please use the last page for any extra information. If you are claiming for more than one policy, please complete a separate form for each policy.

Enclosures (please tick as appropriate)

- Declaration of Consent completed and signed (we cannot process your claim without it)
- proof of identity (e.g. copy of passport)
- other documents and/or statements and/or information substantiating your claim

Signature of claimant \_\_\_\_\_

Place signed \_\_\_\_\_

Date signed    DAY    /MONTH    /YEAR \_\_\_\_\_

If you have a representative he/she must sign here

Signature of representative \_\_\_\_\_

Place signed \_\_\_\_\_

Date signed    DAY    /MONTH    /YEAR \_\_\_\_\_

1

ELIGIBILITY

1

**1** Was the policyholder and/or insured and/or beneficiary a victim of the Holocaust?

The term "policyholder" refers to the person who bought the insurance contract. The term "insured person" refers to the person who was covered by the insurance. The term "beneficiary" refers to the person entitled to receive the insurance payment.

For our purpose a Holocaust victim is defined as anyone who:

- was deprived of their life;
- suffered damage to their mental or physical health;
- was deprived of their economic livelihood;
- suffered loss or deprivation of financial or other assets;
- suffered any other loss or damage of their property; as a result of racial, religious, political or ideological persecution by organs of the Third Reich or by other Governmental authorities in the territories occupied by the Third Reich or its Allies during the period from 1933 to 1945.

Yes     No

62-679

2

CLAIMANT

2

**INFORMATION ABOUT YOURSELF**

Please add a copy of your passport/identity card/  
driver's license/other form of official documentation.  
Do not send us the original.

- 2.1** Last name **2.1**
- 
- 2.2** First name **2.2**
- 
- 2.3 Middle name(s) 2.3
- 
- 2.4** Maiden name (if applicable) **2.4**
- 
- 2.5 Sex  Male  Female 2.5
- 
- 2.6 Name changes including changes of spelling (if any) 2.6
- 
- 
- 
- 2.7 Date of birth (day/month/year) 2.7
- 
- 2.8 Place of birth (country/state/city) 2.8
- 
- 
- 2.9 Citizenship 2.9  
When was it acquired if not by birth?  
All former citizenship (if any) and from when  
to when?
- 
- 
- 
- 
- 
- 2.10** Current address **2.10**
- Please include country  
and area codes for  
telephone/fax numbers
- Street, No. \_\_\_\_\_
- City \_\_\_\_\_
- State \_\_\_\_\_
- Zip/Post Code \_\_\_\_\_
- Country \_\_\_\_\_
- Telephone \_\_\_\_\_
- Fax \_\_\_\_\_
- 
- 2.11 Name, address and telephone number of a  
relative of yours 2.11
- 
- 
- 
- 
-



3

## WHICH INSURANCE COMPANY ISSUED THE POLICY?

3

3.1 Name of company

3.1

 I do not know

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3.2 Place where insurance policy was purchased

Country

3.2

State

City

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3.3 Other information which might support the search (e.g. name of insurance agent or intermediary who sold the policy, letterhead, corporate logo etc).

3.3

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4

## DOCUMENTS

4

4.1 Can you provide us with copies of any document and/or statement and/or other information substantiating your claim?

4.1

 No  YesIf yes:  policy correspondence premium payments other documents and/or statements and/or other information, please specify:

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PLEASE ENCLOSE ONLY COPIES OF DOCUMENTS IN YOUR POSSESSION.

- 5.1 Type of insurance policy 5.1
- Life insurance  
Annuity  
Endowment  
Dowry or education
- Other, please specify:  
\_\_\_\_\_  
\_\_\_\_\_
- 
- 5.2 Policy number 5.2
- 
- 5.3 Currency 5.3
- 
- 5.4 Sum insured 5.4
- 
- 5.5 Date of issue 5.5
- 
- 5.6 Date of maturity 5.6
- 

**5.7** Are you aware of any payments resulting out of the insurance policy? **5.7**

Yes  No

If Yes:

When? \_\_\_\_\_

To whom? \_\_\_\_\_

Amount? \_\_\_\_\_

Please specify type of payment below:

*Payment to a blocked account*

(an account held in the accountholder's name to which access was restricted i.e. transactions were possible only when permitted by government)

*Payment to a government following confiscation of the policy*

(policy was confiscated by government and proceeds were subsequently to be paid by company directly to government)

*Policy loan*

(a loan against the policy provided by the insurance company to the policyholder)

*Surrender payment*

(early surrender of policy to the company in order to receive the surrender value in cash)

*Other, please specify*  
\_\_\_\_\_

(For payments resulting from a restitution/compensation procedure see section 9)

- 5.8 Mode of payment of the premium: 5.8  
 Single payment  
 Weekly/monthly/annual payment
- 
- 5.9 Amount of premium 5.9
- 
- 5.10 To the best of your knowledge, 5.10  
 were all premiums paid?  
 If not, for how long were payments made?  
 Why were the payments stopped?
- 
- 5.11 Has anybody approached the insurance company about 5.11  
 this insurance policy?  
 If yes, please specify name, year etc.  
 (Please attach copies of all relevant correspondence with  
 the insurance company)

## 6

## POLICYHOLDER

## 6

The term "policyholder" refers to the person who bought the insurance contract.

Please write the name as it would appear on an official document such as an insurance policy.

6.1 Last name of policyholder 6.1

6.2 First name of policyholder 6.2

6.3 Middle name(s) of policyholder 6.3

6.4 Maiden name of policyholder (if applicable) 6.4

6.5 Sex  Male  Female 6.5

6.6 Name changes including changes of spelling 6.6  
 (if any)

6.7 Any other names used by policyholder 6.7  
 (including aliases)

6.8 Date of birth of Policyholder (day/month/year) 6.8

- 6.9** *Place of birth of policyholder (country/state/city)* **6.9**
- 
- 6.10 If applicable date (day/month/year) and place of death of policyholder or best approximation **6.10**
- \_\_\_\_\_
- \_\_\_\_\_
- 
- 6.11** *Citizenship of policyholder* **6.11**
- When was it acquired if not by birth?  
All former citizenship (if any) and from when to when?
- \_\_\_\_\_
- \_\_\_\_\_
- 
- 6.12 Former known place(s) of residence of policyholder before 1945 including stays in camps, ghettos etc. **6.12**
- For how long did the policyholder stay at these places?  
Please add dates where possible
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- 
- 6.13 If the policyholder was insured by his/her employer, what was the policyholder's profession and name of employer until 1945? **6.13**
- \_\_\_\_\_
- \_\_\_\_\_
- 
- 6.14 What is your relationship to the policyholder (e.g. husband, wife, child etc.)? **6.14**
- \_\_\_\_\_
- \_\_\_\_\_
- 
- 6.15** *Do you know of any other living heirs of the policyholder?* **6.15**
- Yes  No
- If yes, please indicate names and addresses
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**7****INSURED PERSON(S)****7**

The term "insured person" refers to the person who was covered by the insurance policy.

**7.1** *Last name of insured person(s)* **7.1**

**7.2** *First name of insured person(s)* **7.2**

7.3 Middle name(s) of insured person(s) 7.3

**7.4** *Maiden name of insured person(s) (if applicable)* **7.4**

7.5 Sex  Male  Female 7.5

7.6 Name changes including changes of spelling (if any) 7.6

7.7 Any other names used by insured person(s) (including aliases) 7.7

**7.8** *Date of birth of insured person(s) (day/month/year)* **7.8**

**7.9** *Place of birth of insured person(s) (country/state/city)* **7.9**

7.10 If applicable date (day/month/year) and place of death of insured person(s) – or best approximation 7.10

**7.11** *Citizenship of insured person(s)* **7.11**

When was it acquired if not by birth?

All former citizenship (if any) and from when to when?

- 7.12 Former known place(s) of residence of insured person(s) before 1945 including stays in camps, ghettos etc. 7.12  
 For how long did the insured person(s) stay at these places?  
 Please add dates where possible
- 7.13 What is your relationship to the insured person(s) (e.g. husband, wife, child etc.)? 7.13
- 7.14 Do you know of any other living heirs of the insured person(s)? 7.14  
 Yes  No  
 If yes, please indicate names and addresses

**8****NAMED BENEFICIARY****8**

The term "beneficiary" refers to the person named in the policy as entitled to receive the insurance payment.

- 8.1 Last name of beneficiary 8.1
- 8.2 First name of beneficiary 8.2
- 8.3 Middle name(s) of beneficiary 8.3
- 8.4 Maiden name of beneficiary (if applicable) 8.4
- 8.5 Sex  Male  Female 8.5
- 8.6 Name changes including changes of spelling (if any) 8.6
- 8.7 Any other names used by beneficiary (including aliases) 8.7
- 8.8 Date of birth of beneficiary (day/month/year) 8.8

**8.9** *Place of birth of beneficiary (country/state/city)*

**8.9**

8.10 If applicable date (day/month/year) and place of death of beneficiary – or best approximation

8.10

**8.11** *Citizenship of beneficiary*

**8.11**

When was it acquired if not by birth?

All former citizenship (if any) and from when to when?

8.12 Former known place(s) of residence of beneficiary before 1945 including stays in camps, ghettos etc.  
For how long did the beneficiary stay in these places?  
Please add dates where possible

8.12

8.13 What is your relationship to the beneficiary (e.g. husband, wife, child etc.)?

8.13

**8.14** *Do you know of any other living heirs of the beneficiary?*

**8.14**

Yes  No

If yes, please indicate names and addresses

**9.1** Have you or anybody else participated in any compensation / restitution procedure for this claim (e.g. *Deutsche Wiedergutmachung, Bundesentschädigungsgesetz (BEG), Bundesrückerstattungsgesetz (BRüG)*, *US. Foreign Claims Settlement Commission* or other)?

9.1

Yes  No  I do not know

If yes, under which compensation scheme, how much was paid and to whom?  
(please add BEG or other procedure register number)

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If no application was made, why not?

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If you applied, but no payment was received, why not?

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**IS ANYONE REPRESENTING YOU?**

If yes, you need to complete this section.

Please make sure that your representative signs the first page of this form and the Declaration of Consent.

- 10.1 Representative's last name 10.1
- 
- 10.2 Representative's first name 10.2
- 
- 10.3 Representative's middle name(s) 10.3
- 
- 10.4 Representative's law firm, company, or other organisation name (where applicable) 10.4







**National Gallery of Art**

Statement by Earl A. Powell III, Director of the National Gallery of Art, to the  
Committee on Banking and Financial Services, United States House of Representatives,  
10 February 2000

Mr. Chairman, members of the Committee, good morning. I appreciate the opportunity to meet with you again to discuss the subject of works of art seized during the Third Reich and to tell you about some of the National Gallery's initiatives in this area since we last met two years ago. I was also pleased to be a member of the Association of Art Museum Director's Task Force on the Spoliation of Art during the Nazi/World War II Era. The Task Force's report, issued in June 1998, established important principles and guidelines to which the member museums subscribe.

At the hearing two years ago, I spoke about the National Gallery's role on the Roberts Commission, established in 1943 by President Roosevelt to encourage and assist in the preservation of cultural properties in Europe's war-ravaged areas. Headquartered at the National Gallery, the Roberts Commission proposed the founding of the Monuments, Fine Arts and Archives section of the U. S. Army to assist in protecting and restituting cultural property. Among its many other tasks was the establishment of collecting

points in post-war Germany to which works of art and other cultural objects, hidden by the Nazis throughout Germany and Austria and subsequently discovered by the Allies, were transferred. At these facilities, works were identified, photographed, catalogued, and restituted to their countries of origin. One of the largest of these was the Munich Central Collecting Point and works that were processed there had come from European museums and private collections, particularly from France and The Netherlands. On extended loan from the U.S. National Archives, the National Gallery currently houses portions of the Munich Collecting Point material—the existing negatives and microfilm of the original inventory cards. Over the past two years the Gallery has worked diligently to make these records more accessible—and understandable—to the public. To that end, a computerized index is being developed by Gallery staff and is designed to be used as a “finding aid” for those seeking to use the records. This computerized index cross-references artist, media, and presumed owner to the Munich inventory number. The completion of this index will help facilitate locating specific works of art within the collection. This is an extremely valuable tool, as few know the Munich number for the works of art they are researching and studying. And, it is a very time-consuming task. Prints are being made of each of the approximately 43,000 glass and film negatives and computer records created for the more than 150,000 objects. The Munich Collecting Point archive is a valuable resource; it is available to the public and over the years we have welcomed many individuals doing research on this subject, including authors, family members, and other art museum staff.

The National Gallery has always been concerned with and has conducted research on the provenance of works of art in its own collection. For example, the Gallery is publishing a projected thirty-two volume systematic catalogue of the entire collection. Written by Gallery curators and other scholars, each volume is devoted to a particular school of painting, sculpture, or decorative arts and includes comprehensive scholarly essays on each work, including details on the provenance, or history of ownership, of each work of art. Twelve of these volumes have been published since the systematic catalogue project began some sixteen years ago.

The National Gallery's collection is one of the finest in the world, with major achievements in Western art from the Middle Ages to the present. We are at the forefront of computerized access to information on the collection. The Gallery's Web site, launched three years ago, features an extensive section on the collection, offering searches by artist or title, numerous tours by school or medium, foreign language tours, and in-depth studies on specific artists and works of art. The collection is the cornerstone of the Web site and known provenance information is available on-line for every painting and most of the sculptures in the collection. In keeping with the AAMD Task Force recommendations, extensive research has been undertaken in the last several years by Gallery staff on the almost 1600 European paintings in the collection that date from before World War II. In addition, it is routine procedure for the Gallery to conduct ongoing consultation with the Art Loss Register which, as many of you may know, maintains an international database of claimed losses. I am pleased to

participate on the panel with its chairman Ronald Tauber; the Art Loss Register staff has always been very responsive to the Gallery's requests. We also work closely and on a continuing basis with The President's Advisory Commission on Holocaust Assets in the U. S. I am delighted to share the panel today with their research director for art issues, Jonathan Petropoulos; he and his staff have been very helpful in our ongoing research.

Finding a gap in known provenance in any time period is not surprising, or complicating in and of itself. When a work of art has been sold at auction or through a dealer, a previous owner's name may have been withheld for any number of legitimate reasons. During the World War II period, the picture is further complicated since many works which had been looted were restituted to their legitimate owners in the years following the war and records of these returns, many of which are held by foreign governments, have not always been easily available. Nonetheless, Gallery staff conduct extensive research using materials available at the National Archives and elsewhere to clarify the provenance of the collection. More resources have become available in recent years; these take the form of international web sites of this material and those of individual scholars sharing their expertise electronically as well as more European archives becoming accessible. Working groups such as those at the American Association of Museums annual meeting this coming May are also contributing to available scholarship. To date, the Art Loss Register review of Gallery works with provenance gaps has found no match with their database of claimed losses

or with numerous published sources of losses from World War II. This extensive research being conducted by the Gallery is ongoing.

I would like to tell you about the research undertaken on one picture in the Gallery's collection that illustrates both the often-complicated nature of tracing provenance and the high level of international cooperation the National Gallery has received. The Gallery's painting *The Marriage of the Virgin* (c.1491) by the Italian Renaissance master Luca Signorelli was owned in 1931 by the Goudstikker Gallery in Amsterdam. No additional provenance information was known except its purchase in 1955 by New York collector and Gallery benefactor Samuel H. Kress. There was some cause for initial concern as recent scholarship revealed details of the 1940 acquisition of the Goudstikker Gallery and its contents by agents of Hermann Goering. Research by Gallery staff at the National Archives in College Park, Maryland, uncovered an inventory list of the Goudstikker Gallery's contents that had been sold to Goering's agents; further research showed that the Gallery's painting had not been chosen by Goering himself but that it had remained in Nazi possession. In attempting to determine its whereabouts between 1940 and 1955, we contacted the Chief Inspector of the Dutch Inspectorate of Cultural Heritage, who I understand will be testifying to the Committee on a subsequent panel; her prompt and extremely helpful response in the end proved that the Signorelli was one of a small number of paintings that had been restituted to the Amsterdam dealer's widow after the war. Dutch archives provided the Gallery with a copy of the actual receipt signed by Desiree Goudstikker in 1949 for the pictures. The

provenance could not have been clarified without such international access and cooperation.

The Gallery has always requested full provenance details for proposed acquisitions to the collection, including export licenses where required and, when purchasing art, a warranty of title from the seller that the work is free from any claims. Further scrutiny includes submitting information on proposed acquisitions to the Art Loss Register. In addition, as is customary with many major art museums, the National Gallery publishes annually a detailed list of all works of art acquired during the year, and in our case, a description of our collection is available through the Gallery's Web site.

The Archives of the National Gallery preserves and makes available to researchers and scholars historical materials relating to the National Gallery's past. In response to the great interest generated by this period and subject in recent years, the department produced a Guide to Research Resources Relating to World War II; subsequently, it was expanded and made available on the Gallery Web site last year. The guide directs users to documents and records relating to wartime activities that are available for study and research at the National Gallery; these records include files, photographs, and oral histories of particular interest to those researching the field. For instance, documents reflect the involvement of Gallery employees and others on the Roberts Commission and the officers of the Monuments, Fine Arts, and Archives program, including correspondence, fascinating glass slides of the MFAA's packing



activities in Germany, donated personal papers and journals of travels in Europe, as well as newspaper and magazine articles, to name just a few.

In all aspects regarding this subject, the National Gallery adheres strongly to the statement of purpose and guidelines established by the Association of Art Museum Directors. At this time, Mr. Chairman, I can assure you that we have not received a single claim for unrestituted looted art but if we did, we would seek to review such a claim promptly and thoroughly. Similarly, we have not found any concrete evidence through our own research that any painting in the Gallery's collection was illegally confiscated during the World War II era and not restituted; but if we did, such information would be given the same high priority.

Thank you for the opportunity to discuss further this important topic.

Statement by Glenn D. Lowry, Director of The Museum of Modern Art, New York, to the Committee on Banking and Financial Services, United States House of Representatives

February 10, 2000

Good afternoon, Mr. Chairman and distinguished members of the Banking Committee. On behalf of the Trustees of The Museum of Modern Art, I want to thank you for this opportunity to discuss the significant progress made by American art museums in resolving the fate of works of art stolen by the Nazis between 1933 and 1945.

Let me begin, as I did when I had the honor of testifying before this Committee two years ago, with an unequivocal statement: The Museum of Modern Art does not, and will not, knowingly exhibit stolen works of art. Like our sister institutions, we maintain our collections with scrupulous regard for our professional and ethical obligations.

Within that context, it is crucial to understand the enormous complexity and practical realities of resolving issues of provenance. Questions of provenance are nearly as old as the history of art, and rare is the museum that has never had to address the possibility that someone may claim a cherished work on public view as their personal property. Museums have been able to address conflicting ownership claims responsibly and ethically, and these long-standing professional practices will continue. In the unique context of Nazi depredations, museums must be able to assure themselves and the public they serve that they have good title to the art in their collections.

I would like to spend a few minutes describing what the American art museum community has done to address this important question since several of us last appeared before this Committee. As we promised you two years ago, the Association of Art Museum Directors (AAMD) created a task force chaired by Philippe de Montebello, Director of the Metropolitan Museum of Art in New

York. Within a short period, this task force, on which I was honored to serve, developed guidelines that were accepted by all of the major art museums in the United States. These guidelines have also served as the basis for the recommendations of the 1998 Washington Conference on Holocaust-Era Assets and for additional guidelines promulgated by the American Association of Museums, a group representing 3000 museums of all kinds.

The guidelines call upon American museums to conduct a comprehensive review of their collections to ascertain if any works were unlawfully confiscated during the Nazi era and never returned. To the extent that problems come to light, the guidelines provide a framework for museums to address them candidly and responsively.

As new information has become available through the efforts of researchers and archivists around Europe and the United States, we have incorporated that data in a systematic review of our collections and we will continue to review our holdings as more information emerges.

At MoMA, we have committed several members of our curatorial staff to provenance research, and we have added full time staff dedicated solely to provenance research. We have also greatly increased the level of scrutiny we give to new acquisitions, whether by gift, purchase, or bequest. Other American art museums have taken similar measures.

Working with newly available archival and historical resources, museums have added depth and breadth to the understanding of their collections. We have also worked with our European colleagues, who are also making efforts to address potential problems with works of art in their collections. Several European governments, too, have taken the initiative to transfer from national collections to their rightful owners looted works that were never returned after World War II. Although much remains to be done, we are seeing an increasing awareness and sensitivity on both sides of the Atlantic, and activity on this issue on a scale that no one could have predicted even two years ago. Our staff has met with people involved with research and restitution

programs in Germany, Austria, Switzerland, France, Poland, Russia, Britain, the Netherlands, and even Australia. We have exchanged information with researchers, art historians, reporters, lawyers, art dealers, auction houses, and political leaders. These efforts will continue because they are an integral part of our educational mission, and because they are part of our relationship with the communities we serve.

It is gratifying and encouraging to be able to report to you that despite the enormous devotion of resources to this issue, American museums have to date discovered very few problems with their collections. More important, when problems have appeared, we have squarely addressed them. At the Modern, for example, despite an enormous amount of scrutiny both from ourselves and from the press and others, we are not aware of a single Nazi-tainted work of art in our collection, of the more than 100,000 we hold.

That is not to say there are no serious questions, but the key is that, following the AAMD guidelines and in cooperation with our European colleagues, we have the mechanism and the will to resolve whatever questions arise. By way of illustration, I would like to describe for the Committee the process the Modern followed in the single instance to date where we faced the possibility of a problem with a work in our collection. About a year ago, I received a letter from the representative of a major European collection. His letter raised the possibility that a painting that the Museum had owned for many years, a gift from a prominent American family, had been taken from his family before or during the Second World War. We immediately responded, and agreed to conduct a full investigation. He made his information available to us, a photograph of the painting hanging in his relative's home, and certain transportation records created by the Nazis. With his cooperation, the Museum undertook a huge amount of research in an effort to establish, among other issues, when the photograph was taken, whether the painting in the photograph is the same as the one in our collection, and whether the picture was sold before the war to another collector in Sweden. We made all of this information available to the family. I am pleased to report that in this year long, ongoing inquiry, we have had unstinting assistance from a

number of European sources, including Musée National d'Art at the Pompidou Center in Paris and an important Swedish archive. We, and the potential claimant, are working together in good faith, and on a confidential basis, both of us knowing that we will reach a mutually satisfactory result. If the picture turns out to have been taken from his family and never returned, we will act responsibly, appropriately, and promptly.

I do not want, however, to leave you with the impression that every problem that arises has an easy solution. Often the issues involved are complex and knotted in difficult questions of inheritance and post-war restitution. Take, for example, the two paintings by Egon Schiele that were part of an exhibition of Schiele's work on display at The Museum of Modern Art from the Leopold Foundation in Vienna.

On New Year's Eve, 1997, The Museum of Modern Art received letters from two families claiming to be the rightful heirs of two different paintings in the exhibition. We had exhibited both of the paintings, along with about 150 others by the same artist, without incident at the Museum for three months. We had no reason to believe that there was any cloud on the paintings' past. Both of the pictures had been exhibited around the world for decades, and both had been reproduced frequently in books.

The exhibition closed on schedule, but the two paintings remained in New York because the Manhattan District Attorney subpoenaed the pictures. For the last two years, we have fought a protracted and ultimately successful battle in the New York State courts. Our point was not that one side or the other was the proper owner -- a museum is neither equipped nor empowered to serve as judge and jury in a dispute over other people's property -- but rather that current New York State law protects works of art on loan for public exhibition from any kind of seizure.

Although we had assumed from the start the good faith of the people claiming the pictures, it now appears likely that neither family had a *bona fide* claim. In the case of one of these two claims,

the painting was claimed by a former reporter for *The New York Times*. As it turned out, her claim was based upon her being the widow of a son of the pre-war owner's cousin, who in turn was not an heir to the painting.

The other claim is even more convoluted. The man who asserted his family's rights in the painting wrote to us about his vivid recollections of seeing the picture in his aunt's house in Vienna before the war. But, according to the pre-war owner's grandson, the claimant never saw the painting, never set foot in the house in Vienna, and is not, as a matter of fact, an heir -- a fact the claimant recently conceded in a British newspaper interview. Despite all this, the U.S. Justice Department has commenced a forfeiture proceeding to reclaim this alleged heir's painting, making it almost impossible to engage in the kind of meticulous and dispassionate research required to ascertain the exact history of this painting immediately before and after the Second World War, and who today is the rightful owner.

I mention this example not to discuss the merits of the claim, or to delve into deeply sensitive moral and legal questions of who may rightly assert claims and when they should do so, but to demonstrate that the process of determining what, if any, art in American museum collections was looted by the Nazis and never returned to the proper owner, and then trying to determine who the proper owner might be, is an extremely complex undertaking, and is made even more so when the works in question are loans to, rather than objects owned by, the relevant institution.

Just as we have learned that American and European museums, working with the AAMD guidelines, can play a vital role in reuniting looted art with its rightful owners, we have also learned most emphatically that use of criminal process is not an appropriate way to address this issue. With the immensely valuable participation of groups like the Commission for Art Recovery of the World Jewish Congress, we have seen that the most effective means to resolve problems involving the return of Nazi-looted art requires good faith, discretion, and cooperation between

museums and claimants, not the blunt instruments of subpoena power and forfeiture proceedings.

For museums and for the public, involvement of criminal process is counter productive. Take again, for a moment, the case of the Schiele paintings we borrowed two and a half years ago. So far, other than costing hundreds of thousands of dollars and untold hours of time, the paintings have been locked away in storage, inaccessible to the claimants and inaccessible to the public. And because of this, many foreign lenders both public and private, have raised serious concerns about lending to American museums -- all sobering and unintended consequences of the various legal actions surrounding the case.

American museums, with their sister institutions in Europe, will continue to act responsibly and responsibly. We will not rest on the knowledge that the fears expressed two years ago have been proved false, that our galleries and storage areas are not, upon closer inspection, filled with looted art. We have seen, and I expect that we will continue to see, that people of good will, acting with energy and commitment, will be able to resolve whatever future challenges this issue presents.

The AAMD guidelines, through the rigor with which they have been accepted and put into practice by American museums, repeatedly demonstrate their worth. There is not a single art museum in this country that is not aware of the importance of this issue and the urgent need to diligently review the provenance of the works of art in their collections. These efforts pay off: the North Carolina Museum of Art just days ago reached the conclusion that a painting in their collection had been taken from an Austrian family before the war and never returned. Precisely as the AAMD guidelines direct, the North Carolina Museum carefully considered the factual record, discussed the matter reasonably and respectfully with the family's representatives, and then concluded that the painting belonged to the family in Austria.

I am confident that, should any further issues arise for American museums, they will be addressed and resolved with equal measures of good faith and due consideration. The guidelines, and the spirit of fair and appropriate conduct that motivated us to write them, are deeply engrained into the operations of American museums. As this Committee concludes its inquiry into this issue, it may draw considerable satisfaction from the fact that America's museums are forthrightly addressing the question in regard to our own collections and in the art we borrow, and that we will continue to provide for the American people outstanding exhibitions of fine art.





Association of Art Museum Directors

TESTIMONY

HOUSE BANKING AND FINANCIAL SERVICES COMMITTEE

ON BEHALF OF

ASSOCIATION OF ART MUSEUM DIRECTORS

PRESENTED BY

LYNDEL KING, DIRECTOR  
FREDERICK R. WEISMAN ART MUSEUM  
AND  
CHAIRMAN, AAMD ART ISSUES COMMITTEE

WASHINGTON, FEBRUARY 10, 2000

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Mr. Chairman, I am Lyndel King, Director of the Frederick R. Weisman Art Museum in Minneapolis. I testify today on behalf of the members of the Association of Art Museum Directors (AAMD). We are grateful for the opportunity to be here and thank you and the committee for your continued efforts to shine a light on one of the most tragic periods of history in the western world.

AAMD, which was founded in 1916, has followed the troublesome issues of provenance of works of art since 1963 when we included a section in our publication "Professional Practices" which states: "The Director must not knowingly acquire or allow to be recommended for acquisition any object that has been stolen, removed in contravention of treaties and international conventions to which the United States is a signatory, or illegally imported into the United States." In late 1997, AAMD began a serious discussion, specifically about Holocaust-looted art, which lead six months later, to the publication of Guidelines on Nazi-looted art (copy attached).

The AAMD greatly benefited from the then-recent work of scholars like Lynn Nicholas and Hector Feliciano. Their research and scholarship provided museum professionals with valuable information and background, heretofore not easily available. It caused us to look again at what was owned by our museums.

As a result of the scholarship, the discussions and the guidelines, American art museums, which may have works that could be Nazi-looted, have rededicated themselves to be vigilant and thorough in their provenance research. However, we must put this into an appropriate context. Approximately 50% of all of the art museums that are members of the AAMD, and probably a higher percentage of all art museums in the United States, could not have Nazi-looted art because they either have no permanent collections, or have only contemporary, American, or regional collections.

After the publication of the AAMD guidelines we surveyed the AAMD membership in 1998 and again in 1999 about their progress in researching their collections. In 1998, 80% of the survey respondents whose collections included the kind of art that might have been looted said that they had completed or were in the process of doing the required research. In 1999 that number had increased to 100%. Also in the 1999 survey we asked, "Are you facilitating access by outside researchers to information your museum may have on Nazi-WWII provenance of works in your collection?" One hundred percent of the respondents indicated that access to their records is open. Although not asked by the survey, several respondents volunteered that they had never had a request from outside researchers.

I think we can be proud that in cases where research has proved that works were Nazi-looted and never restituted, they have been returned to heirs of the original owners, or in the case of works looted from institutions, mutually satisfactory arrangements have been made. It is interesting to note that claims have resulted mostly because the museum itself published its collection, either in print form or on a Web site and thus subjected its holdings to public scrutiny.

In the case of the Matisse discovered at the Seattle Art Museum, the painting was returned to the heirs of the Rosenberg family, who sold it to a private collector. And Glenn Lowry made mention of the Cranach painting at the North Carolina Museum of Art which will now be

restituted. This is an example of even a small-to- medium-sized museum following the AAMD Guidelines and doing the right thing. In another recent incident, a claimant has come forward after seeing a work on the museum's Web site. That claim is being processed by the museum.

The point is, the system is working. Museums are researching their collections and they are making information available through print and electronic publications, and when the validity of claims is established, they are returning the works.

Museums large and small are putting themselves to the task of reviewing their collections and they are also taking special precautions when considering new purchases or gifts. In the words of one museum director, "We grill dealers on provenance because of this issue and demand letters from owners or previous dealers attesting to acquisitions."

One of the issues continually cited by museums still in the process of doing provenance research is cost. This is especially, but not exclusively, true for smaller and mid-sized museums whose research staff and budget already are stretched. Because provenance research is a laborious, time-consuming, painstaking process that requires a multilingual staff and hours of investigative work, the process is exceedingly slow. Let me quote from the experience of one mid-sized museum curator in putting together an international exhibition.

"We have been putting a great deal of energy into the issue [of provenance for works of art for the exhibition], but we are a small museum and have no resources to hire extra qualified hands to do the intensive research that may be warranted. For our recent exhibition we devoted extraordinary time [16 months] and effort to determining that neither domestic nor international loans were likely to be subject to competing claims of ownership. Our Immunity from Judicial Seizure application was successful but required the peculiar Catch-22 that we *guarantee* [emphasis added] there was no possibility of competing claims of ownership. If we could provide such assurance we wouldn't need immunity. However, there were works for which we simply could not get information regarding the crucial years." As this curator's recitation indicates, in provenance research, there are often difficulties and obstacles in the most unsuspected places. In this case, her small curatorial staff was stretched to the limit as they spent hours in conversation helping the then USIA understand that they could not "guarantee" as such, that there would be no competing claims.

However, her greatest challenge came in arranging a loan from a private collector. She discovered that the painting she wanted to borrow had been looted, but she did not know if it had been properly restituted. The collector agreed that she should undertake the provenance research, which as she said, "was not easy or straightforward to accomplish." Happily, she was able to determine that the painting had been properly restituted and then resold.

This example gives us insight into several issues facing museum researchers. The most vexing being that there are no short cuts to filling gaps in provenance. It may be relatively easy for journalists or others to establish that a work of art might be labeled as "having suspicious gaps in provenance" but filling in those gaps -- providing conclusive evidence one way or the other -- is the hard part. In fact, even after exhaustive research, it is often concluded that there is no definitive answer to the missing information. While a work may be listed on an inventory as having been looted, it may be more difficult to show whether it was

restituted and then sold by the rightful owner or whether it was sold illegally. Works of art are movable objects. They don't stay in one place the way bank records or other assets do. And, documenting all the movements of works of art over a fifty-year period, even in the best of circumstances, is not easy.

Another museum curator wrote that after reviewing the provenance of 2,100 of the works in the collection, it was found that 800 were acquired after 1933 and of those, 500 paintings needed varying amounts of additional research. She concluded her report by saying: "We have been in contact with dealers, collectors, scholars, curators, and auction houses. We have also consulted the staff of HARP (Holocaust Art Restitution Project) and CAR (Commission for Art Recovery) and other recognized experts in this field. In addition to utilizing the National Archives in College Park, we expect to look into records of various European archives as well." But, with this number of paintings to research, the results will not be immediate.

While American art museums are fully committed to weighing and thoroughly investigating claims of title to specific works in their collection, it must be recognized that museums hold their collection, not for the benefit of the museum, its staff or its trustees, but for the American public. Consequently, we have an obligation to assure the public that any work taken from the public domain is lawfully taken. When art museums are accused of not quickly enough returning works commonly assumed to be Nazi-looted art, it should be remembered that, to date, most of the claims, either by claimants or the press, have proven invalid. We've heard several of those examples from Glenn. Generally, the results of claims that are not substantiated are not reported as widely as the more dramatic situations that occur when objects are returned or just found to have gaps in provenance.

Not only is the system working for cases of art already in museums, the process that has lead us to examine our collections has also created an awareness and sensitivity among museum professionals, dealers, and private collectors. We now ask far more questions before accepting a donation or purchasing a work. In spite of severe limitation of resources, our due diligence continues with even greater urgency than previously existed. Thanks to many working in the field there are more lists and information available than existed five years ago. But there are still obstacles.

In discussions with large, medium and small museums, they have made a number of suggestions for how to expedite the task at hand. The first two suggestions are the same from all museums: additional resources to do the investigative work in museums and also to help in expanding or creating universal databases to assist with the chore. In addition, museum colleagues tell me it would be useful if there were a better cataloging and cross-referencing system at the National Archives. Currently, for example, if a researcher finds a reference for a debriefing that might shed light on a particular painting, there is no way easily to find the transcript of the debriefing. The researcher might be directed to the existence of a box that could hold the transcript -- as well as hundreds of other pieces of paper, none of which is indexed in any way. Curators who have used the archives report that sometimes the boxes are not properly labeled or identified. The task is daunting.

Another suggestion is that that dealers and auction houses, which are often not forthcoming with information, should be obliged to open their records, maybe after a certain period of

time. It has also been suggested that there be some organized way to preserve and eventually open the records of dealers who go out of business. When a dealer goes out of business, the records are often lost or destroyed, which could mean some gaps in provenance would never be known.

Museums understand the imperatives of researching their collections and as you have heard today, even with limited resources, they have plunged ahead. However, the additional research burdens on small museums often forces them to walk a very fine line: do additional research and cut important community programming or do the research at a slower pace and maintain programming. Some are still struggling to find the balance, but all are working at it. However, the important thing, is that in spite of obstacles, museums are unquestionably moving forward. If progress appears to be slow, it is not for any lack of will or moral force. As one museum director said, "We only have one chance to do the right thing. If we return a work of art to the wrong party, or return a work that should not have been returned, we are not likely to have a chance to undo that." This means that slow, unsensational research must take place. Museums, small and large, are aware of the seriousness and of the complexity of the issues. They do not want Nazi-looted art on their walls. And, they are doing the right thing.

Thank you for your kind attention.



Association of Art Museum Directors

June 4, 1998

Report of the AAMD Task Force on the Spoliation of Art during  
the Nazi/World War II Era  
(1933-1945)

AAMD Statement of Purpose: "The purpose of the AAMD is to aid its members in establishing and maintaining the highest professional standards for themselves and the museums they represent, thereby exerting leadership in increasing the contribution of art museums to society."

I. Statement of Principles

A. AAMD recognizes and deplores the unlawful confiscation of art that constituted one of the many horrors of the Holocaust and World War II.

B. American museums are proud of the role they, and members of their staffs, played during and after World War II, assisting with the preservation and restitution of hundreds of thousands of works of art through the U.S. Military's Monuments, Fine Arts and Archives section.

C. AAMD reaffirms the commitment of its members to weigh, promptly and thoroughly, claims of title to specific works in their collections.

D. AAMD urges the prompt creation of mechanisms to coordinate full access to all documentation concerning this spoliation of art, especially newly available information. To this end, the AAMD encourages the creation of databases by third parties, essential to research in this area, which will aid in the identification of any works of art which were unlawfully confiscated and which of these were restituted<sup>1</sup>. Such an effort will complement long-standing American museum policy of exhibiting, publishing and researching works of art in museum collections in order to make them widely available to scholars and to the general public. (See III. below.)

<sup>1</sup> The term "restitution", throughout this report, refers to works of art returned to prior owners, or to circumstances where the prior owner agreed to resolve the matter in some other manner.

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E. AAMD endorses a process of reviewing, reporting, and researching the issue of unlawfully confiscated art which respects the dignity of all parties and the complexity of the issue. Each claim presents a unique situation which must be thoroughly reviewed on a case-by-case basis.

## II. Guidelines

AAMD has developed the following guidelines to assist museums in resolving claims, reconciling the interests of individuals who were dispossessed of works of art or their heirs together with the fiduciary and legal obligations and responsibilities of art museums and their trustees to the public for whom they hold works of art in trust.

### A. Research Regarding Existing Collections

1. As part of the standard research on each work of art in their collections, members of the AAMD, if they have not already done so, should begin immediately to review the provenance of works in their collections to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted.

2. Member museums should search their own records thoroughly and, in addition, should take all reasonable steps to contact established archives, databases, art dealers, auction houses, donors, art historians and other scholars and researchers who may be able to provide Nazi/World-War-II-era provenance information.

3. AAMD recognizes that research regarding Nazi/World-War-II-era provenance may take years to complete, may be inconclusive and may require additional funding. The AAMD Art Issues Committee will address the matter of such research and how to facilitate it.

### B. Future Gifts, Bequests, and Purchases

1. As part of the standard research on each work of art:

(a) member museums should ask donors of works of art (or executors in the case of bequests) to provide as much provenance information as possible with regard to the Nazi/World War II era and

(b) member museums should ask sellers of works of art to provide as much provenance information as possible with regard to the Nazi/World War II era.

2. Where the Nazi/World-War-II-era provenance is incomplete for a gift, bequest, or purchase, the museum should search available records and consult appropriate databases of unlawfully confiscated art (see III below).

(a) In the absence of evidence of unlawful confiscation, the work is presumed not to have been confiscated and the acquisition may proceed.

(b) If there is evidence of unlawful confiscation, and there is no evidence of restitution, the museum should not proceed to acquire the object and should take appropriate further action.

3. Consistent with current museum practice, member museums should publish, display or otherwise make accessible all recent gifts, bequests, and purchases thereby making them available for further research, examination and study.

4. When purchasing works of art, museums should seek representations and warranties from the seller that the seller has valid title and that the work of art is free from any claims.

#### C. Access to Museum Records

1. Member museums should facilitate access to the Nazi/World-War-II-era provenance information of all works of art in their collections.

2. Although a linked database of all museum holdings throughout the United States does not exist at this time, individual museums are establishing web sites with collections information and others are making their holdings accessible through printed publications or archives. AAMD is exploring the linkage of existing sites which contain collection information so as to assist research.

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#### D. Discovery of Unlawfully Confiscated Works of Art

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1. If a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, the museum should make such information public.

2. In the event that a legitimate claimant comes forward, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.

3. In the event that no legitimate claimant comes forward, the museum should acknowledge the history of the work of art on labels and publications referring to such a work.

#### E. Response to Claims Against the Museum

1. If a member museum receives a claim against a work of art in its collection related to an illegal confiscation during the Nazi/World War II era, it should seek to review such a claim promptly and thoroughly. The museum should request evidence of ownership from the claimant in order to assist in determining the provenance of the work of art.

2. If after working with the claimant to determine the provenance, a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.



3. AAMD recommends that member museums consider using mediation wherever reasonably practical to help resolve claims regarding art illegally confiscated during the Nazi/World War II era and not restituted.

#### F. Incoming Loans

1. In preparing for exhibitions, member museums should endeavor to review provenance information regarding incoming loans.

2. Member museums should not borrow works of art known to have been illegally confiscated during the Nazi/World War II era and not restituted unless the matter has been otherwise resolved (e.g., II.D.3 above).

#### III. Database Recommendations

A. As stated in I.D. (above), AAMD encourages the creation of databases by third parties, essential to research in this area. AAMD recommends that the databases being formed include the following information (not necessarily all in a single database):

- 
1. claims and claimants
  2. works of art illegally confiscated during the Nazi/World War II era
  3. works of art later restituted
- 

B. AAMD suggests that the entity or entities creating databases establish professional advisory boards that could provide insight on the needs of various users of the database. AAMD encourages member museums to participate in the work of such boards.

## Testimony of Sharon Page

**Statement for the U.S. House of Representatives Committee on Banking and Financial Services Hearing on Nazi-looted Assets – 10 February 2000**

### ISSUES FOR UK MUSEUMS AND GALLERIES

#### Introduction

It is now over a year since the Statement of Principles and Actions, produced by the UK National Museum Directors' Conference ("NMDC") to address the issue of works of art wrongfully taken during the Holocaust and World War II, was made public at the Washington Conference on Holocaust Era Assets in December 1998. Much work has been carried out since then and is likely to continue for several years to come. The purpose of this statement is to: -

- Describe the work that has been carried out in the UK, the progress that has been made and the lessons that can be learned;
- Examine the UK and international legal issues; and
- Identify what further work could be done in the future.

This statement is largely written from the perspective of national museums in the UK generally and from the perspective of the Tate Gallery in particular, which has been the only national institution in the UK to receive a formal claim against one of the works in its collection. However, much work is also being done by non-national institutions and this statement will endeavour to highlight that work where relevant.

#### History and Progress

The history of the work done by UK national museums and galleries to address the issue of Nazi-looted art really begins in June 1998.

At their June 1998 meeting, the NMDC - a voluntary association of nationally funded museums, galleries, botanical gardens and libraries in the UK - established a working group to examine the issues surrounding the spoliation of art during the Holocaust and World War II period.

The NMDC had already considered general issues of restitution and repatriation of items in museum collections at previous meetings and commissioned a report jointly with the Museums Association and the Museums and Galleries Commission. However, the NMDC's decision to set up a working group to focus particularly on art looted during the Holocaust was taken following discussions with Chris Smith, the Secretary of State for Culture Media and Sport in the UK and Lord Janner, Chairman of the Holocaust Educational Trust. The NMDC were also aware of actions already taken by colleagues in the USA, particularly the statement produced by the Association of American Art Museum Directors in the wake of the seizure of works by Egon Schiele on loan to the Museum of Modern Art in New York. Representatives of the NMDC had also been in contact with colleagues in France and the Netherlands.

The working party began to meet in the summer of 1998 with representatives from the main London based national museums and galleries, including the National Gallery,

the British Museum, the Victoria and Albert Museum, the Imperial War Museum and the Tate. A representative of the Department for Culture, Media and Sport also attended the meetings. The Statement was finalised in November 1998 when it was adopted by the NMDC and made public at the Washington Conference on Holocaust Era Assets in December 1998.

The Statement set out to offer practical and achievable guidance to museums and galleries in the UK on how they could address the issue of Nazi-looted art insofar as it impacted on their collections. As the lead in the UK so far has been taken by museums and galleries themselves rather than government, the NMDC has made a conscious effort to focus its energies on practical guidelines and research rather than lobbying for legislative changes. That is not to say that the NMDC are not aware of the legal problems that may face a national institution should a claim for return of a looted artwork be made. However, so far, the NMDC have sought to address that issue by acknowledging the challenges presented by the statutory and legal framework within which UK institutions operate and providing guidance on how best to reconcile the interests of individual claimants with each institutions' responsibilities to their national public collections.

The NMDC Statement was fully compatible with the 11 Principles which emerged from the Washington Conference and which helped significantly in terms of embedding the principles contained in the UK Statement into a broader international context. The main issues addressed by the UK Statement were:

- Claims handling;
- Research into provenance of existing collections;
- Provenance checking for new acquisitions;
- Sharing collections information and openness;
- Procedures for loans.

However, the Statement anticipated two major further initiatives which have shaped the work carried out over the past year – the production of Action Plans by museums, galleries and libraries detailing research to be done into existing collections and the production of more detailed guidance on such matters as acquisitions and claims handling.

In March 1999, non-national museums and galleries in the UK, under the leadership of the Museums and Galleries Commission, produced their own Statement of Actions and Principles based on the NMDC model. In April 1999 an independent Advisory Committee was established under the Chairmanship of Sir David Neuberger, a High Court Judge, to give independent advice and guidance to UK museums and galleries. The Advisory Committee comprises members from the art trade, government, the Jewish community, education and expert research groups as well as art historical expertise. The Committee met a number of times during 1999 to review progress of work being carried out by UK museums and galleries and has proven to be a highly valuable resource.

Also in April 1999 all national institutions published Action Plans setting out basic information about their collections and key points of contact in the event of a claim. More importantly, however, these Action Plans set out priorities for research and

provenance checking and timescales for delivery. For example, the Tate was able to extract from its Collections Database a list of approximately 600 works in its non-British Collection which were made before 1946 and acquired after 1932 to form the first target area for provenance checking and research. This exercise was completed in October 1998 and work now continues to research into other areas of the collection.

Non-national museums have embarked on a similar exercise and the results of all institutions' first phases of research – including lists of works where gaps or question marks over provenance have been identified – will be made public at a press conference at the end of February and published on a joint web-site.

Many lessons can be learned from this exercise. Provenance checking on this scale – whilst vitally important in the context of aiding research into works acquired during the Holocaust and providing crucial information for potential claimants – is hugely labour intensive and presents enormous challenges to the researcher. Provenance documentation comes in a variety of forms, ranging from formal certificates of ownership to personal letters and entries in exhibition catalogues. Gaps often exist, but mostly for completely innocuous reasons. A key challenge has been to try to achieve a consistency in approach and avoid making assumptions where actual documentary evidence is not available.

All of the museums and galleries taking part in this exercise are funded by either central or local government and do not have the resources to employ an army of researchers to do this kind of work. Some institutions have been able to allocate some dedicated research resource, but the vast majorities have carried out provenance research alongside their normal duties. Non-national museums – who often have a very small number of staff – have found the task particularly challenging and in response the Museums and Galleries Commission have established a fund to which institutions can apply to fund research. However, even where more financial resource is available, a high level of expertise is needed to identify and interpret the provenance information available within the institution itself and to know where to look outside to fill the gaps.

Indeed, filling the gaps is probably the biggest challenge now faced by institutions in the UK involved in this research exercise. The National Gallery in London completed a provenance check of all 2000 items in its collection last year and published their 'gap list' in the ArtNewspaper. However, despite such publication, and continued efforts to fill those gaps, little further information has been obtained, no formal claims have been made and no actual evidence has been revealed to suggest that any of those works may have been looted. However, it is hoped that the web-site publication planned for the end of February will act as a vital research tool and as part of that exercise members of the public will be actively encouraged to come forward with information that may be in their possession.

The National Gallery's experience highlights a further issue. With a relatively small collection, the provenance checking exercise was possible within existing resources and a relatively short timescale. For collections such as those belonging to the Victoria and Albert Museum and the British Museum, containing literally millions of items, the challenge is enormous and such institutions have inevitably had to focus initial research on particular areas of their collections, rather than the collection in its

entirety. It is also worth noting that the only claim made against a national collection in the UK – which will be discussed later – was in relation to a work in an area of the gallery's collection not considered an initial research priority.

However, despite these problems, the work done so far represents an enormous effort and commitment on the part of the institutions and researchers involved. It has provided invaluable insight into our collections and hopefully will provide invaluable information to both researchers into works of art looted by the Nazis and potential claimants. Efforts are also being made to co-ordinate database searches and requests for further information to make best use of available resources.

### **Legal Issues**

As mentioned already, the emphasis in the UK has been to focus on practical guidance and research, rather than to address the issues by use of primary legislation.

This approach differs from a number of countries in Europe that have complemented research and information sharing with legislative changes. Most of these legislative changes have focused on broadening the powers of museums and galleries to give back works in their collections, which have been proven to have been looted. Other legislative changes have included creating exemptions to existing legislation relating to ownership and the passing of title to works of art – usually by removing or extending limitation period provisions.

Under UK law, there is a presumption that good title to a work of art has passed to the possessor if the possessor acquired the work in good faith and the appropriate limitation period has elapsed (currently six years in the UK). Similar provisions apply in other European countries (and the US) although there are variations to both the length of time of any limitation period and/or when the limitation period is deemed to start running. There is a much stronger assumption in favour of the original owner of stolen cultural property in countries who have signed up to the UNIDROIT convention (the UK has not).

In this legal environment, and because the UK was not occupied during World War II, it is more likely that a UK institution will have acquired a previously looted work in good faith and that sufficient time will have passed to transfer good title. And whilst the UK approach has not been to press for changes in legislation, these legal issues are highly pertinent in the event of a claim. Most national institutions are created by Act of Parliament. An institution's founding statute will determine its powers and set out its constitution. Of particular significance to the looted art issue is the fact that many national institutions' founding statutes contain absolute prohibitions against disposing of items in their collections. Even those institutions that do have statutory disposal powers are only able to dispose in certain limited circumstances. Therefore, in the event that good title to a previously looted work has passed to an institution prohibited from making disposals, that institution would have no legal powers to return a work should a claim be made.

All museums and galleries, whether national or non-national, have charitable status and are, therefore, subject to UK charity legislation. This is particularly relevant to claims against items in museum and gallery collections which may have a strong

moral basis, but where, for the reasons described above, legal title has passed to the institution receiving the claim. In such circumstances, a museum or gallery would have very limited powers to either return a work in its collection, or pay financial compensation where a claim had no legal basis. To do so, an institution would be well advised to obtain consent from the Charity Commission (and for national institutions also from their government funding body) and in obtaining such consent, it would need to demonstrate that the return of the work of art or the payment of compensation was in the best interests of the charity and in furtherance of the charity's objects.

In July 1998, the Tate was the first UK national gallery to receive a claim against one of the works in its collection, *View of Hampton Court Palace*, a seventeenth century painting by Jan Griffier the Elder. The claim was made by the family of a German Jewish collector who had been murdered by the Nazis in Düsseldorf before the outbreak of World War II. His children (who are now making the claim) had been able to escape Germany and his wife fled to Belgium with the family art collection, including the Griffier. It is believed that she eventually sold the painting whilst in hiding in Brussels in the early 1940s in order to raise money to buy food.

In trying to reach a just settlement of this claim (the claimants are happy for the work to stay at the Tate but are asking for financial compensation) the Tate has encountered all the legal and moral issues described above. The Tate's Trustees have looked to the government to provide guidance as to how best the claim can be settled and the Department for Culture, Media and Sport is currently exploring ways in which it can assist museums and galleries in settling claims of this nature in a satisfactory manner. Inevitably any decisions taken in relation to the Griffier claim will set a precedent for future claims against objects in UK collections.

### **The Future**

UK institutions will continue to carry out research into their collections in accordance with their Action Plans and respond positively to requests for information and potential claims. It is hoped that this exercise will contribute significantly to knowledge about works of art and their whereabouts during the Second World War and will help researchers and claimants alike.

All UK museums and galleries are about to be issued with comprehensive guidelines on how to deal with issues arising from Nazi-looted art to supplement the basic guidelines set out in the NMDC Statement. These guidelines provide a historical context and give a brief summary history of the Nazi's systematic looting of both public and private art collections. They provide contact details for key organisations involved in research into the issue and who help claimants. The guidelines also provide advice on research methodology, including details of the main databases and sources of further information about cultural objects looted during the period.

They also supply detailed advice to institutions when acquiring works for their collections in the future and when dealing with international loan exhibitions. Both these areas offer considerable scope for future improvement, particularly in the legal context.

In relation to art acquisitions, the guidelines stress the need for rigorous provenance checking prior to acquisition, especially where there are gaps or question marks over provenance in the 1933 – 45 period. The guidelines also recommend that museums and galleries introduce a form of written agreement when acquiring works for their collections, which seeks basic assurances that the vendor has title to the work they are selling, that they are free to transfer that title and that, to the best of their knowledge and belief, there are no third party claims against the work.

A number of UK national institutions are introducing acquisitions agreements and the request for basic assurances on title are also enshrined in recent guidelines on buying cultural objects issued by the Museums Association. However, there is still considerable reluctance in the art market to such acquisition contracts other than those which exclude all liability on the part of the vendor as to title and provenance (indeed, examples have been seen of attempts to exclude legally implied warranties for title, which cannot technically be excluded under UK law!). Museums and galleries are left very exposed when pursuing an acquisition where there are question marks over provenance in the 1933 – 45 period where the vendor refuses to give any assurances as to title and prior ownership, particularly as there are often private owners competing for purchases who are prepared to take risks on issues of provenance. The issue of the art market's role in addressing the problems arising from Nazi-looted art was debated at length at the Washington Conference, but until a better balance of risk and responsibility is established in art market practices so far as ownership and provenance is concerned, museums and galleries will continue to be vulnerable to acquiring works which may have been looted.

The guidelines also set out practical guidance in relation to administering international loans. Some of the most high profile cases relating to works of art looted during the Holocaust have emerged when looted works have been loaned outside the jurisdiction where they normally reside and claims have been made (and works seized) when on display at the borrowing institutions premises. Many European countries and the US have anti-seizure legislation designed to give immunity to works of art when on loan for major exhibitions. No such legislation exists in the UK, and although there have been some calls for it to be introduced, the general view is that there would be little government support for it and that there are better ways to ensure the free passage of works of art to international exhibitions. Indeed, the Museum of Modern Art in New York's experience has shown that anti-seizure legislation does not always solve the problem and there is a compelling argument to suggest that anti-seizure legislation could be challenged under broader international human rights legislation.

The NMDC guidelines, therefore, seek to establish a sensible balance between due diligence on the part of the borrowing institution and basic warranties as to title and third party claims on the part of the lending institution. In order to be truly effective, such guidelines would need to be adopted internationally by all institutional lenders and a first draft of the NMDC guidelines was considered at a conference held for international exhibition organisers in Berlin in July 1999. The proposals were generally greeted very positively, although there was some nervousness on the part of a number of institutions regarding the proposals for basic warranties by lenders on title and third party claims. However, it is proposed that the matter is debated further at this year's conference, with a view to the proposals being adopted as international good practice.

Finally, the House of Commons Select Committee for Culture, Media and Sport is planning to hold an inquiry into the return of cultural property. The Committee will focus on the illicit trade in cultural objects and will be aimed mainly at modern day trafficking. However, the Committee is also likely to consider the question of restitution of objects which are currently in the collections of museums and galleries in the UK, as well as the issue of works of art which might have been the subject of spoliation during the Holocaust and World War II. The Committee will meet in the Spring and museums and galleries in the UK will await with interest the outcome of their deliberations.



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**Written Comments for House Banking Committee**

**Hearing of 10 February 2000**

**Introduction:**

Good morning, Mr. Chairman and Members of the Committee. At the outset, I should note that the views I am expressing here are my own, and not those of the Presidential Advisory Commission on Holocaust Assets in the United States. As the Members of this Committee know, the Presidential Commission was created last year to investigate the fate of Holocaust victims' assets – including art and cultural property, gold, and financial assets such as bank accounts and securities – that came into the possession or control of the United States government. The Presidential Commission will deliver its report later this year, and only that report can express the final opinions and recommendations of the Commissioners.

My remarks today will be organized into four categories. The first concerns numbers: what was looted and what has yet to be returned to victims and their heirs. The second involves museums in the United States and the extent to which they are committed to the process of examining their collections for looted objects and then returning such works to the rightful owners. The third category pertains to victims' property that is currently in private collections. Last, I will provide a brief up-date on the work of the Presidential Commission on Holocaust Assets in the United States.

My testimony today is predicated on a number of important facts that are not always kept in mind in discussions of Holocaust-era Assets. First, the vast majority of art plundered by the Nazis was not “world class” or “museum quality” work. Most of what was taken were paintings of the type owned by successful – but not extremely wealthy – families, domestic silver and household artifacts, and books and religious items. We hear a lot about Old Masters and similar paintings taken from the wealthiest collectors or most successful dealers, but they make up only a fraction of the numerically more significant theft. Additionally, counting and accounting for such assets is even more difficult than many think. We all know that comprehensive lists of what was taken do not exist, but even the lists that we do have treat similar assets differently. For instance, in some places, a stolen stamp collection is counted once, while in other places it may be counted as 1,000 or more separate objects. It is important to keep these differences in mind while attempting to quantify the lost assets.

#### I. Numbers:

Figures about cultural objects, including artworks that were displaced from 1933 to 1945, are often highly speculative. At some level, it is impossible to obtain precise statistics. This stems in part from the wide variation in figures provided by different countries: statistics have significant (and often political) implications, and they have been calculated in different ways. The figures below are based on my own secondary research and do not represent the findings of the PCHA – it is still too early to report any of our findings.

The Germans stole between 1933-1945: 600,000 artworks (paintings, sculpture, objets d’art, tapestries, but excluding furniture, books, stamps, or coins). This includes some 200,000 works in Germany and Austria, some 100,000 in Western Europe and 300,000 objects from Eastern Europe and the Soviet Union.

The Germans stored in mines, castles and other depots between 1939-1945: 5 million objects in over 1,500 depots (2.5 million were in the US occupation zones; 2 million

were in the Russian zones, and 500,000 in other places).

The Americans and British restituted (both stolen and stored works) between 1945-1950: 2.5 million cultural objects, of which 468,000 were paintings, drawings, and sculptures.<sup>1</sup> The Americans alone returned 250,000 objects via the Central Collecting Point in Munich.<sup>2</sup>

The Soviets removed from occupied zones, 1944-1947: 1.8 million cultural objects.

The Soviets restituted to the German Democratic Republic and other Warsaw Pact countries between 1955-1958: 1.5 - 1.6 million.<sup>3</sup>

The Russians today still have in storage depots: 200,000.<sup>4</sup> This number is somewhat sketchy. Some believe the number to be even higher.

The number of French MNRs (works held in trusteeship by the French government: 2,000 (1,000 which are paintings).

The Germans have today 1,532 paintings (1,076 of which hang in museums and the remainder in government offices and embassies) that came from the collections of Hitler, Goering, Bormann, and other leaders, and were deemed not to have come from victims' collections.

The number of displaced works still missing from World War II apart from those in Russian depots: 10,000 to 110,000.

## II. Museums:

Spurred on by hearings before this Committee and its analogue in the Senate, and led by the Clinton Administration's Special Representative Stuart Eizenstat – who convened the Washington Conference on Holocaust Assets last winter sponsored by the Department of State and the United States Holocaust Memorial Museum – many American museums are now

<sup>1</sup> Timothy Ryback, *ARTnews* (12/99), 149.

<sup>2</sup> Guenter Haase, *Kunstraub und Kunstschutz* (Hamburg: Georg Olms Verlag, 1991), p. 243.

<sup>3</sup> Konstantin Akinsha, Gregorii Kozlov, and Sylvia Hochfield, *Beautiful Loot: The Soviet Plunder of Europe's Art Treasures* (New York: Random House, 1995), p. 256.

<sup>4</sup> Statement by Wolfgang Eichwede to author, 8 December 1998.

making a concerted effort to examine their collections for works looted from victims of the Holocaust.

### The Washington Principles

The importance of the Washington Conference and the resulting Washington Principles cannot be overstated. Agreed to by delegations from 44 countries and 13 nongovernmental organizations just over one year ago, the principles state that:

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

**I.** Art that had been confiscated by the Nazis and not subsequently restituted should be identified.

**II.** Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.

**III.** Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.

**IV.** In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.

**V.** Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

**VI.** Efforts should be made to establish a central registry of such information.

**VII.** Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.

**VIII.** If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this

may vary according to the facts and circumstances surrounding a specific case.

**IX.** If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, cannot be identified, steps should be taken expeditiously to achieve a just and fair solution.

**X.** Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.

**XI.** Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

#### American Association of Art Museum Directors - American Association of Museums

Two professional organizations have issued guidelines that are intended to facilitate the process of identifying works of questionable provenance: the American Association of Art Museum Directors (AAMD) and the American Association of Museums (AAM). The AAMD was the first into the field, and its initial work informed the development of the Washington Principles. The AAM guidelines, coming after the Washington Principles, are the most recent to the field, and show the development of institutional thinking in this area. They ask more of museums not only in identifying works with problematic provenance, but also in making public disclosure of credible evidence of unlawful appropriation. Additionally, they contemplate that museums may waive legitimate legal defenses to claims for recovery of once-looted art works “in order to achieve an equitable and appropriate resolution of claims.”<sup>5</sup> In my view, these are positive developments. The question remains, however, as to what will happen when member institutions of these organizations do not comply with their voluntary guidelines.

Curiously, these developments, including the leadership of the Federal government in promoting awareness and discussion of the issues, return us to where we once were as a country. Historical research shows us that directly after the end of World War II, the U.S. government, in the form of both the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas (better known as the Roberts Commission) and the Department of State, warned American museums and art dealers about the problem of looted works being offered for sale.<sup>6</sup> At the time, a still poorly understood complex of factors caused both the government and museums to lose sight of the need for this type of vigilance. As a result, works with problematic provenance entered both public and private collections in this country.

The Roberts Commission and the actions of the State Department, however, set an important precedent: the United States Government has a vital interest in Holocaust-affected art, and has for more than 60 years. The actions of this Committee today – like past hearings and future ones – play an important part in asserting our nation’s influence in the pursuit of justice.

#### Effectiveness of Searching Museum Collections

In general, I think that that the process of self-scrutiny of museum collections is working. I am aware that several major museums have discussed the progress they have made with their self-studies. Additionally, many museums have now adopted a policy of checking the provenance of works that they borrow for special exhibitions. It is very difficult to ascertain all

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<sup>5</sup> American Association of Museums Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era.

the information that is necessary for a work to be restituted to victims or their heirs. One usually has only partial information. Therefore, the museums conducting these self-studies typically identify works with so-called "red-flags"; cases in which there are serious questions about the work's provenance, but not conclusive proof. As I indicated above, museums are finding such works and thereby the process is moving ahead. My greatest concern is what museums do once they have this information; that is, when doubts have been raised but there is no definitive link to a victim. Serious consideration must be given to the need to balance the legitimate institutional interests of museums and their governing bodies in preserving their collections and avoiding the cost and disruption of litigating false or mistaken claims with the need for access to information about questionable works by Holocaust survivors, their heirs, and scholars.

Today, in most cases, museums are not going public with the information found in their self-studies. In nearly all cases where works in museums are determined to have problematic provenance, the disclosure has come from an outside researcher. An important exception to this generalization is the National Gallery in Washington, DC, which puts the provenance of its works on the Internet. The Gallery should be commended for this because it goes farther than any other American museum of which I am aware in this respect. If other institutions could match its accomplishments and present provenance information electronically, the situation would be vastly improved.

I believe that most museums want to do what is right in this area. They view research efforts such as that of the Presidential Commission's as potentially able to help them find more

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<sup>6</sup> National Archives Record Administration, College Park (NARA/CP), Record Group (RG) 59, entry 62D-4, Box 1, memoranda from the American Commission for the Protection and Salvage of Artistic and Historic Monuments and

information about pieces in question. But I believe that we need a reasonable arrangement by which museums publicize the works in their collections that have "red flags", so that survivors and their heirs searching for looted works are at least on a level playing field with respect to access to current knowledge about the provenance of works in institutional collections.

#### Archives Access

One additional issue in this category remains: access to the archival records housed in museums. This has been a concern of researchers for some time. Deputy Secretary Eizenstat made it part of the Washington Principles, and so far, there seems to have been improvement in this respect. I am more sanguine about the prospects of improving access to archives of American museums than those located abroad. The most important untapped resources, of course, lie in Russia. Access to Russian archives by scholars and provenance researchers has been, at best, spotty and unpredictable. But even in other countries where the political and economic situation is less chaotic, real barriers to open access still exist, and representatives of survivors and their heirs complain that a variety of barriers are selectively deployed to impede their ability to identify looted cultural property. At the Stockholm Conference held at the end of January, an official joint statement recognized archival access as an issue. Deputy Secretary Eizenstat went further, calling for the opening of all records relating to the Holocaust. Both scholars and victims around the world hope that these call will be heeded

Where public access is limited because material remains classified for national security reasons, the establishment of the Nazi War Criminal Records Interagency Working Group (IWG)

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the Department of State, dated 1945 and 1950 respectively.



in the United States offers an important model. The IWG, comprised of representatives of the public, the National Archives, the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Defense, the National Security Council, the Department of Justice, the Department of State, and the Holocaust Memorial Museum, has been hard at work for over a year to identify and declassify remaining Nazi-era documents held throughout the United States Government. It has challenged agencies to reevaluate the need to keep such documents from the public eye, and has succeeded in declassifying thousands of additional pages for the benefits of research.

### **III. Private Collections:**

No one is quite sure how many works stolen from Holocaust victims are currently in private hands. At the Washington Conference, Ronald Lauder, Chairman of the Board of the Museum of Modern Art, estimated that there are 110,000 works looted during World War II that have never been returned to the proper owners. While it is difficult, indeed perhaps impossible, to arrive at a precise figure, such an estimate can be arrived at when the number of works likely to be in private collections is taken into account.

#### **Value of Looted Art**

We must recognize that most of the victims of the Holocaust were not wealthy individuals with museum quality art in their homes, yet the loss of their assets constitutes the major part of the attempt to obliterate and entire cultural heritage. The fate of lesser paintings, along with silver sets and other cultural assets, doesn't have a hold on the public imagination that world-renowned art has. But the systemic nature of Nazi looting means that large quantities of these

kinds of cultural assets changed hands. The following passage taken from a 25 November 1948 interview conducted by American authorities with Dr. von Crannach-Sichart, the former director of the prominent Munich auction house Adolf Weinmueller, conveys both the nature of the process and the resultant difficulties in making restitution in a vivid fashion:

"In default of all documents, which burnt, we wanted to state by heart with the following, what kind of connection existed between the Gestapo Prague and the art-dealer firm Weinmueller. During the course of the year 1941, a shipment of the Gestapo Prague arrived by truck with the order to sell the contents by auction. They mostly were paintings by old and modern painters, some graphic maps and some Persian rugs. Not a single object of international value or of higher quality was among these items. They rather had a generally medium rank, so that it was not worthwhile to have a special auction for them, but it was necessary to give these objects to a general auction. We are no more in a position to give specific instructions on number or details. We were not told from where the objects originated. There were no further orders. The objects were sold during the following auction. Because of the above mentioned reason we are no more able to state to which owner they went."<sup>7</sup>

This testimony speaks to a number of important issues: perhaps most notably, the wholesale expropriation and "liquidation" of victims' property by the Nazi agents; the quotidian nature of the majority of the property; the role played by art dealers (and private firms more generally) in the execution of the Nazis' policies; and finally, the absence of relevant documentation.

Another episode is almost equally revealing. Israeli author Aharon Appelfeld wrote a piece for *The New Yorker magazine* in November 1998, where he recounted visiting the village in which he was born and raised in Bukovina (then part of Romania, now in Ukraine).<sup>8</sup> In this extraordinary account, where he noted the reluctance of the (non-Jewish) villagers to discuss the Jewish population that once lived in the town, the most remarkable aspect was that many of their

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<sup>7</sup> National Archives, College Park, Record Group 260, entry 1, box 373, Office of the Military Government for Bavaria, Monuments, Fine Arts, and Archives Monthly Consolidated Field Report, March 1948, p. 52.

<sup>8</sup> Aharon Appelfeld, "Buried Homeland," in *The New Yorker* 23 November 1998, pp. 48-61.

homes contained property that belonged to their Jewish neighbors. He noted that the villagers still residing there had books, furniture, folk art—all kinds of property—that had been taken from the local Jews while they were persecuted. Appelfeld, observed with respect to his parents, who had been murdered, “Today I know that many of my mother’s jewels are to be found in the village houses, and certainly quite a few gifts that my father brought to her from Vienna or Prague. Everything was stolen and now lives in captivity.”<sup>9</sup>

In short, victims’ assets are still in private hands; many are still in Europe, and the evidence indicates that some ultimately came to the United States. Looted Holocaust assets were not only works by Michelangelo and Matisse. Many of the less commercially valuable objects were never properly restituted and are now in private hands and may never be identified or restituted.

#### Actions of Art Dealers

The commerce in works belonging to Holocaust victims in the postwar period has several other important distinguishing features. The first is that many of the dealers in the employ of the Nazi leaders rehabilitated their careers in the post-1950 period and created a shadowy parallel market in which works of dubious provenance often changed hands. This is one of the topics I address in my recent book, *The Faustian Bargain: The Art World in Nazi Germany*. The center of this parallel market was in Bavaria, Austria, and Switzerland: the regions where most of these Nazi dealers continued to reside (and in the case of Switzerland, where the legal code facilitated the laundering of looted art). Second, many works belonging to victims seem to have been sold abroad, particularly in Latin America and South Africa. A number of well-known European

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<sup>9</sup> Ibid., p. 61.

dealers had representatives in South America, and Switzerland appears an important staging area for these sales.

### Allied Restitution Policy

We must also look at the manner in which works looted from Holocaust victims were safeguarded and handled by the Allies after the war. It was U.S. policy to return works to the governments of the countries from which the Nazis plundered them. The research trail tends to go cold at this point, however. We now know very little about what agreements the governments made with regard to restitution to rightful owners, how diligently they pursued such restitution, and if the United States monitored the process.

In many cases, we know that European governments did not deliver the works to victims or their heirs, determining that they were unidentifiable or that heirs could not be located. The French, for example, auctioned off 13,000 artworks in the late-1940s that were deemed "heirless" and the true owners never recovered their art or received any compensation. The Dutch did the same. It appears that the communist governments of Eastern Europe in many cases did not follow through on restitution to individual victims.<sup>10</sup> We need more information to ascertain to what extent works returned to European governments by the U.S. forces were liquidated without any compensation to victims or heirs, and how scrupulous these governments were in trying to identify cultural assets and return them.

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<sup>10</sup> The histories of individual Eastern European countries vary considerably. In Czechoslovakia, for example, private individuals could claim back stolen property between 1946 and 1948 and then again after the Velvet Revolution from 1992 to 1996. Now restitution depends upon the goodwill of the state and much of the unclaimed nationalized property was transferred from the central government to municipalities. This complicates the claims process even further.

### Future Role of Art Dealers

I would like to add in this respect the important role that art dealers and auction houses can play in identifying and returning works now in the private sphere to survivors and their heirs. As we experience a generational transition—that is, as those who were alive during and after World War II pass away—there will be a corresponding transfer of property to their children, resulting in victims' assets once again coming on the market. Additionally, as records and documentation that were previously unavailable are declassified or made accessible, new claims for restitution may arise. It is therefore important that dealers and auctioneers remain committed to the process of restitution.

In this respect, there are good signs. Researchers working for the major auction houses regularly seek independent scholars' assistance as they investigate works the houses intend to sell. But how widespread and accepted this practice will become remains to be seen in a trade historically characterized by secrecy and anonymity, and as yet largely unregulated by domestic or international law.

### IV. The Presidential Commission on Holocaust Assets in the United States:

One of the central projects of the Presidential Commission has been to understand the policies by which the U.S. and its representatives secured and then restituted (or otherwise disposed of) assets belonging to Holocaust victims. From the outset, it was clear that a tremendous number of agencies and representatives were involved. And, as mentioned above, there was a tremendous number of assets to be restituted (2.5 million cultural objects, including

some 486,000 artworks). We have found that the U.S. forces generally did a commendable job; their work was at times even heroic. This doesn't mean that mistakes were not made, and we anticipate that the Commission's report will describe several such mistakes.

The Commission is also focusing its attention on the import of victims' art into the U.S. We are studying both the laws and the mechanisms that existed to apprehend victims' assets that were flowing into the country. In July 1944, a Treasury Department decision under the Trading With the Enemy Act (T.D. 51072) created a means to screen for stolen assets: all artworks valued at \$5,000 or more (or alternatively, those deemed of "artistic, historic, or scholarly interest") were subject to a thorough review, and the Roberts Commission played a central role vetting these import applications. But T.D. 51072 was suspended in June 1946—at the same time the Roberts Commission was disbanded. The decision to terminate T.D. 51072 provoked controversy: Ardelia Hall of the State Department, for example, recommended against it on the grounds that import controls needed to be maintained. The rationale for the repeal centered on the fact that "the Roberts Commission will terminate on June 30 and the Department of State lacks appropriations or personnel for clearing a mass of applications for release from Customs custody."<sup>11</sup>

As a result, governmental enforcement with respect to the import of victims' artworks appears to have suffered. Because most of the customs records were destroyed, it is difficult and perhaps impossible to get a precise accounting of the amount of victims' art that thus entered the U.S. But the repeal of TD 51072 must have made it easier to bring artworks of suspicious

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<sup>11</sup> NARA/CP, RG 59, entry 1, box 1, Assistant Chief, Division of Economic Security Controls to the Director of Foreign Funds Control of the Treasury Department, 28 June 1946.

provenance into this country. We need to understand more about the complex policy and other considerations that led to this relaxation of governmental vigilance.

As our Chairman Edgar M. Bronfman has often stated, the Presidential Advisory Commission on Holocaust Assets in the United States is committed to a critical and unvarnished investigation into the U.S. government's treatment of assets belonging to Holocaust victims. The Commission will present its findings to the President and Congress by the end of this year. As a researcher and teacher in this area, I hope that the Commission's work will facilitate a new wave of investigation into this dark and complicated chapter in human history.



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**Statement of Ronald S. Tauber  
Chairman, The Art Loss Register, Inc.**

**Committee on Banking and Financial Services  
United States House of Representatives**

**February 10, 2000**



**Statement of Ronald S. Tauber  
Chairman, The Art Loss Register, Inc.**

**Committee on Banking and Financial Services  
United States House of Representatives**

**February 10, 2000**

Mr. Chairman and Distinguished Members of the Committee,

I am very pleased to report to this Committee as Chairman of the Art Loss Register. Allow me to begin by describing our Company. The Art Loss Register is the largest, private organization dedicated to:

- The recovery of stolen and missing works of art;
- The deterrence and prevention of the trade in stolen art;
- Providing a central clearinghouse to acquirers of art in order to determine good title.

The ALR maintains a computerized, searchable, database of 100,000 lost and missing works of art. We are a private company organized and owned in part by major companies in the art and insurance markets and by a not-for-profit company conducting art research. We have a staff of art historians, in offices in New York, London and Cologne. The ALR's service is used by 90% of the world's major auction houses and by galleries and museums to determine provenance.

In the nearly ten years of its existence, the ALR has been instrumental in the recovery of \$100 million in works of art. The recovery process begins with the registration on our database of lost items by theft victims and their insurers. We then systematically check the offerings of the major auction houses against items listed on our database. Last year we checked more than 300,000 individual auction lots worldwide prior to sale. We also respond to inquiries and searches from major museums, dealers and galleries, financial institutions, and law enforcement agencies around the world. When we match an item searched by us with an item on the database, we notify the theft victim,

the party on whose behalf we checked the item and law enforcement authorities. At that point, the work of art is usually detained and the parties either negotiate a settlement, often with our help, or adjudicate their competing claims.

Our systematic methodology and infrastructure allow loss victims to register their losses with us, and provide them with the reasonable hope that their valuable works of art may be recovered. At the same time, we act as a clearinghouse for prospective acquirers who seek assurance that particular works of art are not stolen.

We have been very effective in recovering stolen items. Our recoveries usually result from matching auction house searches or dealer or police inquiries with items on the database; sometimes recoveries are made after protracted negotiations by us on behalf of the parties. In every case, our recovery process involves notification to and cooperation with law enforcement authorities. Just last year, we recovered a Cézanne still life stolen in Massachusetts in 1978. The painting was recovered in Europe and then sold for more than \$25,000,000 by the American family from whom it was stolen. In the past few years we have also recovered several Picassos, a Monet, a Manet and other valuable works, all of which had been missing for many years, and in some cases decades. We have also recovered hundreds of precious but lesser-valued items. If we exclude the blockbuster-type paintings, the typical value of our recovered items is \$10,000.

In 1998 we organized a special effort to identify the location of WW II looted art. We dedicated some of our most experienced professional staff to this undertaking and we encouraged the registration of looted art losses on our database. We do not charge any fees to individual claimants either for registration of loss or for assistance in identification of location or recovery. This pro-bono effort has had the financial support of the major auction houses. We have also invited other organizations active in this area to pass to us their collected claims in order to be included on our records.

**I am very pleased to report to this Committee that our efforts have borne significant fruit, both in recovery of art works and in helping to mold the standards**

**and perceptions of the art community towards greater openness and a willingness to confront the difficult issues surrounding Holocaust looted art.**

Several thousand Holocaust claims have been registered since our initiative began eighteen months ago. We accept claims not only from individuals but also from organizations, including those representing Jewish communities in Europe. In just the past few months, for example, we have registered:

- A Pieter Brueghel painting, confiscated, then auctioned and acquired by von Schirach in Vienna;
- Contents of the studio of Georges Ardit, looted in Paris;
- a 15<sup>th</sup> Century Hebrew manuscript, removed from a Bordeaux bank vault;
- a collection of Japanese porcelain, confiscated in Hannover;
- a group of Dutch Old Masters, missing from a Milan warehouse;
- a private library that was confiscated in Breslau.

Once an item is registered with us it is continuously checked against auction house offerings, and dealer and other inquiries from around the world. In this way, we can help uncover the location of looted items. At the same time we also operate as the best source of reliable information to auction houses, dealers and museums on the issue of whether a particular work has a questionable provenance.

**Our experience has led us to four basic conclusions:**

1. **The Auction Houses in the United States and United Kingdom (and to a growing extent, the art trade in general) have become sensitive to Holocaust issues and are supportive of efforts to find a just resolution of Holocaust claims.**
2. **Museums and public institutions in the United States and Western Europe have become aware of their responsibility not to hold art with questionable provenance and increasingly are dealing with difficult questions in moral as well as strictly legal terms.**

3. **Works of art which were looted from Holocaust victims and are now held by private individuals (who may have been bona fide purchasers) continue to be very difficult to identify and competing claims relating to them even more difficult to resolve.**
4. **The maintenance of a comprehensive registry and the acceptance of due diligence standards which require consultation of the registry by the art trade and museum community constitute a practical program for the recovery of looted art.**

I think a few examples will illustrate these conclusions.

In December, 1999 our London office identified a 17<sup>th</sup> Century Dutch landscape in an Old Master catalog in a London sales room as having been looted by the Gestapo in Berlin. This same painting had been sold twice before at auction in the 1970's and 1980's even though the victim's family sought recognition of its rights. This time, the claimant, an American citizen, was informed of the pending sale, as was the auctioneer. The picture was withdrawn from sale and negotiations are underway between the claimant, the auctioneer and the consignor to avoid litigation; we understand that settlement discussions are ongoing. Other identifications at auction houses include a tapestry and a Sisley painting both confiscated in Budapest, a church interior and a genre painting both sold in Brussels during the occupation, and a \$1million Bonnard painting confiscated from a French dealer that surfaced with a Swiss provenance in New York last year. Each of these works of art was withdrawn from sale when its history was identified and discussions are underway to achieve negotiated settlements or returns.

An extremely encouraging development in the art trade is the decision of the organizers of Europe's largest and most prestigious art fair, held each year in Maastricht in the Netherlands, to ask our company to check 4,000 items against our database prior to sale. This brings a very important group of dealers into the same standard of due diligence and responsibility as the major auction houses. These dealers and others seek assurance that works of art are neither subject to contemporary claims of theft nor tainted

by spoliation during the war. We are repeatedly told that the art trade finds it useful to have a single point of reference for inquiries concerning stolen as well as looted art.

Museums in the United States, and some in Western Europe, have been in the forefront of those willing to accept responsibility for assuring the integrity of their collections. The Art Loss Register and Jonathan Petropoulos, another panelist whom you will hear from, identified an extremely valuable Monet "Water Lilies" on loan to the Museum of Fine Arts in Boston from the Musée des Beaux Arts in Caen, Normandy as having been confiscated from a French dealer during the occupation. Both the MFA and the French museum cooperated in the return of the painting to the dealer's heirs, who are Americans still active in the art trade. In another case, this weekend's newspapers reported on the determination of the North Carolina Museum to return a Lucas Cranach painting to the heirs of its rightful owner. The painting was donated to the Museum by an American in 1964 who probably was unaware of its troubled history. The credit here goes to our colleagues at the Commission for Art Recovery and the New York State Holocaust Claims Processing Office and to the Museum which has chosen to proceed in a morally exemplary fashion, without recourse to litigation.

In general, museums have become active searchers of our database prior to acquisition of works of art. Searches by museums around the world of potential acquisitions and works in their collections have increased by more than 300% in 1999 as compared to 1998. Searches by museums protect the institutions against unwittingly acquiring or holding works that may have been looted during the Holocaust or simply stolen from someone's sitting room. Among museums who routinely check with us are:

Metropolitan Museum of Art  
 Museum of Modern Art  
 Art Institute of Chicago  
 National Gallery, Washington, D.C.  
 Baltimore Museum of Art  
 Art Gallery of Ontario  
 Cleveland Museum of Art  
 J. Paul Getty Museum  
 Los Angeles County Museum of Art

Philadelphia Museum of Art  
 Indianapolis Museum of Art  
 Worcester Art Museum  
 Saint Louis Art Museum  
 National Gallery, London  
 Victoria & Albert Museum, London  
 Tate Gallery, London.

Museums are also checking prospective loan exhibits, no doubt a positive development from MOMA's painful experience with the Schiele still held by US Customs authorities.

Not surprisingly, works of art embedded in private collections remain the most difficult to identify and claims relating to them are the most difficult to resolve. We have made some such identifications including a Venetian painting by a contemporary of Canaletto, confiscated in Vienna and now held by a private collector in France. The current possessor has so far been unwilling to enter into any discussions with the claimant, an American citizen, and the claimant may need to resort to legal remedies. A similar case involves a major impressionist painting which was apparently stolen by the Nazi appointed liquidator of a Paris art gallery and is now in a private collection in Switzerland. On the other hand, we have been able to jumpstart discussions between a family in Israel and a London dealer representing a private collector who bought a painting from a dealer in Berlin after it was confiscated by the Gestapo in the mid 1930's. In yet another case, our Company was able to match a picture inquired about by a London dealer with a claim for a painting looted in Warsaw which was lodged with the World Jewish Congress; settlement discussions are now underway.

I have given you all these examples with the intention of demonstrating that practical steps by practical people can make a real difference in both recovering works of art and changing the standards of the art world. Others addressing this Committee will tell you of the difficulty of assessing the size of the looted art problem and of resolving competing claims. My message to you is a positive one. The Art Loss Register is identifying works of art—one at a time—as they reach the commercial market place and as institutions check their collections.

The single most important step a Holocaust victim (or his or her heirs) can take to locate a missing work of art is the free one of registering the work on a centralized database. The standards and custom of the art trade are changing to require due diligence checks of centralized databases prior to acquisition or sale. The system of loss registration and due diligence checks can and does work to identify the location of lost works. Once identified, the ALR and others, including advocacy organizations, can be effective in achieving just resolutions of difficult situations.

The victims of the Holocaust and their heirs need and deserve the support of the Congress and private and public organizations in keeping the spotlight on their legitimate quest for justice. Those of us in the front lines of the recovery process welcome and appreciate this Committee's and Congress' continuing interest.

Thank you very much.

Respectfully submitted,

Ronald S. Tauber

STATEMENT OF MARTHA NIERENBERG  
TO THE  
COMMITTEE ON BANKING AND FINANCIAL SERVICES  
OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2000

Good afternoon, Mr. Chairman, Mr. LaFalce, and other members.

I am Martha Nierenberg. I am here to tell you of my quest, so far unfulfilled, to recover my family's heirlooms lost as a result of the Holocaust. Among those heirlooms are ten paintings now in the possession of two state-owned Hungarian museums and exhibited by them as part of the "Herzog Collection." These ten paintings include works by Anthonis van Dyck, Lucas Cranach, Gustave Courbet and Mihaly Munkacsy.

The Herzog Collection was assembled by my grandfather, Baron Mor Lipot Herzog, a banker in pre-War Budapest, Hungary. My grandfather selected and purchased the art in this collection before his death in 1934. The Herzog Collection was inherited by my mother, Erzsebet, or Elizabeth, Herzog Weiss de Csepel, and her two brothers, Istvan and Andras Herzog.

This was a large collection, containing hundreds of items, including paintings by Old Masters as well as modern works by Renoir, Monet and other impressionists. It also contained one of the largest private collections of paintings by El Greco. My mother and uncles divided the collection among them.

Unfortunately, World War II began with Hungary among the Axis Powers. Just as in Germany, laws against Jews and people of Jewish origin were gradually passed, requiring their property to be sequestered and catalogued. However, the situation for Hungarian Jews and people of Jewish origin did not become truly desperate until March



1944 when the Germans occupied Hungary. Adolf Eichmann was delegated to the country for the explicit purpose of exterminating all Hungarian Jews and persons of Jewish origin. Eichmann personally led the Waffen SS efforts to exterminate the Jews from Budapest. Some 600,000 Jews were deported from Hungary, and many went to their deaths. My uncle, Andras, was placed in a forced labor unit and did not survive the War. We do not know how he died, but it certainly was the result of the Holocaust.

My mother and father, along with many others, sought to save their art works from the Nazis. The Herzog collection was mainly hidden in the cellar of one of my father's family's industrial factories. Despite my parents' efforts to prevent the looting of their art, the Nazis found the hiding place and took the art to the Majestic Hotel, Eichmann's headquarters, for his inspection. Eichmann shipped much of the looted Herzog collection to Germany.

Fearing for our lives, my father's family agreed to a Nazi plan to lease my father's factories and equipment for a period of twenty-five years. If my father's family would agree to this lease, the Nazis would allow us to escape to the West. That is what happened in May 1944. My mother and I, together with my siblings, made it to Portugal, while my father stayed behind in Austria as a hostage.

In Portugal, I came to the attention of the American Ambassador, Mr. Samuel Baruch, because I played competitive tennis. He urged me to go to America, which I did on December 27, 1946. I went on to do graduate study at Harvard, to work, and eventually to marry and have four children and ten grandchildren. My mother, sister and two brothers came to America a little later. My father eventually joined us, and my immediate family was reunited. We all became naturalized U.S. citizens. My mother

who had been trained as a psychiatrist in Budapest, and who had studied in Vienna with Anna Freud, was re-licensed and practiced in New York for many years. When she died in 1992, I inherited that portion of the Herzog Collection she had inherited from her father, Baron Herzog.

I fondly remembered the Herzog paintings from my grandfather's house and my own family's home. Until the fall of the Berlin Wall, and the transformation of the former East Bloc countries, little if any information could be obtained about the state of the Herzog Collection or other looted properties. For this reason, and because my family had left Hungary, I was unaware of what had become of the lost Herzog Collection.

With the opening of Hungary to the West, and the rise of a democratic regime in Budapest, we made inquiries. We learned that many pieces of the Herzog Collection, both those I owned as well as ones inherited by my cousins, were being openly exhibited as the "Herzog Collection" in two museums in Budapest -- the Museum of Fine Arts and the National Museum. These paintings, while taken to Germany during the War, were shipped back to Hungary in 1946 and 1947 by American forces. The Hungarian museums then received the paintings but only for the express purpose of safeguarding them until their owners could be identified and located.

In September 1995, I retained counsel and approached the museums and the government about rectifying this situation and returning my paintings to me. There followed many months of negotiations, and in April 1996, I personally traveled to Budapest to meet with the Minister of Education and Culture and his assistant. This resulted in the creation of a so-called "Experts Committee" to determine the ownership of these paintings. The Experts Committee met several times over another long period and

concluded that I did indeed own these paintings. Based on the Experts Committee's findings, we made a friendly proposal to resolve all issues.

Unfortunately, then a new government came into power and was unwilling to continue this process. They apparently believed they could not support anything done by the prior government. The new government suggested we start the negotiation and Experts Committee process over from the beginning. The new government expressed no interest in negotiating on the basis of the proposal we had made.

Due to the endless delays and numerous broken promises, we felt there was no choice but to commence a lawsuit in the Hungarian courts, which we did in October 1999 with the assistance of the Commission for Art Recovery. By that point, we had been in contact with the Hungarian authorities for almost four years, and there had been no progress. These delays are significant in part because of my age. As the Hungarians continue to delay, it seems to me they expect there will be a point at which I will no longer be able to pursue my claims.

Since we believe Hungarian law clearly supports my right to possession of the paintings, litigation in Hungary was a logical decision. I am told that a lawsuit in the United States was virtually impossible and may well have involved months or years of litigation over jurisdiction, venue, sovereign immunity and other preliminary matters. We hoped that suing in Hungary would lead to a decision on the basic issue -- my ownership rights -- more quickly than in the United States, where the merits of the case might never be heard at all.

However, the Hungarian government continues to delay. The defendants have asserted several, minor procedural defenses and have not yet stated in court their position

on the basic elements of my case. For example, they are raising formal, petty and invalid arguments about authentication of a U.S. affidavit. They also formally raised an objection because my late brother's estate was not a party to this lawsuit, ignoring the fact that his will left all his rights to the art to me. Finally, the Hungarian government is asking the Court to impose a cost deposit requirement on me as a non-Hungarian litigant, although the government knows I am a Hungarian citizen in addition to being a U.S. citizen. If the cost deposit were imposed, I would be required to pay the Hungarian court several hundred thousand dollars to secure a claim by the government for legal fees. I believe the government is just trying to scare me away, but it will not work. However, most claimants of looted art in Hungary must deposit large sums before asking the court to decide their case.

Mr. Chairman, I am determined to do everything I can to obtain justice and recover my family's legacy. I would hope that a country clearly wishing to be a part of the West -- Hungary is a member of NATO and is seeking membership in the European Union -- would deal with the merits of claims such as mine for recovery of Holocaust Art rather than engaging in old, tired bureaucratic games. The Hungarian government should do what is right -- it should accept the conclusion of its own Experts Committee, acknowledge my ownership rights and negotiate an end to the lawsuit.

Yet this lawsuit is not just about me and my family's legacy but also about broader principles of right and wrong. The Hungarian government should do what is right for all owners and heirs of looted art. It should begin by acknowledging that it controls an unknown number of fine art pieces that were stolen from Jews and people of Jewish origin. It should make a serious and renewed effort to identify those artworks and

return them to their rightful owners. It should also provide a clear, short, workable process for all others who may wish to assert art claims -- a process that doesn't require hiring lawyers or posting hundreds of thousands of dollars in bonds.

Instead, the Hungarian government has done everything it could to make it impractical or impossible for me to recover my paintings. My attorneys have pressed my claims both through diplomatic channels and the lawsuit, but the response from the Hungarian government has been uniformly discouraging. Hungary's position is remarkable in that it differs from that taken by many other European countries which have faced the issue of returning looted Holocaust art. Germany, for example, has renewed its work on the principle that looted art must be returned. France, in recent years, has made exhaustive efforts to examine its museums and archives to determine what objects were stolen during World War II. Even the Russian Federation has passed laws recognizing victims of Nazi persecution. Hungary, however, continues to benefit from the horror involved in the exploitation of property stolen from Jews and people of Jewish origin during World War II. In effect, they are ratifying Eichmann's actions. My hope is that Congress and this Administration would intervene in Hungary and advise the government in the strongest terms that its prize collections cannot be founded upon stolen art.

Thank you.

Testimony before the Committee on Banking and Financial Services  
U.S. House of Representatives  
February 10, 2000

Charlotte E. van Rappard-Boon  
Chief Inspector for Cultural Heritage  
Ministry of Education, Culture and Science  
of the Netherlands  
Director of the project *Origins Unknown*  
*Research in the provenance of Art looted and sold during*  
*World War II*

Dear Mr. Chairman,

It is a great honor for me to talk today to your distinguished committee on the efforts the Netherlands is making towards research and restitution of art looted and lost during World War II, both on a national level and by individual museums.

In Holland as in other countries the last few years have seen a new awakening to the history of the World War II and its aftermath. Where previously the atrocities committed by the nazi's occupied the center of interest, nowadays the handling of looting, recuperation and restitution after the war have also become the focus of attention, of historical research and a matter of guidelines for national governments in handling these sensitive issues.

My short expose on what happened in Holland after the War in matters of restitution and reinstatement of property rights will concern itself only with art as that is the only subject about which I feel that I can speak with any authority.

Looting of art by the Nazi's in Holland was much less done to public collections – as for example it happened in countries in Eastern Europe - than to the private owners of a few cherished paintings or some old furniture and blue-and-white Delftware. Of course the looting of the synagogues, the Jewish libraries or the Jewish Historical Museum all perpetrated by the E.R.R. was comparable to that which took place in other countries. But to me the image best

illustrating the looting in the Netherlands are the endless list of the Dienststelle Muhlmann the central organization for the looting of the German occupation. The thoroughness of the German administrator shines out from the detailed list made by policemen – often Dutch policemen -visiting Jewish households before they were looted: *Ein tisch, ein stuk balatum, wasche* and finally which would interest us *ein bild*. Some weeks later after the family had been deported, some other civil servant would visit the same house and note: *alles ist noch da* and *alles ist mitgenommen* whereupon all household goods were taken away.

Facts about this looting of the Netherlands were known to the Allies and the Inter-Allied Declaration of 1943 formed one of the measures to offer a solution both to looted property and that sold willingly to the Germans. As has been described extensively the Nazi leaders were avid collectors of art and the art trade in the Netherlands thrived as never before. To counter the selling of assets to the Germans the Government in exile in London had promulgated laws, which expressly forbade selling Dutch assets to the enemy. With regard to works of art, just as happened in France, already during the German occupation Dutch art historians started compiling lists of works of art, which they knew to have left the country. As soon as the war ended, efforts to track down works of art in Germany and to return them to their original owners were gathered together in a single service, called the *Netherlands Art Property Foundation (SNK)*. This service cooperated closely with the allied forces in Germany, especially the *Monuments, Fine Arts & Archives Service (MFA&A)*. On the basis of detailed lists made up from forms on which missing works of art were reported by private persons whose art had been looted or confiscated or persons and art dealers who had sold works of art to the Germans, lists made by the Foundation itself based on the administration of the Germans, such as cited above of transport lists of works of looted art and records of sales by auction houses and art dealers, the Allies tried to find as many works of art in Germany as possible. Their efforts were often severely hampered - as ours are still today - by the fact that only well-known works of art have descriptions detailed enough to recognize them easily or were even photographed. Most works of art had to be recognized on the basis of short descriptions while attribution to an artist was based more on the owner's memory or expectation than on a cool art historical evaluation.

As will be clear from what I said before about the looting itself, identification of a work of art listed for example: as "*Farmers making merry at a tavern* by the workshop of van ~~Octave~~ <sup>Ostade</sup> without any measurements or further description, is an extremely fortuitous business. Hundreds of paintings must exist answering to this kind of caption. Thus mistakes in identification of objects were made and not always corrected afterwards. Also works of art that were difficult to identify, mostly furniture and decorative art, were shipped back to the country that seemed the most likely country of origin. In this way most Delft blue-and-white tiles were sent to Holland though they might as well have come from a French collection.

All the same, seeing how the people in the office of the Netherlands Art Property Foundation worked during those years, at a time when Holland was recovering from its Great War losses and money and means to run an adequate administration were scarce, one is filled with admiration. Without a computer, but using an endless amount of paper files and lists ordered according to artist names, original owners, art dealers or auction houses they reconstructed the provenance of many works of art. They had a complex administration which was based on several ordering systems according to original owner, artist, transport from Germany and it has taken us more than half a year before we have grasped it in all its details.

Of the 10.000 of items which came back from Germany, more than half were works voluntarily sold during the German occupation of the Netherlands by the art trade thus violating Dutch war Laws. These became the property of the Dutch State. We do yet not know exactly how many recovered items were given back to their original owner. But from an inventory of 1804 paintings which we have researched closely, we know that 69 were given back to the owners, 13 were sent back to Germany because they did not come originally from Holland, 2 were sent to Belgium and 1 to Vienna. After the Foundation finished researching their provenance 469 paintings were sold at public auctions. In all, after completion in the 1950's of provenance investigations, about 2.000 paintings and a still unknown number of pieces of decorative art were sold by the Dutch state. These were works that the State felt at that moment that they had sufficiently researched and about which they were sure of their ownership. Details about the work of the Netherlands Art Property Foundation and the regulations, which they followed when deciding to give back, an item to its original owner can be found in a leaflet on restitution, which I have brought with me, in the introduction to the first report of the project *Origins unknown*. They can also be found at the website of the Netherlands embassy in Washington ([www.netherlands-embassy.org](http://www.netherlands-embassy.org)).



Today, there are still ca. 4000 paintings, prints, pieces of furniture and decorative objects that were recovered after the war in the State collection. They are all inventoried and most of the paintings have been published in the 1980.

Recently, questions concerning these remaining works of art have been asked. Might not modern methods of research, use of databases and vast modern documentation systems such as that of Netherlands Institute for Art History enable us to find more information about original owners than was previously possible? A pilot study was done for a hundred works of art, both paintings and decorative art. The results of the pilot study were published in Dutch and English in April 1998 under the title *Origins Unknown*, with introductory texts including information about the work of the Netherlands Art Property Foundation. Because sufficient new details concerning the provenance of these objects were found, the Dutch government decided to enlarge the study to comprise all items, which in the State collection were recuperated after the war from Germany. Four researchers paid by the State under the direction of the Inspectorate of Cultural Heritage are reconstructing the provenance of all recuperated works in the State collections using all the means, which we have today. Art dealers have opened old archives to us and we ourselves have found archives from auction houses etc. that seemed to have been lost. The research is supervised by the independent Ekkart Committee, named after its chairman dr. Ekkart who is director of the Netherlands Institute of Art history. The other committee members are the director of the Jewish Museum in Amsterdam, the former Minister for Culture and a representative of the Central Jewish Platform. In cases where new facts about owners arise, works can be returned to these or their heirs. Of course, after all these years much of the documentation which might have helped is lost or destroyed, but by gathering *circumstantial evidence* from catalogues of pre-war exhibitions of private collection, art dealers administrations, insurance lists, etc. links can be found which were lost before. We discovered going along that the most efficient method of reconstructing a provenance is not by going backwards from the present whereabouts and the present owner. In doing this one always encounters the black hole formed by the nearly complete lack of documentation during the years of the Second World War. We try to recover the location of the object in question also somewhere during the 1920's and 1930's and work forward from that point. By doing this we try to narrow the gap of the World War II years and thus make a deduction of what happened then.

Up till now we have researched some 800 items. Though the provenance of many has become much clearer, we will have to countenance eventually that for more than half of the objects all will contain blank spots.

Because a work of art can mean an extremely personal tie with the past and can have great emotional value for a family, the Dutch government plans to continue to proceed on a case-by-case basis regarding the restitution of works of art. No general measures are considered because we believe our method to be a viable one. In each case where new facts come to light, a decision about restitution of these works will be made by the Secretary of State for Culture. Thus, the works of art about which nothing is found, will stay available in the future if new facts come to light regarding their origins.

According to Dutch law theft and looting committed during the Second World War now fall under the statute of limitation. The Secretary of State can waive the right to the statute of limitation and will do so in those cases where:

- works of art are claimed which were not previously claimed and of which sufficient proof of their original ownership can be found
  - new facts come to light which were not known by the parties concerned after World War II, and which alter substantively the evidence on which an earlier decision was based. If a written settlement of rights was reached between parties after the war, the State will abide by this.
- Finally, even as <sup>an</sup> historian and amateur historian with no legal expertise what so ever, I should like to address some of the more general issues.

Disregarding statutes of limitations – one of the mainstays of our juridical system should only be considered if substantive proof of previous ownership has been found.

Collective solutions for the NK collection of recovered objects i.e. auctions, transference to Jewish organizations or museums should not be considered as long as there is a chance that links to original owners can still be found.

Works of art at this moment in the possession of bona fides private owners are protected by Dutch civil law. However, in these cases possible claimants and present owners can apply to the Netherlands Institute for Art History and our office the Inspectorate of Cultural Heritage of the Ministry of Culture, for more information concerning provenance and possible postwar claims. Possible solutions for these cases could include arbitration or a decision by common consent along the lines suggested by the American Museums Association.

In the same way as the State Government is researching its collections, the Dutch museums under the aegis of the Dutch Museum Association are researching the acquisitions made during the war and in the after-war years to investigate whether they acquired knowingly or unknowingly objects which were looted or confiscated from Jewish owners. The museums are

conducting their own research aided by the Inspectorate for Cultural Heritage which checks the museum data and methods of research and adds facts which it has found during its own research of the State collection.

If works of art are found in these museums which have been stolen from Jewish owners, it is expected that the governing bodies of the museum - which may be local or provincial governments or private foundations - will act in the same way as the Dutch State and return these objects to their owners. It serves absolutely no purpose to make unsubstantiated guesses about the number of works of art with a "dubious past" which have been acquired by museums. Circumstances and especially behavior of museum directors have varied widely. Only thorough research into specific circumstances of an acquisition can a dubious origin is proved. The museum research has already resulted in several paintings and other objects being given back to the original owners and their families.

Objects, which are of extremely dubious origin and in several objects of which the original owners have been traced and which will be given back shortly. On the other hand a nearly unknown history has come to light in the stories of how museum hid works of art for Jewish owners during the war. In this regard the municipal museum of Amsterdam deserves special mention where they found room to house as many collections as they did, is still to me

The first report of the museums investigation has just been published the research as such will be finished in this year. The State investigation will be finished in three years time and its results will be published during those years in regular reports. We hope in this way to solve most outstanding questions though truth commands us to say that some of these will probably never be answered.

Testimony of  
Ronald S. Lauder, Chairman  
Commission for Art Recovery  
World Jewish Congress  
Before The  
House Committee on Banking and Financial Services  
February 10, 2000

Mr. Chairman, Mr. La Falce, thank you for the opportunity to address this committee's second hearing on the subject of Nazi-looted art. As Chairman of the World Jewish Congress Commission for Art Recovery, I have been evaluating the problem and monitoring developments in the United States and in Europe. There have been many events; some promising and some that are dismaying. The Commission has been working on two fronts -- with claimant families and negotiations with the German government -- and we are looking at the picture to see how we can be most useful and effective.

I first confronted the issue of art stolen by the Nazis as U. S. Ambassador in Austria. In 1986, I was shown a huge cache of art stored at the Monastery of Mauerbach, near Vienna. It was stolen by the Nazis from Jewish families and never returned. Political pressure led to Austria passing a law to sell the art at auction for the benefit of survivors and Jewish charitable organizations. The Austrians said the works were third-rate and not very valuable, but the sale realized over \$13 million.

I have been involved in restitution through my activities in many Jewish organizations: the World Jewish Congress and the World Jewish Restitution Organization among them. I am a member of the Volcker Commission that is overseeing the Swiss Bank settlement. Restitution from governments is a simple concept. Return property. No penalties. No interest. Just undo the grievous wrong that was done decades ago.

Among the heinous crimes of the Nazis, art theft is not the worst. No return of art, no material restitution can make the Jewish people whole, make up for the loss of lives, the destruction of family bonds, the death of the vital culture of Europe's Jews. Through my foundation I have set up 58 educational and community programs to help revitalize Jewish life in fifteen eastern European countries. We reach 7,500 children and several thousand adults. I believe that each generation has a responsibility to right past wrongs as best we can. Theft of cultural goods was a crime at the Nuremberg Trials, and uncovering and telling the truth about it is an important component of Holocaust remembrance. Every demonstrated fact makes it harder to deny the Holocaust.

I took up the art restitution cause over two years ago at the request of the World Jewish Restitution Organization. Since then, the Commission for Art Recovery has been active on behalf of families, here and abroad. Through our research, we have helped

families locate art taken by the Nazis over fifty years ago. We found it in public and private collections in many countries, or traced it through an auction sale to a dealer. Identifying and locating is the essential first step in the process of return.

Last week, the North Carolina Museum of Art agreed to return a Madonna and Child by Lucas Cranach the Elder to two elderly sisters in Vienna. The museum had received it in the 1960's as a gift, and it came to the museum at the owner's death in the 1980's. Until the sisters told the Commission for Art Recovery about the theft, no one had located the painting in sixty years. We found it. The family had good documentation, and the museum in Raleigh weighed the evidence. They returned it without a lawsuit. Ten months from start to finish. This is the first case I know of in which an American museum has returned Nazi-looted art to a claimant without court proceedings. It should be an example for other museums – here and abroad.

Raleigh is a long way from Vienna. The museum did not look the proverbial gift horse in the mouth. If they had, I am not sure that they would have been able to identify it back in the 1960's as the property of this Austrian family. Today, museums would be more careful, and many museums now call on the Commission for Art Recovery for guidance in researching potential acquisitions.

I want to emphasize that art is different from other assets. Once stolen and re-sold, it can move around the marketplace, and around the world, without anyone taking much notice. In the last fifteen years the International Foundation for Art Research and the Art Loss Register have made that much more difficult. But because so many years have passed when the art world paid no attention, art that was taken by the Nazis or was sold under duress can – and does – turn up anywhere: Raleigh, Leipzig, Berlin, Seattle, and Chicago.

In art restitution, there are no "Swiss Banks" that retained assets in the face of survivors' pleas: there are no insurance companies that demanded death certificates from the children of Jews who were gassed by the Nazis.

Although Jews who owned art were a minority, the systematic plundering of Jewish possessions by the Nazis is an important chapter in the Holocaust, and one that is not completely understood. In spite of the good work that has been done, national commissions, including our own, are taking a new look at the history. New research will expand on the work of Lynn Nicholas and Jonathan Petropoulos. Today the committee will hear from commissions from Holland and from the United States.

One of the most important areas for research is the history of the Jew Auctions held by the Nazis for the benefit of the Third Reich. Beginning in the mid-30s, Germany held auctions of Jewish collections. Before the war, these works were up for grabs. Anyone who wanted to attend and bid was free to do so; there was nothing illegal about doing business with Nazi Germany at that point. Many of the records of those sales are still classified by German authorities, and the Commission is pressing for the declassification of these documents. The world does not yet know the names of all the families whose

collections were stolen and dispersed in this way. In the Jew Auction catalogues, sometimes an asterisk before an item signals that it was "non-Aryan" property.

One family that came to the Commission for Art Recovery are the heirs of Gustav and Clare Kirstein, prominent citizens of Leipzig. Gustav was a principal in a distinguished art printing firm in Leipzig and a patron of artists. He was forced out of his business by the Nuremberg laws and died in the 1930's. His widow stored everything with art dealers in preparation for shipment to the United States. She hoped to join her daughters there, but when the Gestapo took her passport away in 1939, Clare Kirstein committed suicide. The family lawyer, a Jew who was reduced to functioning as a notary serving a greatly diminished population of Jews, authorized the 1942 auction of the Kirstein collection in Leipzig. The auction house, still based in Germany, answered the Commission's inquiry and told us that the proceeds of that sale went to the Reich. We identified more than fifty works from the Kirstein collection in the Museum of Fine Arts in Leipzig, and we have reason to hope that as a result of our discussions they will be returned. We found another in a museum in Hannover, and its return to the family is almost assured because of our efforts.

Before this Committee's first hearings on art, the world was aware of the unfinished business created by the Nazi art looting machine. We learned about the art that was returned to European countries after the war and how imperfectly the different countries dealt with the problem. Some are working now to clean up this unfinished business. But others are not.

Ten years ago, the world learned that thousands of works of art missing for fifty years had survived behind the Iron Curtain. As ArtNews revealed, Red Army Trophy Brigades took these home in 1945. They include masterpieces of Impressionism and Post-Impressionism as well as Old Master Drawings and Asian art and the Gold of Troy.

This art is still being held hostage in the Russian Federation. It is caught up in politics; the Russians refuse to return anything to Germany. However, many of the works of art that the Red Army took home from Germany did not belong to Germany or even to Germans. Instead, the Nazis took them from Hungary during Adolf Eichmann's heartless regime. He put the art on display in his headquarters at the Hotel Majestic and later sent them to Germany where the Soviets took them. Russia today is also holding art acquired by the Nazis in Holland and claimed by The Netherlands.

The Commission for Art Recovery is in touch with several families whose art is in Russia today, and we are planning to undertake negotiations on their behalf. We have also offered our good offices to Germany, since their discussions with Russia have stalled.

Hungary managed to keep a lot of art that the Nazis took from its citizens of Jewish descent. Martha Nierenberg is here to tell you about that.

Let me turn to Austria. I mentioned earlier that the government eventually agreed to the 1996 auction of the Mauerbach art. Austria's legislature passed a good law in 1998, under the leadership of Elisabeth Gehrer, Minister of Culture. The goal was to identify works of art in Austria's national museums that were taken from victims of the Nazis, and to return them to the heirs. I understand that the museum in Graz has just published a book on art it acquired under questionable circumstances.

Austria had a unique political history. It was governed as part of the Third Reich, during which time Jews were deprived of their possessions and their lives. After the war, the United States chose to view Austria as a friend. In those years, Austrian museums took possession of the art property of its surviving Jewish citizens. For those who had fled and chose not to return, the art was exacted as a quid pro quo for allowing them to export some of their other assets.

Under the new law, a special office was set up to look into the facts surrounding the museums' acquisitions. It also established a committee to review the researchers' findings and make recommendations. Now claimants knew where to write. From what we know, the responses were fairly prompt. The new law led rather quickly to the identification of almost 1,000 pieces of art, arms and armor, and decorative arts that had been "given" by the Austrian branch of the Rothschild family. These "gifts" were extorted. The art was returned and auctioned by the family at Christie's last summer.

Many speakers praised Austria at the 1998 State Department Conference here in Washington. Sadly, those first cases were the exception, and other families have been denied the return of their art. I see this as part of the movement to the far right, and the party of Jörg Haider, whose pro-Nazi and anti-Semitic remarks have been widely quoted. Following the Rothschild returns, Austria selectively refused the claim of an American citizen, Maria Altmann, who is an heir to the Bloch-Bauer art collection. In this case, the committee recommended that the porcelain sets and pencil drawings could be returned, but it refused to return the magnificent portraits of her Aunt Adele, by Gustav Klimt. Elisabeth Gehrer immediately ratified the committee's recommendation and invited Mrs. Altmann to sue in Austrian court. But with property as valuable as Mrs. Altmann's Klimts, Austrian courts require a bond of half a million dollars just to get started. Yes, you heard me correctly.

Maria Altmann's story has been submitted to the Committee and is included in the record.

It is terribly difficult for Maria Altmann or Martha Nierenberg to sue a government an ocean away. It is daunting, expensive, time-consuming, and dismaying, since courts are often not politically independent. Our Department of State, which took the lead in bringing 44 nations together for the Washington Conference and in drafting Principles on Nazi-Confiscated Art can -- and should -- do more. I believe that each relevant country needs a claimant friendly and transparent procedure. We proposed an Action Plan to Germany that can be modified for other countries (Appendix I). Our State Department should encourage countries to set up a procedure to put teeth into the Washington

Principles and make the words real. In some cases, countries that signed agreements with the United States after the war exaggerated their returns of confiscated property; it is time for the State Department to look into this and see that those claims are made real, even though it is fifty years later.

In France, Hector Feliciano publicized the situation. He was especially effective in getting the French government to focus on the works of art it held for fifty years without even trying to find the pre-war owners. By dispersing it among many museums, the French made it almost impossible for a Nazi art theft victim to find his property. Largely because of Feliciano's goading, the National Museums posted all these works of art on the Internet.

The French government set up a national commission to research the role that France played during the occupation and after the war. The Mattéoli Commission has issued interim reports; the final report is to be issued this month. The art report will take a few months more and is expected in April. France still must account for 13,000 works of art found in Germany that American forces returned to France along with some 45,000 that France identified and returned to their pre-war owners. France did not bother to research the ownership of the 13,000 and auctioned them after the war. These works of art, perhaps taken from France's Jewish citizens and residents, were not deemed to be museum quality. How much money went into the national treasury as a result is yet to be determined by the Mattéoli Commission.

The Commission has been in discussions with German officials in the Ministry of Culture and with Minister Naumann for eight months. Germany also has a group of unclaimed works of art that it calls the Linz List, in the belief that the works were acquired for the world-class museum that Hitler planned for his boyhood hometown of Linz. When Germany's unilaterally determined period of restitution ended in 1962, the art was put on display for museum directors. Over the next 20 years, the art was dispersed -- lent to 102 museums and more than 50 government offices. No list was available. If a claimant imagined that their art survived the war and might be in Germany, it was unclear how to determine if it was. The art is administered by the Finance Ministry; upon request, they provided the Commission for Art Recovery with a computerized list of about 2,200 works of art. However, a German government press release in November referred to 13,000 works of art, and no one has been able to explain the huge gap in the numbers.

Some German museums have been honest about art in the inventories that they know or believe were taken from Jews, and almost all have been responsive to the Commission's queries on behalf of claimants. The museum in Mainz, for example, published over 30 paintings in one of its catalogues that it actually states were "Taken from Jewish possession between 1933 and 1945." Recently, the consortium of Berlin museums has returned art to the heir of Max Silberberg. Others have returned art from the Littmann collection to the heirs. A museum in former East Berlin has published a booklet with paintings of doubtful provenance in its collection. The Bavarian State Museums had undertaken a provenance review of its vast collections. Our months of



negotiations with the Ministry of Culture hastened the release in December of a statement issued by all German museums "On the Tracing and Return of Nazi-confiscated art. Especially from Jewish Property" (Appendix II). Although it is an important step, we were disappointed with its tone. It begins by reviewing Germany's good works in this field (which ended by Germany's unilateral decision in 1962) and then declares a number of good intentions. But each intention is modified with a "where applicable" or "when appropriate" -- and all to be decided by the current possessor of the art and the information! I only wish the German museum community had asked to hear the point of view of the victims. They would have found out how unfriendly and bureaucratic their well-meaning words seem to a family shut out of the process for 50 years and still haunted by the Nazi past.

In its discussions with the German Ministry of Culture, the Commission presented an Action Plan to create a straightforward and simple procedure for claimants. I am happy to say that Minister Naumann personally wrote to me last week to tell me of the adoption of most of our suggestions. Just two days ago, one of the ministry's officials wrote to the Commission's director to provide even greater detail on many of the new programs. He credited our meetings and suggestions with many of the steps Germany will take. Germany will set up a central office for claims with substantial funding from the federal government and a committee to oversee its operations. We urged the publication of the so-called Linz List on the Internet. In March, Germany will put the list on the Internet, with English translations of the titles provided by the Commission. At last, claimants whose art is missing may be able to locate it. Our discussions continue, and with the good will that exists on both sides, we will bring about the necessary changes to make the appropriate art returns from Germany.

I believe that Minister Naumann will continue to use his influence to bring about major changes Germany and clear up this unfinished business. This week, The Jerusalem Post published an interview with him (Appendix III). Minister Naumann is clearly sympathetic to our suggestions and is moving forward with them. With modifications, the Action Plan could serve well for other European countries whose governments are still in possession of art taken from Jewish owners.

Radio Prague announced that museums in the Czech Republic will be looking into their inventories, and I hope that all museums will do this, including those in countries that were not invaded. Museums are public institutions, and no part of their collections should be based on theft.

I hope this report gives the Committee a sense of the developments as we have been following them. Much remains to be done. I urge our State Department to work with each country to set up a procedure with the advice of those who understand the point of view of victims whose suffering began under the Nazis.

Thank you.

## Appendix I

## ACTION PLAN

1. It is the policy of the Federal Republic of Germany that, in recognition of its moral obligation arising out of the Nazi persecution of Jews, (i) all works of art taken from Jewish owners during the period 1933-1945 by the National Socialist regime that are currently held or controlled by the Federal Republic and federal organizations shall be returned to their rightful owners, and (ii) no legal technicalities, such as statutes of limitations, preclusion periods or postwar global settlements shall impede the return of this art. The art includes, but is not limited to, art forcibly taken from Jewish owners, art that Jewish owners were forced to sell at distress sales, art sold at "Jew auctions" and art that Jewish owners were prompted to relinquish. The government of the Federal Republic regards morality as the primary basis for the restitution of works of art to families dispossessed by the National Socialist regime for reasons of race, politics, religion, or other beliefs.

2. The government of the Federal Republic will take an active role, in cooperation with the Commission for Art Recovery, to seek out the rightful owners (or their heirs) of art with a dubious provenance during the years of 1933 - 1945. Toward this end, the government has undertaken, as announced on November 15, 1999, to assure the publication on the Internet of a catalogue of the art known as the "Linz Collection." These works of art were mostly acquired for Hitler's planned museum in Linz. Today, the Linz list comprises approximately 13,000 objects of varying quality and includes paintings, works on paper, sculpture, tapestries, carpets, furniture, decorative arts, manuscripts, books and rare coins. Among the most valuable objects are 1,500 paintings, including works by major Italian and Flemish artists from the 16<sup>th</sup> and 17<sup>th</sup> centuries as well as Austrian and German 19<sup>th</sup> century art. The Linz Collection was administered by the government and, by 1982, was dispersed among German museums and federal organizations, making it difficult for a potential claimant to identify his property. This Internet catalogue will illustrate each artwork and provide for each item the name of the artist, the title of the artwork and, to the extent available, its provenance. In addition, the Internet catalogue will "user-friendly" search mechanisms. The availability of the catalogue will be widely advertised internationally by the Federal Republic in leading newspapers, media and on the Internet. The government of the Federal Republic anticipates publication of this catalogue in March of 2000. The catalogue will also be periodically updated with additional information as it becomes available.

3. The government of the Federal Republic will facilitate and coordinate the return of the art currently held or controlled by the Federal Republic and federal organizations. A "Claims Office" will be designated as the central clearinghouse for the receipt of all inquiries by claimants for art, in effect, a "one-stop shop." The Claims Office will be a cooperative effort of the Federal Government and the Länder. The office will coordinate a review of archives, records and other materials that may have any bearing on any inquiry or claim. Within the next few months, to further assist claimants in the claims process, a "Guide to the Art Claims Process" will be published and widely

distributed in print and on the Internet. The guide will explain in detail the claims process and provide the addresses, telephone and facsimile numbers and email addresses for the contact persons in the Claims Office. The Guide will also detail examples of the documentation or other evidence that will be required to substantiate a claim for art; but it will also make clear that such examples will not be exclusive and that other evidence will also be considered. Each claimant will receive a written response from the Claims Office within three weeks of receipt of the claim. The response will either acknowledge the validity of the claim and request the claimant to contact the Claims Office to arrange for the return of the art or will, clearly and in detail, explain what type of further documentation to substantiate the claim may be needed. The response will include the name of an official to contact to resolve any issues concerning the claim. Art that is confirmed as belonging to a claimant will be promptly returned to the claimant. If the claimant or other owners of the art have previously received compensation for the art, such compensation shall be repaid (without interest) to the federal government. The claims process shall continue for a reasonable period of time.

4. The government of the Federal Republic recognizes that many new sources of information have become available in recent years, and art that is currently held or controlled by the Federal Republic or federal organizations that may have been the subject of a lump sum or "global" settlement with any successor or restitution organization will be returned to proper claimants notwithstanding the terms and conditions of any such prior settlement. The government of the Federal Republic will make available records of art that was subject to such global settlements.

5. The Federal Republic has worked with the Länder and local governments to develop a joint statement of principle on the restitution of art looted from Jewish families by the Nazis. This statement will provide a framework, within the guidelines of the Washington Conference on Holocaust-Era Assets, for the identification and restitution of Nazi-looted art.

6. After the completion of the claims process, art that is not claimed after a reasonable period of time shall be turned over to the Conference on Jewish Material Claims Against Germany, as successor organization, for disposition.

7. The Federal Republic may acquire any art that is not claimed after a reasonable period of time by payment of prices to be agreed upon with the Conference on Jewish Material Claims Against Germany. As a matter of historic soundness, the Jewish provenance of such art, as well as its acquisition by the Federal Republic, will be noted in an appropriate form (e.g., plaques, etc.) if such art is publicly displayed in museums, government offices or other public institutions.

8. The Federal Republic will prepare periodic (but at least semi-annually) reports for the public on the progress of the return of the art. These reports will be published in print form and will be made available on the Internet.

9. In order to provide for the protection of United States claimants, procedures will be adopted to ensure that the return of any art to citizens of the United States will be comply with the tax - exemption provisions of the United States-Federal Republic of Germany Income Tax Convention of 1989. Similar procedures will be adopted for art returned to citizens of other countries, whenever applicable.

10. The Federal Republic believes that the art taken by the Soviet forces as the result of World War II includes many works of art looted by the Nazis from Jewish families. The efforts of the Federal Republic and the Länder to recover this art is an integral part of their program to restitute art to rightful Jewish owners. To the extent that any of this art is returned to Germany, the Federal Republic will handle this art in accordance with the principles set out in this plan, and, in particular, paragraphs 2, 3 and 6.

## Appendix II

**Statement  
by the Federal Government,  
the Laender (Federal States) and  
the national associations  
of local authorities  
on the tracing and return  
of Nazi-confiscated art,  
especially from Jewish property**

of 14 December 1999  
(text as of 9 December 1999)

**English version provided by the German Chancellor's Office to the  
Commission for Art Recovery**

In accordance with the requirements of the Allied restitution provisions, the Federal Act on Restitution and the Federal Indemnification Act, the Federal Republic of Germany has fulfilled merited claims on grounds the confiscation of works of art by the Nazi regime after WWII, and set up the necessary procedures and institutions for enabling persons entitled to such indemnification to enforce their claims vis-à-vis other parties liable to restitution. The claims primarily arose to those who immediately suffered damage and their legal successors or, in case of Jewish assets without heirs or Jewish assets that were not claimed, to the successor organisations established in the Western zones and Berlin. The material restitution was effected either on a case-to-case basis or by global settlement. The restitution law and the general civil law of the Federal Republic of Germany thus finally and comprehensively provide for issues of restitution and indemnification of Nazi-confiscated art, especially from Jewish property.

In the German Democratic Republic (GDR) the compensation pursuant to Allied law of wrongs perpetrated under National Socialism did not go beyond a rudimentary stage. In the course of German reunification, the Federal Republic of Germany has undertaken to apply the principles of restitution and indemnification law. Nazi-confiscated art was returned or indemnified in accordance with the provisions of the Vermögensgesetz (Property settlement Act) and the NS-Verfolgtenentschädigungsgesetz (Federal Indemnification Act concerning persons who suffered damage at the hands of the National Socialist regime). Thanks to the global filing of claims on the part of the Conference on Jewish Material Claims against Germany Inc. (JCC) in its capacity as today's association of successor organisations claims situated in the accession area with regard to cultural property of Jewish parties having suffered loss. As formerly in the West German Laender, material indemnification on a case-to-case basis was sought: where this was not possible, compensation was effected by global settlement.

## I.

Irrespective of such material compensation, the Federal Republic of Germany declared its readiness at the Washington Conference on Holocaust-Era Assets on 3 December 1998 to look for and identify further Nazi-confiscated cultural property in so far as the legal and factual possibilities allow and, if necessary, take the necessary steps in order to find an equitable and fair solution. Against this background, the decision by the Foundation Board of the Prussian cultural Heritage Foundation of 4 June 1999 is welcomed.

The Federal Government, the Laender and the national associations of local authorities will bring their influence to bear in the responsible bodies of the relevant statutory institutions that works of art that have been identified as Nazi-confiscated property and can be attributed to specific claimants are returned, upon individual examination, to the legitimate former owners or their heirs, respectively. This examination includes a match with material compensation already provided. Such a procedure allows to identify the legitimate owners and avoid duplicate compensation (e.g. by repayment of compensations already paid).

The relevant institutions are recommended to negotiate the extent and procedure of return or other material indemnification (e.g. in the form of permanent loans, financial or material equilisation) with the clearly identified legitimate former owners or their heirs, respectively.

## II.

The German public institutions such as museums, archives and libraries have supported the tracing of Nazi-confiscated art already in the past by means of

1. exploitation of and access to the data research findings and records available to them
2. investigations in case of concrete inquiries and research, on their own initiative, in case of new acquisitions
3. search activities in the framework of the institutions' tasks
4. providing information on the history of Nazi-confiscated art in collections, exhibitions and publications.

These efforts shall be carried on wherever there is sufficient reason.

## III.

Furthermore, the Federal Government, the Laender and the national associations of local authorities consider in accordance with the principles of the Washington Conference to provide a website on the Internet with information on the following:

1. What the institutions involved can do for publicising art of unclear origin to the extent that is presumed to have been confiscated by the Nazis.
2. A search list in which every claimant may enter the items he is looking for and thus report for investigation by the relevant institutions and the interested public.
3. Information on the transfer abroad of Nazi-confiscated art during or immediately after the war.
4. Establishing a virtual information platform where the interested public institutions and third parties may enter their findings relating to the tracing of Nazi-confiscated art in order to avoid duplicate work on the same subjects (e.g. at which auction was Jewish cultural property of which collection sold?) and make such information available by the way of fulltext retrieval.

## IV.

This statement refers to archives maintained by public institutions, museums, libraries and their inventory. The public bodies funding these institutions are called upon to ensure the implementation of these principles by taking decisions to this effect. Institutions under private law and individuals are called upon also to apply the principles and procedures laid down at the Washington Conference.

## Appendix III

The Jerusalem Post, February 7, 2000

**"PLUNDERED ART ON THE LINE: Germany will inaugurate a Web site to help restore Nazi-looted art to its rightful owners"**

**By Marilyn Henry**

Germany's culture minister is cleaning house.

Michael Naumann, intending to root out Nazi-looted art, called on all major German museums to inspect the provenances of the artwork in their possession to ensure they are "clean." Those that are not are destined for the Internet.

"We are amassing a list on the federal museum level of pictures and artwork, including coin collections and artifacts, that have dubious provenances, either because they come out of the so-called Linz collection of Hitler and his henchmen or because they were found in depots with unclear provenances," Naumann said.

The materials are being reviewed at a center in Magdeburg by art historians and other experts, who also are investigating millions of artworks, books, and artifacts that were plundered after 1945 by the Soviet occupation forces in East Germany.

Next month, the ministry plans to publicize the data, including pictures, online. "The intention of the Web site is to find the real owners of the artifacts and the books," he said.

The German initiative is but one aspect of massive but inconsistent series of efforts by a number of nations, with varying degrees of enthusiasm, several Jewish organizations, and an assortment of art trackers and lawyers--to restore Nazi-looted art to its rightful owners.

In December 1998, some 40 nations meeting at a US State Department conference on Holocaust-era assets produced an 11-point agreement known as the Washington Principles. The nonbinding guidelines included a call to open museum archives to facilitate provenance research, public announcements of unrestituted works, and steps for reaching a "just and fair solution" for looted works whose owners cannot be identified.

"The Foundation of Prussian Cultural Properties, which includes the great museums of Berlin - for instance, the Pergamon Museum - within a year of the new government returned artwork worth more than DM 20 million to the original owners," Naumann said in an interview last week in Stockholm, where officials from 46 nations convened for a conference on Holocaust education and research.



The artwork that set the tone was a Van Gogh sketch, *L'Olivette*, which was removed last June from the National Gallery of Berlin and given to the surviving heir of a Breslau art collector whose work was sold at a Nazi-era "Jew auction" before he was sent to Auschwitz. In December it sold at auction, at Sotheby's, for almost 5.3 million pounds, - double its estimated value.

The German initiative also has a wide definition for what constitutes loot.

Many Nazi victims previously had lost the rights to claim their property because, technically, they had sold it, albeit at bargain-basement prices. Those types of sales, while under compulsion, had the veneer of legal transactions, leaving the owner without the chance to recover the work.

That has since changed.

"The Germans have now agreed to pursue a policy in which German Jewish losses after January 1933, in general, have to be considered 'forced losses.' Claimants don't have to prove that they didn't voluntarily sell their art but were forced to sell," said Willi Korte of Washington, a highly experienced investigator of looted art. "This opens the field for claims considerably."

Naumann gave no indication of what standards of proof would be required of claimants. The ministry will be on guard against fraudulent claims, but cannot be so rigid that it precludes a legitimate claim by an owner or heir who lacks documented proof.

When asked how he intends to strike that balance, Naumann said: "Solomonically."

"That's an issue that pertains not only to claims of originally Jewish ownership," he said. "It pertains to every claim. All the museums in the world are full of artwork that once belonged to someone else, and not all of them came into the museums in a legally clean, late-20th-century manner with a 20-page contract signed by a lawyer."

Museums originated as houses of war trophies, "and the attitude of gathering trophies is fully alive and kicking in other nations," Naumann said. He was referring to Russia, where the Duma passed a law that declared its looted "trophy art" to be constitutional.

Many of the works in Russia are art that was originally owned by Jews, confiscated by the Nazis, and then taken by the Russians.

Naumann assailed the Russians for renegeing on a statement made at the 1998 Washington conference in which it said it would restore Jewish art to the rightful owners. "But for that purpose they would have to actually publish a complete list and they are not doing that yet," he said.

Germany has not yet set a deadline for claims, nor is there a plan to dispose of heirless looted art. "Once we come to the bridge, we will cross it," said Naumann.

Naumann's actions appear to be independent of another German initiative that deals with property claims, a DM 10 billion government-industry proposal to compensate Nazi-era slaves and forced laborers and settle claims against Germany for confiscated assets.

At talks this week in Washington, advocates for Nazi victims specifically asked that cultural property, including claims for art, be excluded from the proposal, in part because many artworks have yet to be located or be identified as plunder.

Coordinating a national approach to Nazi loot was complicated in Germany because postwar institutions are not under the centralized control that characterized the Third Reich.

"One of the great achievements of our [postwar] constitution is that the cultural ministry of each state is totally independent," Naumann said. "Therefore, getting together on this issue has taken a year. But now we've succeeded in persuading the Laender [the states] to form a unified force."

While the German states have a coordinated approach, that is not true across Europe. France and Austria also are active in identifying possibly looted art. France's system is centrally controlled, allowing the state to dictate to all museums. Austria passed legislation to accelerate restitution, which led to the return of an art collection belonging to the Rothschild family.

The absence of a universal system, however, retards the search for looted art, which easily crosses borders in both legal and illegal transactions.

"I think it is a subject that could and should be brought up in the European council of cultural ministers," said Naumann, "but I do not deem it to be the role of Germany to be the hector and lecturer on this."

# STOLEN BY AUSTRIA



Gustav Klimt, *Portrait of Adele Bloch-Bauer*  
Stolen from Ferdinand Bloch-Bauer and never returned!

Gustav Klimt's famous *Portrait of Adele Bloch-Bauer* is just one of **six** paintings by that artist which were taken from Ferdinand Bloch-Bauer by the Nazis after March 1938 and never returned. Ferdinand's niece and heir, Maria Altmann (age 84), has actively been trying to recover the paintings for the past two years. This is her story.

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### Summary

Ferdinand Bloch-Bauer, a prominent Jewish Viennese businessman, head of the Austrian sugar industry and a lifelong collector of art, commissioned the well known painter and founder of the Austrian Secession Movement, Gustav Klimt, to do several portraits of his wife Adele. He bought two of these in addition to four landscapes by the same artist. In 1936 he donated one of the landscapes to the Austrian Gallery. The five remaining paintings were hanging in Ferdinand's home until the day that the Nazis seized its entire contents.

Adele died in 1925 when the bacillus of the Nazi plague was still dormant. She left a will requesting her husband to leave the Klimt paintings in his will to the Austrian Gallery in Vienna. Ferdinand declared himself willing to do so when his time would come. However, in 1938 when the Nazis invaded the Austrian territory, he fled for his life to Switzerland, leaving of course, all his possessions behind. He died in exile in 1945 having revoked all previous wills. The reason for this is obvious; he had lost all of his Austrian possessions and therefore the possibility to dispose of them. The Austrian Government now takes the position that the request of Adele Bloch-Bauer's will has the force of a legacy. This, of course, is absurd.

The paintings belonged to her husband who had commissioned them and paid for them. Under this flimsy pretext the Austrian Government has refused to turn over the stolen paintings to the last surviving member of the Bloch-Bauer family, Maria Altmann. An attempt to take legal action against the Austrian Government was stifled by its demand of a prior deposit of \$500,000. And so, the Klimt paintings are stolen again: the first time by the Nazis in 1938, the second time at the end of World War II when the Austrian Government forbade the export of "Austrian Art", the third time now by a flagrant perversion of the law.

**Before 1938**

Maria Altmann was born into an affluent Jewish family in Vienna, Austria in 1916. Every Sunday she and her four older siblings would have brunch over at the beautiful palais owned by her uncle Ferdinand and aunt Adele. The palais, a large building on one of the finest streets in Vienna, was gorgeously decorated with fine artworks, tapestries, porcelain and furniture. When Adele died suddenly of meningitis in 1925, Ferdinand created a memorial room for her with her two full-length portraits by Klimt and four landscapes. A seventh Klimt painting was in Ferdinand's bedroom.

When Adele died, she left behind a short will that asked that her husband donate the two portraits and four landscapes to the Austrian Gallery after his death. Although the paintings belonged to Ferdinand, and not his wife, Ferdinand allegedly stated that he intended to fulfill his wife's wishes although he was not legally required to do so. In 1936, at the request of the Austrian Gallery, Ferdinand donated one of the landscapes to the museum.

**Escape from Austria**

In December 1937, Ferdinand's niece Maria (age 21) was married. Her husband Fritz Altmann was the younger brother of the cashmere sweater manufacturer Bernard Altmann. As a wedding gift, Ferdinand gave Maria a diamond necklace and earrings that had once belonged to Adele. After just two months of marriage, in March 1938, the Nazis annexed Austria. Fritz was arrested and sent to Dachau as a hostage to force his brother, who had escaped to France, to sign over his business to the Nazis. The Gestapo took Maria's jewelry, sending her diamond necklace to the Nazi leader Hermann Göring as a present for his wife.

Ferdinand fled first to his summer home in Czechoslovakia, a large castle and estate outside Prague. When the Nazis took the Sudetenland, Ferdinand fled to Zurich, Switzerland,

and his estate was used as the principal residence for the Nazi commander of the so-called Protectorate, Reinhard Heydrich. Heydrich, one of the principal architects of the Nazi's "Final Solution" was leaving Ferdinand's castle when he was assassinated in 1941.

After several months in prison, Fritz was ransomed by his brother and released from Dachau. Maria was taken by the Gestapo to Berlin to seal the deal. Although Fritz was subsequently placed under house arrest, he and Maria managed to escape on the way to a doctor's appointment. With Bernard's help, they fled over the border to the Netherlands where they were met by Bernard and flown to Liverpool, England, where the British had invited Bernard to build a new sweater factory. Maria and Fritz soon came to the United States and in 1942 reached Los Angeles, where Maria has resided ever since. Maria became a U.S. citizen in 1945.

### **The Looting**

In exile in Switzerland, Ferdinand was cut off from his family and all his possessions. The sugar company he directed was aryanized, and Ferdinand's shares held in Swiss banks were handed over to the Nazis. Ferdinand's palais was bought by the railroad for its new headquarters. The artworks were plundered. In early 1939, a large group of Nazi and museum officials met in Ferdinand's palais to discuss dividing up the enormous art collection. His famous 400-piece porcelain collection was auctioned off, with the best pieces going to Vienna's museums. Some of his 19th century artworks by Austrian masters were taken and given to Adolf Hitler and Hermann Göring. Others were bought for Hitler's planned museum in Linz. Erich Führer, the Nazi lawyer liquidating the estate, was allowed to take a few paintings for his own collection.

The Austrian Gallery expressed an interest in the Klimt paintings, ultimately obtaining three of them from Führer, including the famous gold *Portrait of Adele Bloch-Bauer*. One landscape was bought by the City of Vienna and another was kept by Führer. The portrait in Ferdinand's bedroom ended up in the hands of an art dealer.<sup>1</sup>

In his second-to-last will, dated Oct. 8, 1942, Ferdinand wrote while in exile in Zurich: "In an illegal manner, a tax penalty of one million Reichsmarks was imposed and my entire estate in Vienna was confiscated and sold off." Indeed, when the war ended in 1945, Ferdinand was almost penniless. He died in November 1945, never having recovered any of his property. Not surprisingly, in his last will written in October 1945, Ferdinand made no provision for the donation of his property to any Austrian museums.

#### Post-war Hostility

The government of Austria in the post-war period after 1945 was extremely hostile to restitution claims by exiled Jews. For example, at the end of the war, in April 1945, Dr. Karl Renner, a noted legal scholar, chancellor and president of Austria (and, incidentally, formerly an intimate friend of Adele Bloch-Bauer), wrote:

Restitution of property stolen from Jews, this [should be] not to the individual victims, but to a collective restitution fund. The establishment of such and the following foreseeable arrangements is necessary in order to prevent a massive, sudden flood of returning exiles. A circumstance, that for many reasons must be paid very close attention. . . . The restitution to the victims cannot follow naturally. As soon as the property of the fund, which shall serve to compensate collectively all of the robbed individuals, is established, shares will be given out, for each pro rata based on the suffered damages -- not by the measure of whether a person's property is completely, partially or not at all recoverable; this

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<sup>1</sup> The Klimt painting was donated by the art dealer to the Austrian Gallery in the 1980s in exchange for an export permit for a work by Egon Schiele which the dealer wished to sell to former U.S. Ambassador to Austria Ronald S. Lauder.



collective procedure naturally provides that claims can only be satisfied in relation to the recovered property and only after the completion of investigation, prosecution and return of valuables (that is after years!). . . . Basically the entire nation should be made not liable for damages to Jews.

This overwhelming hostility to the claims of Jews on the part of the Austrian government carried over from the Nazi period into the post-war period and placed every Jewish family with claims against the government in a very precarious position. If a claimant was to have any success at all, deals had to be made to assuage the government ministers and their cohorts, who in most cases were as anti-Semitic as their Nazi predecessors.

#### **Attempts at Restitution**

Ferdinand had no children and left his entire estate to Maria and her older brother Robert and sister Luise. Luise was stranded in Yugoslavia, where she had survived the war with two young children. Her husband was arrested by the communists and executed for being a "capitalist." Maria's brother Robert, who had fled to Vancouver, Canada with his two other brothers, took up the task of attempting to retrieve Ferdinand's property.

After the war, a family friend and lawyer in Vienna, Gustav Rinesch, attempted to recover the Klimt paintings and other artworks and property. The Allies had collected looted artworks and held them in the Art Collecting Point in Munich. However, individual applicants were not permitted to retrieve their property directly. Rather, the artworks would only be returned to their country of origin, which was then responsible for determining whether the artworks should be restituted. Austria used this procedure and laws against exporting cultural items to obtain and hold Nazi-looted artworks hostage. The Austrian Federal Monument Office routinely demanding donations to federal museums before it would permit any artworks to be returned and exported to their former owners, most of whom remained outside Austria.

One of the Klimt landscapes was retrieved by Rinesch from Führer, who was imprisoned for Nazi activities. It was kept in an apartment in Vienna pending a request for export permits. The City of Vienna agreed in 1947 to return another landscape painting to Ferdinand's heirs, but demanded a return of the purchase price. But the Austrian Gallery refused to return the three paintings it had taken from Ferdinand's collection during the war, claiming instead that the paintings had been given to the Austrian Gallery in 1925 by Ferdinand's wife Adele. This claim was inconsistent with Adele Bloch-Bauer's will of 1923, which makes only the legally unenforceable request that her husband donate the paintings after his death. The heirs and their attorney, however, did not have access to Adele's will or other court documents, which were taken out of the court files by the Austrian Gallery.

The Director of the Austrian Gallery, Karl Garzarolli, realized the invalidity of his museum's claim to the Klimt paintings, as he very revealingly confided to his Nazi-era predecessor, Bruno Grimschitz, on March 8, 1948:

Because there is no mention of these facts [the purported donation of the Klimt paintings by Adele or Ferdinand] in the available files of the Austrian Gallery, i.e. neither a court-authorized nor a notarized or other personal declaration of Ferdinand Bloch-Bauer exists, which in my opinion you certainly should have obtained, I find myself in an extremely difficult situation. . . . I cannot understand why even during the Nazi era an incontestable declaration of gift in favor of the state was never obtained from Ferdinand Bloch-Bauer. . . .

In any case, the situation is growing into a sea-snake . . . I am very concerned that up until now all of the cases of restitution have brought with them immense confusion. In my opinion it would be also in your interest to stick by me while this is sorted out. Perhaps that way we will best come out of this not exactly danger-free situation.

### The Extortion

Meanwhile, despite his reservations, Garzarolli took an aggressive stance against the heirs and prepared to sue them to obtain the other Klimt paintings that were not yet in the Austrian Gallery. On April 2, 1948, Garzarolli wrote to Otto Demus, head of the Austrian Federal Monument Office, expressing his strategy with regard to the Klimt paintings and other artworks in Ferdinand's collection:

I ask that the acquisition and trade proposals only be made when the attorney general has given the okay; in other words, for tactical reasons a delayed procedure is requested.

Demus immediately telephoned and met with Rinesch on April 3, informing him that the Austrian Gallery desired a number of artworks from Ferdinand's collection, including the Klimt paintings. He told Rinesch that none of the paintings would be allowed to be exported if the heirs disputed the Austrian Gallery's ownership of the Klimt paintings. Based on this meeting, Rinesch decided (without first obtaining the informed consent of his clients, and obviously under extreme duress) to agree to "donate" the Klimt paintings to the Austrian Gallery in order to get the absolutely necessary support of Garzarolli and Demus for export permits for the other works recovered from Ferdinand's collection, many of which were being held at the Munich Art Collecting Point. Rinesch met with Garzarolli to confirm this deal on April 10, 1948 – the same day he first saw Adele's will and concluded, "This is not in the form of a bequest." On April 13, Rinesch sent his five-page request for export permits for the rest of the Bloch-Bauer collection to Demus, with a copy to Garzarolli adding, "I rely on your sense of justice."

In this underhanded way, Austria managed to avoid having to return the Klimt paintings to Ferdinand's heirs. In the end, the heirs were required to donate additional paintings, drawings and porcelain, and trade several other artworks, in order to obtain export permits for the remnants

of Ferdinand's once enormous collection. Still fighting for export permits in July 1949, Rinesch wrote:

The Bloch-Bauer heirs have, to document their interest in the public Austrian collections, in the most loyal way agreed that the major works of the Austrian painter Gustav Klimt from the Bloch-Bauer collection may remain at the Austrian Gallery as a bequest. Even if this bequest was originally already foreseen in the will of Ferdinand Bloch-Bauer's deceased wife, the heirs certainly had the ability to prevent the fulfillment of this bequest, because in the meantime the financial circumstances of the testatrix's family had changed catastrophically and also the remaining conditions of the bequest had fallen away through the experiences of the Third Reich.

He enlisted the support of Garzarolli, who now agreed to approve lifting the export restriction on several remaining works, based on the donation of the Klimt paintings:

The Austrian Gallery has recently studied the question again and believes that for the following reasons approval of export can be recommended for both paintings without exception. Namely, the heirs of Ferdinand Bloch-Bauer have immediately agreed to acknowledge and accept Ferdinand's declaration that in the event of his death he wished to follow the wishes of his deceased wife to donate the paintings by Gustav Klimt to the Austrian Gallery, despite various transactions by Bloch-Bauer's attorney during the Nazi era that extremely worsened the situation of the Austrian Gallery, and thereby established a way for the Austrian Gallery actually to receive this bequest.

The government continued to fight the heirs in other ways, dragging out the negotiations over the return of Ferdinand's sugar factory for over ten years. The heirs and their attorney finally gave in, settling for a payment of just \$600,000 from the sale of the sugar factory. As part of the settlement, they were forced to give up the beautiful palais, which to this day houses the offices of the Austrian railroad. They also had to sell a number of the returned artworks to pay taxes the government said was due from the factory. Nothing was ever retrieved from Czechoslovakia. Most of the fabulous porcelain collection was never returned, and pieces

continue to show up at auction – the owners immune from suit under Europe’s “bona fide” purchaser rules.

From Ferdinand’s once enormous personal estate, little or nothing remained. The post-war restitution process in Austria had turned the old maxim on its head – to the defeated went the spoils.

### **The Revelation**

In early 1998, in the wake of the seizure of two paintings by Egon Schiele that had been loaned to the Museum of Modern Art in New York by a government-supported Austrian foundation, the Austrian federal minister for education and culture, Elisabeth Gehrer, opened up the old archives to permit researchers to prove that no looted artworks remained in Austria. Thereafter, and much to her surprise, an Austrian author and journalist, Hubertus Czernin, published a series of articles exposing the fact that Austria’s federal museums had profited greatly from the extortion of artworks from exiled Jewish families after the war. Principal among these artworks were the collections of the Bloch-Bauer, Rothschild and Lederer families. Klimt’s *Portrait of Adele Bloch-Bauer I*, which all the museum publications represented as having been donated to the museum in 1936, was revealed to have been transferred to the museum only in 1941 with a letter from the Nazi lawyer Führer signed “Heil Hitler.” The revelations were devastating.

Gehrer responded by closing the Federal Monument Agency archives and ordering a thorough investigation by a committee of archivists from the various federal museums and headed by the director of the Federal Monument Agency, Ernst Bacher. The researchers essentially confirmed Czernin’s stories and reported to Gehrer that indeed many valuable artworks had not been restituted to their owners after the war and in many cases donations were

coerced by government officials. In many cases, such as with the Klimt paintings from the Bloch-Bauer collection, the provenance had been falsified to hide the fact that the paintings had been stolen during the war.

#### **Promised Restitution**

In response, in September 1998, Gehrler proposed a new restitution law, designed to return artworks that had been donated to federal museums under duress in exchange for export permits, or obtained by the federal museums despite having a provenance which suggested that they were never properly restituted to their pre-war owners. The law was unanimously approved by the Austrian parliament and signed into law by the President in December 1998. The new law created a committee made up of government officials and art historians which was to advise Gehrler which artworks should be returned and to whom. Rudolf Wran, the section chief for culture under Gehrler, was selected to head this committee.

In January, 1999, the government permitted Czernin to copy the documents in the Federal Monument Agency files. Czernin provided copies to Maria Altmann's attorney, E. Randol Schoenberg. It was at this time that Altmann first learned that the Austrian Gallery had lied to her brother's attorney about the contents of Adele's will, and had swindled her out of her inheritance.

In early February, the committee announced its first recommendation to return hundreds of artworks to the Austrian branch of the Rothschild family. Later that month, Minister Gehrler responded to parliamentary inquiries regarding a long list of suspect artworks by concluding that "the connection between the donation of the Klimt paintings and the export permit law is evident." The Austrian press reported in big headlines that the Klimt paintings would have to be returned.

### The Opposition

But Wran and the other committee members had other plans. Most of them were greatly distressed by the prospect of returning these icons of Austrian art to Ferdinand's heirs. The Rothschild collection, while certainly very valuable, did not include any significant Austrian artworks. As valuable as it was, the entire Rothschild collection, which was auctioned off in July 1999 for \$90 million, was probably worth only about half as much in today's market as Ferdinand Bloch-Bauer's Klimt paintings that were at the core of the Klimt collection at the Austrian Gallery, Vienna's most popular museum. Certainly in terms of their importance to Austria, Ferdinand's Klimts were in a class by themselves.

Anticipating possible opposition from the very conservative committee, Schoenberg obtained an opinion from an Austrian expert on probate and estate law, Andreas Lintl, on the significance of Adele's will. Lintl concluded (as had Garzarolli and Rinesch in 1948) that the statements in Adele's will were of no legal consequence and that the heirs had not been required to give the paintings to the Austrian Gallery. This meant that the paintings were donated solely in exchange for export permits and would have to be returned under the new restitution law. Schoenberg sent the opinion to Wran. He met with Wran in late April, but Wran refused to discuss the specifics of the case.

In March, Bacher's research committee submitted a report on the Bloch-Bauer collection to Wran's committee, and sent a copy to Schoenberg. The report omitted key documents, gave only a partial view of the story, and made several incorrect conclusions. Schoenberg wrote to Wran and Bacher correcting the report and asked that his letter and further documents be shown to Wran's committee. Unbeknownst to Schoenberg, this request was not honored and the rest of the committee was forced to rely on an incomplete and misleading report.

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Wran forced the decision on the Bloch-Bauer collection to be pushed off by the committee until the end of June. In the meantime, he and one of his compatriots on the committee, Rudolf Kremser, a government attorney, drafted a legal opinion contrary to the one submitted by the heirs. Not knowing the conclusions of the government attorney's opinion, Schoenberg requested by telephone and in writing that he be given an opportunity to read any contrary opinion and to address the committee and respond to any arguments made against restitution. This request was refused by Wran and Kremser. Having heard from the press that opposition was brewing, but in the dark as to what Kremser had written, Schoenberg submitted a further opinion from Lintl again concluding that neither Ferdinand, nor his heirs, were legally required to donate the paintings to the Austrian Gallery.

#### **The Decision**

On June 28, 1999, the committee met and quickly affirmed the recommendation of Wran and Kremser that the Klimt paintings not be returned. The committee did agree to return 16 Klimt drawings and 19 porcelain settings that had been donated by the family in 1948 as part of the consideration for export permits. Gehrler simultaneously announced her adoption of the committee's recommendations.

The other members of the committee were not given copies of the two opinions by Lintl, nor were they given any of Schoenberg's letters or informed of his request to see and respond to Kremser's opinion. Wran confirmed this when he informed Schoenberg of the committee's decision. The Bloch-Bauer heirs and their attorney had been purposely excluded from the entire decision-making process.

Not all of the committee members were in accord with Wran's tactics. Ilsebill Barta-Fliedl abstained from the vote and questioned the judgment and motives of the other members.



Before the committee even discussed the matter she had been ordered by her boss, one of the government ministers, not to vote in favor of restitution in the Bloch-Bauer case. Apparently, the committee vote was predetermined by the Austrian government before the committee had even discussed the Bloch-Bauer matter. The vote was a sham. At the end of the year, Barta-Fliedl resigned from the committee in protest. She has stated that it was clear from the first couple of meetings that the attitudes of the other members of the committee were inconsistent with the purposes of the committee. The committee was made up of people who opposed art restitution in general and were especially hostile to the claims of Ferdinand's heirs.

#### **The Law**

Kremser's legal opinion, and therefore the committee's decision, was premised on the false assertion that Adele's will gave the Austrian Gallery an ownership interest in the paintings. In coming to this conclusion, however, Kremser expressly disagreed with all of the leading Austrian legal experts who have written on this precise legal issue in the last several years (before the Bloch-Bauer case arose). In his 1994 article on "The Legacy of an Object Not Belonging to the Estate," Prof. Rudolf Welser concluded:

That the testamentary disposition of an object not belonging to the estate is valid when the object belongs to an heir, does not apply in the case when the testator sets forth that the heir should upon his own death leave an object from his own separate property to a third party.

Adele's will reads as follows:

I ask my husband after his death to leave my two portraits and the four landscapes of Gustav Klimt to the Austrian Gallery.

In the estate files is a declaration dated January 1926 from Gustav Bloch-Bauer (Ferdinand's brother), the attorney for the estate, stating:

It should be noted that the referenced Klimt paintings are not the property of the deceased testatrix, but of her husband.

Thus, it is clear that Adele's request in her will was a "Legacy of an Object Not Belonging to the Estate" directing her husband Ferdinand to dispose of his own property in a certain way after his death. This wish, according to Prof. Welser and the other Austrian legal scholars, is and was unenforceable. To enforce such a request against the terms of Ferdinand's last will would violate the and circumvent the strict laws regarding testamentary dispositions. And yet Kremser and Wran led the commission members to believe the exact opposite so that there would be no opposition to the government's pre-ordained decision not to return the paintings.

#### **Political Pressure**

Schoenberg wrote to Gehrer to inform her of the committee's grave error and the denial of due process to Ferdinand's heirs. He recommended an arbitration process to resolve the dispute over the legal significance of Adele's will. Gehrer rejected this approach, stating that if the heirs believed the decision was wrong, their only remedy was to go to court. Gehrer also stated, contrary to all the facts that were available to her and in clear denial of what had transpired during the Nazi era, that "The paintings were not stolen from Ferdinand Bloch-Bauer."

Clearly, even the one government minister who had proposed the new law, now found it politically impossible to continue. Her party, the conservative People's Party, faced difficult elections in October, where her party eventually came in third, behind even the far-right Freedom Party led by Jörg Haider, known for praising Nazi SS leaders as "men of character," and referring to Nazi death camps as "penal institutions." By rejecting the Bloch-Bauer's claims to the Klimt paintings, Gehrer joined in the Holocaust denial and revisionism that has reigned in certain

circles in Austria since the end of the war. It is no surprise that she was rewarded for her “loyalty” and reappointed as a prominent minister in Austria’s new right wing coalition government.

#### **Lawsuit**

In September, Maria Altmann announced that she would file a lawsuit in Austria to vindicate her claim. However, the government had more in store for her. First, it was necessary to apply for a waiver of the enormous court costs required to bring a lawsuit in Austria. These court costs are based on the value of the recovery that is sought and in this case would total several million dollars, far beyond what Mrs. Altmann, who still works as a dress designer at age 84, can afford.

However, in November, the Austrian court granted Mrs. Altmann and the other heirs only a partial waiver, and ruled that they were required to spend \$400,000 or all the assets at their disposal – essentially their entire life savings – in order to proceed. This is in addition to the risk of paying costs to the opposing side more than \$500,000 if the heirs lose the case before an Austrian judge. Not content with even this impossible ruling, in December the Austrian government appealed the court’s decision, arguing that the amount Mrs. Altmann and the other heirs should have to pay should include the value of the porcelain and drawings that were finally returned to them, after lengthy bureaucratic delays, in November. Despite Gehrler’s earlier invitation, Austria clearly is behaving as if it does not want the Bloch-Bauer case decided in a court of law.

#### **The Treaty**

In Article 26 of the Multilateral Austrian State Treaty of May 15, 1955, Austria promised:

In so far as such action has not already been taken, Austria undertakes that, in all cases where property, legal rights or interests in Austria have since 13th March, 1938, been subject to forced transfer or measures of sequestration, confiscation or control on account of the racial origin or religion of the owner, the said property shall be returned and the said legal rights and interests shall be restored together with their accessories.

Austria has failed to live up to its treaty obligations. It is incumbent upon the United States to assert its rights under the 1955 treaty and insist that Austria provide due process to the victims of Nazi persecution, especially those like Maria Altmann who have been loyal U.S. residents and citizens since they fled from Austria over 60 years ago.

In his May 15, 1959 letter regarding the settlement of Article 26 claims for restitution, U.S. Ambassador to Austria H. Freeman Matthews concluded:

My Government has instructed me to advise you that it may approach the Austrian Federal Government in the future in connection with the settlement of individual claims asserted under Article 26 of the State Treaty which are not presently known to my Government and do not fall within the classes and categories of claims enumerated in paragraphs 1 and 2 of Section A of your note.

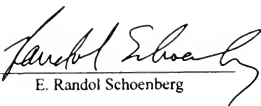
In other words, the U.S. reserved the right to assert unknown claims, such as the ones for the Bloch-Bauer's paintings. The fact that the Austrian government had lied to the heirs and had falsified the provenance of the paintings was not revealed until last year, so these claims fall within the category of claims "not presently known" in 1959.

#### **Conclusion**

The Bloch-Bauer case and others like it could be easily resolved if Austria was willing to submit to neutral arbitration. It is a fundamental maxim that in the event of a legal dispute, claimants should be afforded a reasonable opportunity to prove their claims before a neutral tribunal. Today, more than half a century after the defeat of the Nazis, it is time that these

matters be resolved and settled fairly and quickly. Unfortunately, given the current political situation in Austria, it seems that without U.S. intervention on behalf of its citizens, these wrongs will never be righted.

Dated: February 4, 2000



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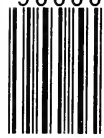
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