In addition to the issues of forced labor and the settlement of insurance claims by Holocaust victims and the heirs, the government of the United States and the Administration, in particular -- is working intensely for justice for victims of the Holocaust.

Last year, the Congress unanimously passed legislation sponsored by Chairman Leach creating the Presidential Advisory Commission on Holocaust Assets in the United States, on which I serve and on whose behalf I speak today. The Commission is composed of 21 members, including 8 members of Congress** and is chaired by Edgar Bronfman, who has dedicated years to this cause.

We are hard at work at fulfilling the mandate given to it by the Congress -- to conduct original research into what happened to the assets of Holocaust victims -- including art and cultural objects, gold, and other financial instruments -- that passed into the possession or control of the Federal government, including the Federal Reserve. We will then deliver a report to the President and Congress that will outline policy recommendations to right any wrongs for Holocaust victims and their families.

At the most recent meeting of the Commission, we released a “map” of all World War II-era Federal and related entities which may have possessed or controlled assets of Holocaust victims. We detailed more than 75 offices, divisions, and units of the government that dealt with Holocaust assets before, during, and after the United States’ entry into World War II.

The intricacy of this web of offices through which the assets passed and the large volume of documents that must be reviewed to track exactly what each agency did or did not do are key reasons why Representative Rick Lazio, with Chairman Leach and Ranking Democrat LaFalce, Representatives Jim Maloney and Brad Sherman, and International Relations Committee Chairman Ben Gilman have introduced HR 2401 -- the US Holocaust Assets Commission Extension Act of 1999 -- to extend the Commission’s life for one year and authorize additional appropriations to support our work.

The Administration strongly supports this legislation, and I urge this Committee to report this bill out to the full House as quickly as possible, to emphasize the American commitment to learning what our government did during this period and acting to achieve justice and bring closure to these issues.

** House Banking Members who serve on the Commission and might be in attendance at the hearing are:
Representative Rick Lazio (R-NY), Representative Jim Maloney (D-CT), and Representative Brad Sherman (D-CA)
To: Ken, Gene, Lynda, Marc, Helen and Jonathan
From: Stu
Re: Today's House Banking Committee hearing
Date: September 14, 1999

Attached is a copy for you of the information I was able to beg, borrow, and, well, obtain from today's hearing. I'm happy to answer any questions about the sessions that you may have.
Opening Statement
Of Rep. James A. Leach
Chairman, House Banking and Financial Services Committee
Holocaust Hearing

The Committee meets anew to examine issues related to the Holocaust and the restitution of assets seized from victims to their rightful owners.

A great deal of progress has been made since our first hearing three years ago. Study commissions have been formed in more than a dozen countries, including the United States, and two major international conferences, here and in London, have been held. Foundations have been set up, and payments to aging victims have begun.

A consensus has emerged that a framework for reaching a credible resolution of those aspects of the Holocaust that relate to mass theft should be completed as this century comes to an end, so that the new Millennium can begin with a slate that takes into account that the greatest crime in human history is neither forgotten nor financially rewarded. All precepts of Western justice require that victims, not victimizers, should be compensated for crimes against humanity.

Of the outstanding issues, the Committee we will take up today three of the most extraordinary: the behavior of European banks, including French institutions, during World War II and immediately afterward; the
practice of using slave labor by German companies; and unpaid claims on insurance policies purchased by Holocaust victims.

On each of these fronts, considerable progress has been made. Although class action suits are pending on the first two matters, and disagreements persist about insurance claims, there can be no doubt of the moral imperative to compensate Holocaust victims which overrides any procedural ambiguities that might stand in the way. History has no statute of limitations.

If negotiations are taking time it is because compensation questions fifty years after the fact are exceedingly complex. The mundane problems of proper documentation, exchange rates and present value are difficult enough by themselves. But parties in these talks must deal with profound moral judgements for which there are no precedents. What is a just compensation for prejudice? For genocide? Can justice ever be satisfied for crimes of such magnitude?

We have today five distinguished panels of witnesses. This morning, we will start with Stuart Eizenstat, now the Deputy Treasury Secretary, who has done so much to advance the process of restitution. He will be followed by a group of Holocaust survivors and a third panel of Jewish leaders and academic experts.

We will reconvene for an afternoon session at 2 o’clock, to hear presentations by Lawrence Eagleburger, the former Secretary of State who now chairs a mixed commission of Holocaust victims’ representatives and insurance companies. We will conclude with presentation from Barclay’s Bank and officials of the French Matteoli commission, led by Adolph Steg, a distinguished French surgeon who is himself a Holocaust survivor and Resistance hero.

##########
Mr. Chairman, Mr. LaFalce, thank you for continuing to focus public attention on issues related to the Holocaust. The hearings you have held over the last year and a half have contributed significantly in the U.S. government's efforts to bring some measure of justice to those who suffered so much during that horrible period of world history. I am delighted to be here today to give you an update on the progress being made, progress to which you have contributed in full measure.

Before reviewing each area in which we have been working, I would like to summarize what we have learned from our work to date, and why we are investing so much time and energy in issues arising out of World War II, fifty years after the end of the War. I would also like to underscore the seriousness and urgency with which we approach Holocaust issues, the historical consistency of U.S. policy in this area, and the practical considerations of foreign policy that underlie our efforts.

As a result of two major U.S. government interagency studies, in 1997 and 1998; two international conferences, in London and Washington, involving over 40 countries and more than a dozen NGOs; research by both belligerent and neutral countries from Europe to Latin America on their role in World War II; the completion of the work of the Tripartite Gold Commission; and our own involvement in lawsuits brought against Swiss banks and now German industrial companies who employed slave and forced laborers during World War II, we have discovered little-recognized facts about Nazi Germany's war effort and learned more about the full depravity of how the Nazi regime systematically plundered the property of those they murdered and imprisoned. We have pieced together new information about the way in which the Nazi war machine was sustained. We have underscored how little justice has been done for those who bore the brunt of the Holocaust and other Nazi brutality.
We have learned how, faced with the lack of value of the Reichsmark, the Nazi authorities helped finance their war effort by looting massive amounts of gold from the central banks of the countries they conquered and from the victims they killed in the Holocaust, smelting and resmelting it into disguised gold bars and, primarily through the Swiss National Bank, converting it into usable hard currency.

We have learned how neutral countries supplied crucial raw materials to Germany which sustained the Nazi war machine.

We have discovered new details about how the Nazis forced some 12 million workers, deported to Germany from Central and Eastern Europe or relocated in their own countries, to work in German industry and agriculture, freeing German men to fight on the front. By its own admission, German industry became an integral part of the Nazi war effort.

We have learned how the Nazis often forced insurance companies to pay over to them the cash surrender value of policies taken out by the people they exterminated, and how after the War the companies generally refused to pay any living beneficiaries.

We know now about the looting of works of art on a scale unprecedented in history, much of which has been returned to its owners at the end of the Second World War. And we have learned how private and communally owned property, from synagogues to cemeteries to schools and community centers, were plundered on a vast scale, much of which has yet to be returned to its owners.

The Urgency of Our Effort

The full dimensions of what happened, during this era of depravity, underscore the importance of trying to do justice, however belated, to the survivors of the Holocaust, many of whom are U.S. citizens. It imposes an obligation on the Administration, the Congress and state and local governments to help secure a measure of justice before it is too late. Israel Singer, the President of the World Jewish Congress, has reminded us that each year 10% of Holocaust survivors pass away. We must not let a
biological solution complete Hitler’s evil plans for a “final solution.”

In December 1997, I set as a goal the resolution of the bulk of the material claims arising out of the Holocaust era before the end of the century and the beginning of the new millennium. While this date is now less than four months away, we are working hard to meet it. While we shall not have finished our work by December 31, 1999, we are hopeful to have in place the mechanisms that can yield comprehensive settlements and rapid distribution of funds and assets to survivors and their families.

The Consistency of U.S. Policy

The effort to bring a measure of justice to Holocaust survivors and their families did not begin with this Administration or this Congress. It has been a consistent part of U.S. policy for half a century.

As far back as 1945, the United States Government instructed U.S. forces occupying Germany to ensure that stolen property be restituted. Through a massive effort by the U.S. and its allies, millions of dollars of stolen property was returned during the first five years after the war. In 1949, the German authorities modeled German restitution law on decrees by the U.S. military government. The 1955 Convention on Relations with the Federal Republic of Germany preserved the restitution system established under Allied legislation, and led to the establishment of the German system for compensating victims of Nazi persecution. German restitution programs to date have processed over 4 million claims amounting to over DM 100 billion.

More recently, in 1990, as part of our agreement to the reunification of Germany, the U.S. asked for and received assurances that the German restitution and compensation programs would be extended to victims living in East Germany who, under the policies of the former German Democratic Republic, had until then been denied adequate compensation. In 1996-97, the U.S. Government was directly involved in encouraging the German government to extend the program to victims living in the Russian Federation, Poland, Belarus and the Ukraine who had been “double victims” of both Nazism and Communism.
The U.S. Government has also concluded its own bilateral agreements on this subject. One, concluded in 1992, covered claims for property located in East Germany confiscated by the GDR from U.S. citizens. Additional agreements for one-time payments to U.S. citizens interned during the War in concentration camps were also negotiated.

All of these property restitution and compensation programs, while significant, were not sufficiently comprehensive and thus left gaps. What we have been doing is trying to close these gaps.

**U.S. Policy Objectives**

The consistency of U.S. policy on Holocaust issues has served important U.S. foreign policy interests. They include the furtherance of the close cooperative relationship this country has had with Germany, one of our most important allies as well as with the nations of Eastern Europe; the maintenance of stability in Europe; and the removal of impediments to greater cooperation and unity among the nations of that continent. More broadly, the horrors of the Holocaust provided a lesson applicable to contemporary events. The firm actions of the United States and NATO in Kosovo were and are motivated, in part, by an unwillingness to repeat the world's indifference to the plight of peoples subjected to persecution reminiscent of the Holocaust.

**The International Community**

In attempting to achieve justice for Holocaust survivors and their families, we have been joined by many nations. In 1997 the London Gold Conference brought together 42 countries, seeking to uncover the full implications of the Nazi plundering of gold during World War II. At that conference, the international community created a Nazi Persecutee Relief Fund with assets of $61 million, much of which was contributed by nations in the form of gold. The fund is an international effort with contributions from 18 countries. Managed by the British Government, with the account held by the Federal Reserve Bank of New York, the Nazi Persecutee Relief Fund channels money precisely to provide basic relief to survivors of Nazi persecution. Each country can target its contribution. With respect to the U.S. pledge to provide $25 million to the Fund, for example, for the first FY 1998
tranche of $4 million, we chose to spend the money providing support to the neediest "double victims" (of both Nazism and Communism) abroad, and selected a proposal by the Conference on Jewish Material Claims Against Germany, an organization representing 23 Jewish NGOs globally, to administer it. The Claims Conference, using its expertise in this field and its pre-existing contacts with local aid networks in Eastern Europe and the former Soviet Union, is currently bringing needed food, medicine and clothing to Holocaust survivors in Ukraine, Belarus, Moldova, and the Baltics. We look forward to working with Congress as we select projects for the FY1999 contribution and as we seek to obtain funding for the FY 2000 final balance of the U.S. pledge.

In 1998, the international community again met, this time at our invitation in Washington, to deal with other assets stolen during the Holocaust and never returned, among them art, insurance, and communal property. This groundbreaking conference set us on our current path, which I shall detail later. Also in 1998, the International Commission on Holocaust Era Insurance Claims was established under the Chairmanship of former Secretary of State Eagleburger, to honor unpaid insurance claims and create a humanitarian fund for victims. In short, we have seen in the last few years an sharp increase in activity, reflecting a notable international consensus to achieve a measure of justice for Nazi victims of the 20th century, so that we can enter the 21st century with a clearer conscience.

**Slave and Forced Labor**

I would now like to turn to a current focus of our efforts, that is payment for those who were forcibly compelled to perform slave and forced labor during the Holocaust. Our efforts here are without regard to religion or national origin. In fact, the vast majority of those compelled to work for the Nazis who still survive are not Jews, but Eastern European Christians from countries overrun by Hitler's forces in the early years of World War II.

To their credit, both German industry and government have stated their intent to do justice for this last large group of individuals not covered by any past or current German compensation program. German Chancellor Schroeder,
who even prior to becoming Chancellor exercised extraordinary leadership on the issue, has been extremely helpful to this process. Soon after becoming Chancellor, he appointed one of his senior Ministers, Bodo Hombach, to represent him. When Minister Hombach was asked to head the European Union's efforts to reconstruct South Eastern Europe, the Chancellor ensured that this issue would remain a focus of his government by asking one of Germany's leading elder statesmen, Otto Count Lambsdorff, to take over. I have known Count Lambsdorff from my work in previous administrations and I welcome the opportunity to work with him again.

Our current involvement in this issue dates to the Fall of 1998, when I was asked by the German government to help find a resolution between class action claimants who had filed suit in U.S. courts for wages and damages arising from slave and forced labor during the Nazi era and 16 defendant German corporations. The German companies, recognizing their moral responsibility for the behavior of private companies during the Nazi era, proposed to establish a foundation which would provide payment to those who were forced to work for private industry as well as those who were victims of other actions during the Nazi era in which German companies participated. The German government, in support of its companies, has proposed to establish a government foundation, which would compensate many others who were forced to work for the Nazi state who might not be covered by the private sector foundation.

These German proposals are currently the subject of intensive discussion in plenary and working groups chaired by Count Lambsdorff and myself. The Participants are:

- The Conference on Jewish Material Claims Against Germany
- Five Central and East European Governments (Poland, the Czech Republic, Ukraine, Belarus, and Russia) and the German-financed Reconciliation Foundations located in these countries
- the Israeli government
- a number of plaintiffs' attorneys representing former laborers in class action lawsuits in U.S. courts
• representatives of German corporations currently supporting the foundation, and

• the German and U.S. Governments.

By late August, discussions on the administrative and legal aspects were far enough advanced for the issue of payment levels to be discussed. This began in Bonn August 24-26, and will be continued here in Washington October 6-7. Meanwhile, Count Lambsdorff has publicly campaigned for increased German industry participation in the industry foundation, noting that "there was hardly a German company that did not use slave and forced labor during World War II". Consistent with his personal commitment to the process, Chancellor Schroeder convened a meeting, September 6, of German industry leaders and told the press following that session that 35 German companies were now willing to join the industry foundation, more than double the original 16.

**Key Issues in the Slave/Forced Labor Talks**

The fundamental trade-off for German industry is to grant a reasonable amount of payment to former forced/slave industrial workers in return for what they have termed "legal peace" i.e. an end to lawsuits on the subject. If agreement can be reached on payment levels, and the plaintiffs' attorneys and survivor groups concur, the Department of Justice is prepared to file a "Statement of Interest" in future lawsuits brought in United States Courts against German companies in cases where the foundation provides a remedy stating our belief that the Foundation should be regarded as the exclusive remedy for future claimants who could utilize it. If asked by the court, we would indicate that dismissal of such suits is consistent with U.S. policy. Such statements by our Government in open court are extremely rare, and I hope German industry realizes this. I want to stress that we would only agree to do this if the participants in this process agree to establishment of the private foundation and a federal foundation.

As regards the German government foundation, Count Lambsdorff has conveyed to me Chancellor Schroeder's pledge to seek legislation establishing it when the Bundestag returns from vacation in September. In order to obtain the support of the Central and Eastern European Governments
participating in this process, which is necessary for moral, political and legal reasons, it is essential that the government’s foundation offer as broad coverage as possible, so as to include workers who were relocated from their homes and forced to work for the Nazi regime.

There are two main reasons why we support resolving these claims through a negotiated settlement rather than trial. First, the age of the survivors -- now averaging around 80 years -- necessitates an expeditious solution. Second, the number of victims who would be covered by the two German foundations would be much greater than those covered by the lawsuits pending in United States Courts. Thus, justice will be better served if agreement can be reached to establish the German foundations, rather than put Holocaust victims at risk in uncertain and lengthy litigation.

The central unresolved issue is the amount of payments to be made to the various classes of laborers. While I cannot discuss details related to payment levels, it is clear that the participants are far apart on this issue and both sides will have to give considerably to achieve an agreement. I hope the German industry realizes just how far the U.S. government has gone in the interests of an equitable settlement. We have devoted the better part of a year, and considerable staff resources, to creating a framework for productive negotiation. We have done what they and the German government have requested.

The German companies have time and again denied any legal liability in U.S. courts, but have clearly indicated their moral responsibility for the gross abuses inflicted on millions of forced and slave laborers. It is now time that they make a proposal to settle the suits in a fashion consistent with their moral responsibility not only for their own workers but for all workers employed in German private industry during the Nazi era. Likewise, it is appropriate for the German government to establish a Federal Foundation to cover the forced laborers not covered by the industry Foundation. We are encouraged by Chancellor Schroeder’s willingness to do this.

By the same token, I hope that plaintiff’s attorneys are aware that the initial monetary demands they have put forward in this negotiation are not considered realistic by German industry or the German government and make it more
difficult for that government to muster public support for helping fund a reasonable solution. They will need to show flexibility if these cases are to be settled within the lifetimes of the survivors they represent.

Despite the wide disagreement over payment, I feel we have nevertheless come far in this process. If the remaining differences can be resolved, agreement could be achieved in principle on all slave/forced labor issues before the end of this year.

**Insurance**

On insurance, efforts to provide rapid and fair resolution of claims have intensified. The International Commission on Holocaust Era Insurance Claims, created in November 1998, has been charged with establishing a just process that will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust. Under the very able leadership of former Secretary of State Lawrence Eagleburger, the Commission has achieved significant progress in creating a claims-based process to pay outstanding insurance claims in the lifetimes of Holocaust survivors. The International Commission includes five leading European insurance companies, representatives of international Jewish survivor and other Jewish organizations, U.S. and European insurance regulators, and the State of Israel. Under Chairman Eagleburger, a fact-based effort to resolve Holocaust insurance claims promptly and fairly is being negotiated. The objective is to provide expeditious resolution of insurance claims without resorting to lengthy litigation that would delay payment to survivors.

The International Commission is making significant progress in resolving a complex set of issues which includes valuation of policies, independent audit review, and the waiver of the statute of limitations. It will establish a help line for claimants. It has designed a non-bureaucratic claims process and relaxed set of standards of proof. It is prepared to publish the names of potential policyholders; has agreed that the insurance companies will bear the cost of claims processing; and proposed establishment of a humanitarian fund.

Chairman Eagleburger expects to have the claims settlement system in place in the near future. The
International Commission's blueprint for settling Holocaust-era insurance claims is now in the final round of negotiations. Once the claims process is in place, we expect that the legal and the claims process will be merged.

The Administration supports Chairman Eagleburger's and the Commission's efforts to bring justice to Holocaust survivors through the establishment of a fair claims process. We have worked with European countries to bring them into this international effort to obtain justice. Recently the, Belgian, Czech, and Polish governments joined the German, French, Israeli and Italian governments in participating in the Commission. In France, I have met with the Matteoli Commission, which is testifying before this committee in the person of Dr. Adolphe Steg, with whom we have worked closely.

We continue to believe that the International Commission is the best vehicle for resolving Holocaust-era insurance claims and have great confidence in Chairman Eagleburger's leadership. We commend the five insurers that have voluntarily agreed to join the International Commission - Allianz, Generali, AXA, Zurich, and Winterthur. These companies' commitment to the Commission, demonstrated by the $90 million escrow fund established at the beginning of the process, and their willingness to negotiate on these difficult issues, has helped make possible the progress to date. We call on all insurance companies that hold policies from the Holocaust era to participate in this process. And we call upon all of our states to give those companies participating in this process a safe harbor from regulatory action as they complete the claims process and begin making payments.

Art

Mr. Chairman, I would now like to turn to an issue with which you have great experience and to which you made a significant contribution when you chaired that portion of the Washington Conference on Holocaust-Era Assets dedicated to stolen art. Significant initial progress has been made to restitute art that was confiscated by the Nazis during World War II. The 44 nations participating in the Washington Conference reached consensus on a set of eleven principles relating to Nazi-confiscated art that envision a massive cooperative effort to trace the current location of
this art, publicize this information so that pre-War owners can come forward, and reconcile competing claims of ownership to produce just and fair solutions. The Conference specifically urged nations to encourage the use of alternative dispute resolution mechanisms instead of lengthy court proceedings to accomplish our mutual goals more quickly.

Since the Conference last December, there have been many positive developments in this area:

• In February, Austria agreed to return to the Rothschild family over $40 million in art pursuant to the Austrian restitution law enacted in November.

• In March, Britain's National Gallery issued a list of 120 paintings in its collection that it is investigating to make sure they were not confiscated or stolen in the Nazi era.

• In April, France returned to the Rosenberg family the Monet painting, part of its MNR collection, that had been loaned to the Museum of Fine Arts in Boston and exhibited there.

• In June, the Prussian Cultural Heritage Foundation -- the German Foundation that runs many of Berlin's most prominent museums -- agreed to return a van Gogh drawing to the heirs of Max Silverberg.

• Also in June, the Seattle Art Museum agreed to return a Matisse to the Rosenberg family, following an independent investigation into the work's provenance.

More broadly, as a result of an April hearing in Paris on "Looted Jewish Cultural Property", the Committee on Culture and Education of the Council of Europe is preparing model legislation on the return of looted Jewish cultural property for adoption by the Parliamentary Assembly of the Council. This model legislation should, in turn, initiate new legislation on this subject in European national parliaments hopefully similar in scope to the groundbreaking legislation adopted by Austria. One of the organizations represented at the April Council of Europe meeting was the newly-created European Commission on Looted
Art, which is supported by organizations and individuals in 35 countries in Europe.

We have still to receive indications of how the Russian Federation intends to follow up on their commitment, made during the Washington Conference last December, to open up their Nazi-era archives in order to help create a data base. These archives are essential to the search for stolen art of the Holocaust period, and we stand ready to cooperate with the Russian government in any initiatives they propose.

In the United States, the guidelines of the American Association of Museum Directors, similar to the Principles of the Washington Conference, which call upon museums to research their holdings to see if there are any works with a Nazi-World War II provenance, are in the process of implementation. So far, the Association reports that no museum has reported finding such a work. If any are found, the guidelines call upon museums to publicize that fact, so that pre-War owners and their heirs can come forward and a just and fair solution can be worked out between them and the museum.

Provenance work in the field of art can be a lengthy and expensive process. To assist American museums in completing this research, perhaps some of our higher education institutions could encourage their art history majors to work as interns on Holocaust-related provenance research. This could be a useful source of free help to museums, and students would be gaining practical research experience working on a project of current interest which may be meaningful to them personally.

**Communal and Private Property**

In the area of property restitution, there has been slow but steady progress in the countries of eastern and central Europe during the past few months. Much remains to be done, however. As these countries seek to join western political and economic institutions, it is important that they adopt laws and practices on property which are consistent with international standards. It is toward that objective that we have been working since I started my activities as U.S. Special Envoy on Property Restitution in eastern and central Europe in 1995. I have visited all of the involved countries at least once to urge the adoption
of equitable, transparent and non-discriminatory laws and practices. Officials at all levels of the executive branch have followed up my initiatives, as have many Members of Congress in their meetings with foreign government officials both here and abroad.

In each country, the historical context and the current political situation have resulted in very different approaches to the issue of returning property, both private and communal, to rightful owners.

As an example, let me here describe developments in Poland, where the large, pre-war Jewish community owned a great deal of property. Polish law provides for the restitution of communal property to Catholic, Orthodox, Lutheran and Jewish communities. A significant amount of property has been restituted to the three Christian communities. The Jewish community faced a particularly difficult situation since the present community consists of only a few thousand members, compared to the 3.5 million in the late 1930's. To help ensure that this property is restituted promptly, the Union of Polish Jewish Communities and the World Jewish Restitution Organization have been working to establish a foundation to claim and manage the restituted property. Ambassador Henry Clarke of the Department of State recently facilitated the reopening of these negotiations, and we hope the foundation will be established soon.

A vast amount of private property was also wrongfully seized by the Nazis and by Communist regimes in Poland. The present Government expects to submit a bill to the Parliament shortly on restitution of, or compensation for, these properties. This has aroused a great controversy -- some opposing the high cost of such a program, others arguing that the proposed compensation is inadequate.

Restitution remains an important political issue in other countries of Eastern and Central Europe as well. In Romania, the Parliament has been heatedly debating new legislation for several months, and a bill for restitution of private property passed the lower house by a wide margin. In Ukraine, the Parliament is preparing new legislation on property of religious communities.
**Swiss Bank Settlement**

In August of 1998, a settlement was arrived at in principle in which our government played a significant part. Under it, two Swiss banks, who were defendants in a class action brought in the Federal District Court in New York alleging they had failed to return dormant bank accounts to the heirs of account holders who died in the Holocaust would settle the suit with a payment of $1.2 billion. Since that time, the parties, the court and a court-appointed special master have been engaged in the lengthy procedures required under class action settlements. The notification process is still underway. A fairness hearing is scheduled for the end of November, after which a distribution plan must be drawn up for comment and subsequent presentation to the court for approval. The earliest date for commencement of distribution is the late spring of next year. While all involved in the case are proceeding conscientiously to conclude it, this shows the drawbacks of this type of litigation when members of the class are of advanced years. We have benefited from this experience in working on the Foundation solution to the slave/forced labor issue, where all involved intend that distribution will be delayed no longer than six months after final agreement.

**Presidential Advisory Commission**

Last year, the Congress unanimously passed legislation sponsored by you, Mr. Chairman, creating the Presidential Advisory Commission on Holocaust Assets in the United States, on which I serve and on whose behalf I can speak. The Commission is composed of 21 members, including 8 members of Congress and is chaired by Edgar Bronfman, who has dedicated years to this cause.

The Commission is hard at work fulfilling the mandate given to it by the Congress: to conduct original research into what happened to the assets of Holocaust victims, including art and cultural objects, gold, and other financial instruments, that passed into the possession or control of the U.S. Federal government, including the Federal Reserve. The Commission will then deliver a report to the President and Congress with the facts it has found and its policy recommendations. Similar historical commissions have been established in 17 other countries.
At the most recent meeting of the Commission, we released a “map” of all World War II-era Federal and related entities which may have possessed or controlled assets of Holocaust victims. It detailed more than 75 offices, divisions, and units of the government that dealt with Holocaust assets before, during, and after the United States’ entry into World War II.

The intricacy of the web of offices through which these assets passed and the large volume of documents that must be reviewed to ascertain exactly what each agency did or did not do make this a lengthy work of research. For this reason, Representative Rick Lazio, with Chairman Leach, Ranking Democrat LaFalce, Representatives Jim Maloney and Brad Sherman, and International Relations Committee Chairman Ben Gilman have introduced HR 2401, the US Holocaust Assets Commission Extension Act of 1999, to extend the Commission’s life for one year.

I strongly support this legislation, and I urge this Committee to report this bill out to the full House as quickly as possible, to emphasize the American commitment to learn what our own government did during this period and what can be done to achieve justice and bring closure.

**Education and Remembrance**

Perhaps the most significant achievement of the Washington Conference on Holocaust-Era Assets was the encouragement it gave to the cause of Holocaust education. Insuring the education of future generations may be the greatest legacy of our efforts. As time grows short for survivors to actually use the fruits of the legal settlements, we look the widest possible dissemination of the facts and meaning of the Holocaust, as a way of ensuring it will never happen again. While money will be of significant help, it will never be enough. And, it cannot be the final word on the Holocaust.

That is why the President pledged the U.S. to be a founding member of an international task force to promote Holocaust education worldwide. In addition to the United States, members of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research include France, Germany, Israel, Italy, the Netherlands, Poland, Sweden and the United Kingdom. Israel currently chairs the task force.
Holocaust education and remembrance will be the focus of three upcoming international conferences scheduled for Prague, Jerusalem, and Stockholm. The rededication among all participating nations to ensuring that the victims' individual worth and personal dignity will never be forgotten means their memory will provide enduring lessons for all humanity as we enter a new millennium.

Conclusion

The terrible aftermath of the Holocaust and its forever-relevant lessons will always be part of our life. We must learn these lessons, to make the 21st century a time when human rights and human dignity will be better respected -- and the international community more willing to act to protect those rights -- than was the case during World War II.

The challenge to the international community -- and ourselves -- to deal with the remaining material claims from the Holocaust before the end of the century, remains unfulfilled. But I look back at all the progress that has been made and say that we have made great steps forward in bringing these issues before the conscience of the world and putting them on the global agenda -- no mean feat. We have taken on all of the important issues. We have created institutions and set in motion processes that, with creative thinking and good will, can bring about rapid resolutions.

I want to thank all of those in so many countries, and those in Congress, especially on this Committee, who have worked so hard to get us to where we are. We hope the survivors feel we have their interests at heart and can depend upon their support and their prayers, as we work against the clock to win for them what they have been so long denied, and what they so richly deserve.

Thank you.
TESTIMONY OF
RABBI DR. ISRAEL MILLER, PRESIDENT
CONFERENCE OF JEWISH MATERIAL CLAIMS AGAINST
GERMANY, INC.
TO THE BANKING COMMITTEE
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

14 September 1999

The Conference on Jewish Material Claims Against Germany welcomes the opportunity
to update the United States House of Representatives on the developments during the last
few months relating to the negotiations with German industry and banks, Austrian banks
and the discussions with insurers in the framework of the International Commission on
Holocaust Era Claims.

The Claims Conference is committed to provide every assistance and participate in all
efforts to resolve outstanding indemnification and restitution issues. Nothing can ever
compensate for the loss and destruction suffered by the Jewish people during the darkest
period of human history. However, as we approach the dawning of a new century, our
responsibility to future generations is to search for the truth and rectify the injustice one
of the greatest robberies in modern history. As the biblical prophet Elijah asked King
Ahab, “Have you murdered and also inherited?”

Negotiations with the German Government

As you are aware, the Claims Conference has participated in negotiations with the
German Government on issues of restitution since the 1950s. For the past half century,
the Claims Conference, composed of 23 major national and international Jewish
organizations has represented the Jewish people and Holocaust survivors in regard to
compensation and restitution.

During the period immediately prior to the reunification of the two Germanys, the Claims
Conference entered a series of negotiations on compensation with the Federal Republic of
Germany with the support of the United States government. These talks focused on securing compensation for victims of Nazi persecution who had received little or no compensation prior to that date.

As a result of the negotiations, the unification agreement between the two Germanys contained an explicit commitment by the German Federal Government to “… enter into agreements with the Claims Conference for additional fund arrangements in order to provide hardship payments to persecutees who thus far received no or minimal compensation according to the legislative provisions of the German Federal Republic…” Subsequently the Claims Conference concluded an agreement with the German government establishing what is now known as the “Article 2” Fund. This fund provides a pension payment of DM500 a month to Holocaust survivors who meet the eligibility criteria. The Claims Conference administers this program on behalf of the German government.

However, there are thousands of Holocaust survivors who are not eligible to receive a pension under the current criteria. The Claims Conference is conducting continuing negotiations with the German government for the liberalization of the eligibility criteria in order to avoid injustice. We have received applications for pensions under Article 2 from persons in desperate financial circumstances but who are ineligible to receive Article 2 for “technical reasons” – that is: they were in a concentration camp not currently recognized as such by the German government or were subjected to persecution for periods less than currently stipulated by the German government guidelines. The staff of the Claims Conference, although performing their work as dedicated professionals, continue nonetheless to be extremely moved when reading these tragic testimonies. The Claims Conference is determined to continue to press the German government for the liberalization of the Article 2 provisions.
Negotiations with German Industry

The Claims Conference is currently participating in the negotiations chaired by Deputy Treasury Secretary Stuart Eizenstat and Count Otto Lambsdorf addressing the responsibility of German Industry toward slave and forced laborers and the involvement of German Banks in the looting of assets and the aryranization of Jewish property.

These negotiations have reached a critical junction. A significant number of Holocaust survivors are passing away each year and this number will only increase. Our quest to do justice can not wait years – the survivors do not have years. A fair and just settlement has to be achieved now – before the passage of time defeats the goal of the attainment of justice.

A fundamental element of any fair and equitable settlement must be an appropriate acknowledgement of the responsibility of German Industry for the morally unjustifiable use of slave labor during the Second World War. German Industry participated in the Nazi policy of “Vernichtung durch Arbeit”. Every aspect of this policy must be unequivocally denounced as unacceptable by German Industry and German Industry must offer a profound apology for their participation in such a system. Not only do Holocaust survivors deserve such a declaration, but if we intend to approach the new century as a society recognizing the dignity of man, the international community must demand such a statement.

The Claims Conference maintains that a settlement with German Industry should comprise three elements:

1. Payments to former slave and forced laborers;

2. A fund that recognizes that the majority of persons who suffered under slave labor are not alive today. Our task is not only to compensate the living but also to recognize the suffering of the departed and establish a fund, dedicated to their
memory, that undertakes purposes and projects with which they would have identified.

3. A component that specifically addresses the wrongs committed by the banking industry. The banking industry must accept moral responsibility for its active and often proactive participation in the aryanization of Jewish assets. As the official 1946 Report of the U.S. military government of Germany indicates the three largest German banks often bought Jewish property, businesses and securities at below market price for their own account and otherwise profited from aryanization through the provision of loans and receipt of commissions, brokerage fees, etc. They competed among themselves to profit from the policy of the Nazi regime to forcibly transfer assets from Jews to “Aryans.” The basic moral principle of all restitution is that the parties that engaged in and/or profited from unconscionable acts are not entitled to retain such profits. Therefore this moral principle dictates that the banks are required to divest the profits that resulted from their active participation in this program.

Further meetings with German Industry are scheduled for early October. Every participant in the negotiations is morally obligated to survivors to make the utmost effort to reach a mutually acceptable solution within the next few months. A quick and just resolution to these claims will ensure that survivors are able to feel the hand of justice at the conclusion of our century.

Negotiations with Austrian Banks

The Claims Conference regrets to report on the state of the current discussions with Bank Austria/Creditanstalt. The House may be aware that certain Plaintiff’s lawyers signed a settlement agreement with the Bank which is subject to court approval.

The Claims Conference believes that the settlement is unfair to Holocaust survivors in and from Austria and distorts the involvement of Creditanstalt in the aryanization of
Jewish assets in Austria by hiding behind the skirts of the German banks. Our research has shown that prior to the ownership of Creditanstalt by Deutsche Bank, Creditanstalt actively and enthusiastically participated in the aryanization of Jewish assets. Our opposition to the settlement is not merely based on the amount of the settlement, but derives from our commitment to ensure that truth and justice prevail.

We urge you to call upon Bank Austria to reconsider the release of the 1400 Austrian companies who are listed in an Exhibit to the Settlement Agreement from future claims for the use of slave labor during World War 2 and guarantee that the Humanitarian Fund remains a meaningful contribution in the memory of the heirless.

Insurance

The Claims Conference has been an active participant in the International Commission on Holocaust Era Insurance Claims (ICHEIC). The work of the Commission has not been simple and straightforward. The parties have been deadlocked on fundamental issues such as nationalization and valuation. However due to the leadership of Chairman Eagleburger much has been achieved by the International Commission.

Although neither party is completely satisfied by all the aspects of the claims process in its current form, a viable mechanism has nevertheless been established to finally pay unpaid insurance policies after the passage of 60 years. There are many issues before the Commission that have still not been resolved; however, we are hopeful that progress will be made on the outstanding issues and that the Commission will continue its effort to finally assist Holocaust survivors in their quest for justice in this area.

There is one major area in which we urge the House to intervene. Despite the attempts by Chairman Eagleburger and the State Insurance Commissioners, a number of companies that held a significant share of the pre-war insurance market have thus far declined all efforts to persuade them to participate in the International Commission. Alternatively they have made an offer to participate in the Commission as less than full members thus
avoiding the obligations of full membership while obtaining the benefits of the provisions of the MOU which provide them with a ‘safe harbor.’ In particular, Munich Re (which holds a controlling interest in the Ergo Group) should be encouraged to join the Commission as a full member and commit itself to honor the unpaid policies issued by subsidiaries of the Ergo Group - including Victoria Zu Berlin.

Hundreds of persons with policies issued by subsidiaries of the Ergo Group have already contacted the various State Insurance Commissions (at a time when no substantial outreach program has even commenced). Since companies such as Munich Re have not joined the Commission – ICHEIC is unable to assist these persons – and has the unfortunate task of telling these Holocaust survivors that in addition to the other injustices that they have suffered, their family purchased a policy from a company not participating in ICHEIC. Will they understand or accept this? Of course not. And survivors are right not to accept this answer. After all what type of justice is partial justice? Every effort must be made to ensure that all companies operating in pre-war Europe join the commission.

The task before us, to secure justice at the end of the century, is overwhelming but we owe it to future generations to succeed. As it says in the Ethics of the Fathers: “We may not be able to finish the task, but neither are we free to desist”
Statement of Elan Steinberg
Executive Director, World Jewish Congress

House Committee on Banking and Financial Services

September 14, 1999
Mr. Chairman,

It is often the case that testimony before an important committee of the House of Representatives is the justified opportunity to deliver a statement on an issue highlighting the shortcomings, critiques and other complaints about the subject at hand. Yes, there will be that but first I feel compelled to tell this committee and Mr. Chairman, you in particular, how you have changed the course of events and directly made the lives of tens of thousands of people so much better.

These hearings and your ongoing commitment to the moral cause of historic truth and the physical restitution of assets taken from Holocaust victims have had profound practical effects. As a result of testimony here in December 1996, in which it was proposed that Swiss authorities establish a humanitarian fund, some $185 million was pledged by Swiss banks and institutions. As of this year, more than 120,000 needy survivors around the world - including tens of thousands here in the United States - have directly benefited from this fund. On behalf of these beneficiaries - Jews and Non-Jews - we express our gratitude to you and this committee which has made an historic difference.

Mr. Chairman, there is so much to cover and I will therefore try to telegraph my message. The Chairman of the Claims Conference, whose mandate it is to deal with restitution issues in Germany and Austria, will speak powerfully to those issues. I have been asked to move beyond the question of Swiss banks to deal among other issues with progress, or lack thereof, with respect to Austrian and French banks and the massive problems of unresolved insurance claims.

With respect to insurance claims, we wish to express our support for the Eagleburger Commission, and underscore that we support "safe harbor" protection for those companies that are in the Commission and comply with its decisions.

Mr. Chairman, when the controversy surrounding Swiss banks first developed and the putative offer to settle claims was made, the president of the World Jewish Congress replied that he did not wish to speak about money, he wanted to deal with the process. This remains the heart of the issue even as we turn to the issue of Austrian and French banks. The question, of course, is not only how much is owed but the core concern is whether a process exists that provides for transparency and accountability as we seek to achieve the twin goals of moral restitution - the search for the truth - as well as material restitution. Regrettably we cannot yet say that such a process - much less resolution - has yet been achieved with respect to Austrian and French banks.

First by way of background, in March of 1938, crowds of cheering Austrians welcomed Hitler's arrival in Vienna and the incorporation of Austria into the Nazi Reich. The persecution of Jews followed with the seizure of their
Austrian Jews were compelled to register their assets with the authorities and I have with me a complete register of 50,000 names of Vienna's Jews in this "census" with the file number of their recorded holdings. Those holdings are intact and available in Austria.

We have studied Jewish assets seized in Austria. Broken down by category, the financial component - the most liquid assets - such as security, cash, savings, make up nearly one half the total. The leading Austrian bank, Creditanstalt, is the subject of claims today. Recently, Creditanstalt/BankAustria came to an agreement with a number of lawyers to settle claims for $30 million, with an additional $10 million for lawyers' fees and administrative costs. The Austrian Jewish community, the Conference on Material Claims and the World Jewish Congress have rejected this unseemly offer.

BankAustria claims it is not liable because Germany's Deutsche Bank took control of it in March, 1938. I have documents here from the U.S. Military study of 1946, which prove that Deutsche Bank did not establish effective control until October 1938. It was during that six month period that the bulk of economic crimes against the Jewish people by BankAustria took place.

We have met with representatives of BankAustria even in the most recent days, and while I hope that an appropriate settlement might still come about, I can not yet report this to you, Mr. Chairman.

The case of French banks is also less than satisfactory. Here too the issue is one of process, transparency and accountability. The circumstances here are unique.

The defeat of France by Nazi Germany in 1940 led to the establishment of the collaborationist but unoccupied Vichy Regime in the south, while German forces proceeded to occupy the northern part of the country. At the time of occupation, half of the Jewish population in France of some 350,000 comprised non-French Jews - refugees from Poland, Austria, Germany, Belgium and other European countries.

France was unique in that it was the only country in Western Europe that delivered up the Jews to Nazi death camps from territory not directly occupied by the Germans. The most salient fact to understand here is that the Holocaust in France took the lives of 75,000 Jews; 70% were non-French Jews. This point is so central, forgive me for repeating it: 70% of the Jewish victims of the Holocaust in France were non-French Jews.

I have underlined this point because we have been repeatedly told by
French banks and authorities that they will not negotiate or deal with the international representatives of Jewish communities and Holocaust survivors because it is a French-Jewish issue. It is indeed a French-Jewish issue and the French-Jewish community must be involved but it is also undeniably a world-Jewish issue. Simply put, a Polish Jew who as a refugee was plundered in France and who currently lives in Skokie, Ill., is not represented by French Jewry.

That the French government has established the commission known as the Matteoli Commission is a positive step but is not sufficient. It does not as it currently functions, meet the standards of accountability and transparency. To cite an example:

French banks have handed the Matteoli Commission a list of some 63,000 accounts held by Jews during World War II. Neither the Matteoli Commission, nor the French banks has agreed to publish this list. More importantly, these accounts were generated through the internal audits of the French banks and without any process of independent verification, handed over to the Matteoli Commission. This is not accountability. It were as if the Swiss banks, without the independent oversight of the Volcker Commission, were allowed to unilaterally determine which were relevant accounts.

We are also disappointed that France has yet to follow through on its promise to contribute 20 million francs from looted Nazi gold to a fund for needy Holocaust victims. As we learned during previous meetings of this committee, the United States, Britain, and France established the Tripartite Commission after the war to return gold looted by the Nazis back to the countries from which the gold was stolen. Because none of this gold was returned to victims, from which much of it had been plundered, the U.S. and Britain established a fund at the Federal Reserve Bank of N.Y. for recipient countries to contribute their final allocations of gold for humanitarian purposes. France, alone among the donors, refused to contribute its full allocation and pledged only 20 million francs of more than 100 million francs. But even that pledge has not been fulfilled as France, unlike 10 other countries, has failed to deposit the 20 million francs at the Federal Reserve Bank while 10 other countries - including the United States and Britain - already have.

I am, however, pleased to report to the committee that developments in Britain are highly positive and encouraging. Last December, the British government announced it was establishing a $25 million fund to compensate survivors whose assets were seized by Britain during World War II. These were refugees who escaped the Nazis only to have their bank accounts seized under the Enemy Property Act because they came from countries Germany had invaded.

The British government posted the names of these accounts on the internet,
launched a worldwide publicity campaign and just last month began paying the first claims.

Mr. Chairman, we hope that restitution in Austria and France may yet profit from examples such as Britain and the previous shining example of Norway. I have deliberately used the word profit because the moral profit gained from doing the right thing far outweighs short term financial profit derived from deception and the failure to come to grips with the ethical demands of truth and memory.

Mr. Chairman, the U.S. government in a bi-partisan manner and this committee in particular has led the way in this struggle to honor the demands of justice and propriety. Let me again thank you for all you have done and presume to thank you for all you will do.
Testimony of Burt Neuborne

John Norton Pomeroy Professor of Law, and
Legal Director of the Brennan Center for Justice
New York University School of Law

before the

Committee on Banking

of the

United States House of Representatives

concerning

Claims by Victims of the Holocaust for Disgorgement of Unjust Enrichment

September 13, 1999
Mr. Chairman, and Members of the Committee:

Good morning. My name is Burt Neuborne. I am grateful for this opportunity to appear before you this morning to discuss moral and legal claims by victims of Nazi oppression for compensation from German corporations that reaped significant unjust profits at their expense by knowingly and willingly participating in Nazi-era crimes against humanity. I am the John Norton Pomeroy Professor of Law at New York University, where I have taught Constitutional Law, Federal Courts, Evidence and Civil Procedure for the past 26 years. I have also litigated widely as a civil rights-civil liberties lawyer, serving from 1982-86 as National Legal Director of the American Civil Liberties Union, and currently as Legal Director of the Brennan Center for Justice at NYU.

I make no claim to academic neutrality on these issues. I currently serve as lead settlement counsel in the federal class action seeking relief against Swiss banks for unjust profits earned as a result of Holocaust-connected activities. The Swiss banks case has been settled for $1.25 billion. I am also serving as an attorney for the plaintiffs in numerous federal class actions seeking relief against German corporations in connection with claims arising out of knowing use of slave labor, knowing participation in the Aryanization of Jewish property, and knowing failure to account for insurance policies owned by Holocaust victims. I appear this morning to acquaint the Committee with the nature of the victims' claims for compensation, and with the current status of ongoing efforts to negotiate a consensual resolution of the outstanding claims of Holocaust victims. I will not attempt to develop a legal claim in this forum on behalf of victims.
The parties disagree vigorously on the merits of any legal claim for relief, and that dispute is best dealt with by a federal court. But the parties are in agreement that, whether or not a legal claim for relief exists, humanitarian and moral issues of the highest order are raised by the plight of uncompensated victims of the Holocaust. It is those humanitarian and moral issues that I hope to discuss this morning.

Before beginning my formal testimony, I am delighted to acknowledge the invaluable achievement of Deputy Secretary of the Treasury Stuart Eizenstat in helping to document the facts underlying these claims, and in working tirelessly to persuade all affected parties to find a way to resolve the claims in a just and expeditious manner. I also acknowledge the extraordinary efforts of my co-counsel Melvyn Weiss and Michael Hausfeld, and the numerous other lawyers who have worked intensely on these issues over the past several years, as well as the valuable contribution of Dr. Israel Singer and the World Jewish Restitution Organization.

1. The Nature of the Unresolved Holocaust-Era Claims Against German Corporations

Three sets of claims are currently being pursued against German corporations on behalf of victims of Nazi-era crimes against humanity. One set of claims is on behalf of the millions of individuals throughout Europe who were forced to perform involuntary labor for German industry and the German government during the Nazi era, and who have never been compensated for the value of their labor, or for the appalling conditions of their confinement. A second set of claims is on behalf of the millions of Germans and Austrians whose property was confiscated in connection with the Nazi Aryanization program, under which virtually all Jewish-owned businesses in Germany and Austria were involuntarily transferred to persons of more acceptable
racial stock through forced sales at a fraction of the business' real value. A third set of claims is on behalf of owners of insurance policies who failed to survive the Holocaust, and whose insurance proceeds were retained by faithless insurance companies that simply ignored their duty to locate appropriate beneficiaries.

A common moral thread unites the three seemingly disparate sets of claims against German corporations. In each setting, victims of Nazi oppression charge that German corporations, acting in close cooperation with Nazi officials, knowingly and unlawfully earned substantial unjust profits from the exploitation of innocent victims. In the slave labor context, the unjust profit was the value of the victims' involuntary labor, and the enormous profits earned by wartime corporations through the exploitation of slaves. In the Aryanization context, the unjust profit was the substantial fees charged by German and Austrian banks for acting as the financial agents for the massive forced transfer of ownership of Aryanized property, and the huge profits reaped by the banks in retaining choice Aryanized properties for their own accounts. In the insurance context, the unjust profit was the economic benefit reaped by European insurance companies that made no effort to pay off on insurance policies owned by persons who failed to survive the Holocaust, simply keeping the proceeds as an unjust windfall.

In each of the three settings, German corporations reaped unjust profits by unlawfully exploiting the victims of Nazi persecution. Fundamental principles of restitution and unjust enrichment that have undergirded our legal and moral values since Aristotle teach that no one should be permitted to profit by committing an unlawful act at the expense of another. Instead, the wrongdoer is universally obliged to disgorge the unjust profit to the victim. Victims of the Holocaust now invoke those fundamental tenets of restitution and unjust enrichment. They
demanding an accounting of the unjust profits earned by German corporations as a direct result of their unlawful exploitation of Holocaust victims, and the disgorgement of all such unjust profits to the victims.

2. The Scope and Nature of the Slave/Forced Labor Claims

Historians have reached a consensus concerning the massive use of involuntary labor by German industry during WWII. As the manpower demands of the German army accelerated, and as the demands for the production of war materiel increased, German industry found it impossible to staff its factories through the traditional method of voluntarily attracting male laborers. German industrialists initially considered widespread appeals to German women to staff the factories voluntarily, similar to the remarkable voluntary mobilization of America's women that took place in this country during WWI. They were hampered, however, by Nazi ideology that envisaged a rigid role for Aryan women as wives and mothers, not factory workers. Instead, Germany turned to the exploitation of involuntary labor. Although involuntary labor has been documented as early as the improper use of French prisoners of war in 1939, the German slave labor program reached its nadir in 1942 after the appointment of a Nazi official whose principal responsibility was the extraction of involuntary labor from conquered populations in blatant violation of international law. From and after 1942, SS units combed conquered Europe, forcibly rounding up inhabitants for deportation to forced labor camps, where they were required to perform industrial labor under appalling conditions without compensation. German corporations, anxious to meet production schedules and consumed with greed in an effort to earn enormous wartime profits, competed with one another for access to the pool of involuntary labor,
often lobbying high Nazi officials for preferential treatment in labor allocations, and actually buying laborers from the SS in formal slave auctions. In company after company, the percentage of the labor force staffed with involuntary workers increased to over 50%. By 1944, twelve million persons had been impressed into involuntary servitude by the SS.

The unjust enrichment flowing to German corporations as a result of its use of unpaid, involuntary labor was immense. Imagine the economic benefit to a wartime economy of being relieved from the obligation of paying wages to more than 50% of your labor force. The fruits of the unpaid slave and forced labor were realized in enormous wartime profits, much of which was paid out to large shareholders as dividends, much of which was reinvested in capital equipment that paved the way for post-war corporate profitability.

The victims of the Nazi slave labor program have never received compensation for their labor. At the close of the war, the Allies initially decided to compensate the victims of Nazi oppression by physically dismantling the German industrial plant, and transferring its assets to the victorious nations for re-distribution to the victims of Nazi crimes against humanity. The Treaty of Paris of 1946 codified the policy of physical liquidation of German industry, and provided an elaborate formula for transferring German industrial property to the victors as the core of the reparations process. If the policy exemplified by the Treaty of Paris of 1946 had been carried out, victims of Nazi slave labor would have looked to the proceeds of the liquidation of German industry for compensation. But the consequences of such a Draconian approach to German reparations would have made it impossible for Germany to re-emerge as an industrial power. By 1948, second thoughts had arisen over the wisdom of a policy that condemned Germany to decades of poverty. Instead of a punitive program of physical liquidation of the
German industrial plant, the Western Allies adopted a new policy of reconstruction that sought to rebuild Germany as a stable, prosperous democracy. The Western Allies decided to postpone consideration of claims by slave laborers until German industry was able to recover its economic health, and a comprehensive peace treaty ending WWII was signed. The new policy was codified in the London Debt Agreement of 1953, that explicitly “postponed” consideration of claims against German corporations arising out of the Nazi era until sometime in the indefinite future when a final settlement of the reparations issues would be achieved pursuant to a general peace treaty. Thus, in 1946, slave laborers were initially told to look to the proceeds of the liquidation of German industry for their compensation. When the liquidation approach failed, slave laborers were told, from and after 1953, that their claims had been postponed until the indefinite future. When the Cold War made it impossible to achieve a final peace treaty ending WWII, the postponement provisions of the London Debt Agreement remained in effect for more than 50 years. Finally, in 1991, the Allies entered into the 2+4 Treaty with the then two-Germanies, ending the reparations phase of WWII, and finally lifting the “postponement” of slave labor claims imposed by the London Debt Agreement.

Nor were slave laborers compensated pursuant to internal German reparations programs. Several German firms made token payments to slave laborers in the 1950's and 60's, but the amounts involved were nominal. Germany itself made token payments to Eastern European Reconciliation Foundations in the 1990's, but, once again, the amounts were nominal. Germany itself expended substantial sums in reparations, but the reparations programs explicitly excluded Eastern European slave laborers, and explicitly declined to provide compensation for the value of involuntary labor, even for Germans.
Thus, a combination of the "postponements" imposed by the international community from 1946-91, and the failure of the German reparations programs to include compensation for forced laborers, left the involuntary labor population with no remedy for more than 50 years. To its credit, the German Federal Constitutional Court ruled in 1996 that claims against German corporations by slave laborers were no longer blocked by international law. Numerous legal claims for relief were filed in the wake of the decision of the German Federal Constitutional Court. Faced with numerous legal claims by slave and forced laborers in both German and United States courts, and cognizant of strong moral claims that transcend any legal theory, Chancellor Schroeder pledged during his successful election campaign to attempt to find a means of resolving the outstanding claims of slave laborers.

Representatives of German industry, responding to Chancellor Schroeder's concerns, and to the increasingly large number of lawsuits filed against German corporations doing business in the United States, suggested the creation of a massive German foundation, governed by a Board of Directors of eminent international persons and funded by contributions from German industry and the German government, that would make expeditious payments to surviving involuntary laborers in complete satisfaction of present and future legal claims against German corporations. Interested parties, including lawyers for the victims, representatives of German industry, representatives of interested governments, and non-governmental organizations representing the victims, have been meeting in Bonn and Washington, D.C., under the auspices of the United States and Germany, since March in an effort to reach a negotiated resolution of the slave labor claims. The United States delegation has been ably headed by Under Secretary Stuart Eizenstat. The German delegation is currently headed by Dr. Otto Graf Lambsdorff, whose candor and
common sense have provided significant assistance to the negotiators. The next negotiating session is scheduled for Washington, D.C., on October 4, 5, and 6.

It is fair, I believe, to report that the negotiators have made substantial progress on every issue except the size of the fund. Although more work remains to be done, the negotiators have successfully discussed the nature of the foundation, its governance structure, criteria for eligibility for payment, and methods of assuring German industry future legal peace. Without intruding into the negotiations process, I will attempt to explain the difficulties the negotiators are experiencing in reaching agreement on the appropriate contribution to the fund.

The negotiators quickly agreed that Nazi era involuntary laborers should be divided into categories that respond to the severity of the conditions of labor. Three categories appear to be appropriate: (1) slave laborers, who were confined to concentration camps and subjected to the harshest conditions of labor; (2) forced laborers, who were deported or displaced from their homes and compelled to perform industrial labor; and (3) other involuntary laborers, including agricultural laborers. The parties have agreed that payments from the fund should contain a differential between slave, forced and other laborers designed to reflect the relative harshness of the conditions of labor.

The negotiators then turned to the task of quantifying the number of laborers falling into each category. Negotiators for the victims reluctantly agreed that it was impossible to provide compensation for all 12 million involuntary laborers. Tracing the heirs of persons who failed to survive, and the sheer number of persons involved, would have rendered the plan impracticable. Accordingly, the negotiators agreed to restrict direct payments to surviving laborers. The negotiators agreed that the most appropriate method of acknowledging persons who failed to
survive was the creation of a substantial "future and remembrance" fund designed to honor their memory by supporting programs designed to assure that the evils of the Nazi era never occur again.

Negotiators for the victims then attempted to identify the number of surviving laborers in each category. They were aided in their efforts by Professor Lutz Neithammer, a distinguished German academic teaching at the University of Florence, who conducted a painstaking analysis of the number of surviving involuntary laborers at the request of the German government. Extrapolating from Professor Neithammer's latest report, I estimate that approximately 300,000 slave laborers are currently alive. While it is possible to identify the German companies that used slave labor, and even to identify the particular concentration camps that provided labor to each German company, it is impossible at this stage to allocate the number of survivors per company, or even to allocate the surviving slave laborers who worked for German industry and slave laborers who worked for a German government entity. The best estimate appears to be 50% allocated to German industry, and 50% allocated to the German government. The figure is relevant only insofar as it guides the relative contribution to the fund from government and industry.

It also appears that there are approximately 1.25 million surviving forced laborers, consisting of approximately 700,000 deportees, and 500,000 displaced workers. Once again, substantial records exist of the location of work camps, and the companies that received labor from the camps, but it is impossible to allocate forced labor survivors to particular companies at this stage, or to allocate the surviving laborers between government and industry. The best estimate allocates 70% to industry, and 30% to entities of the German government.
Finally, it appears that approximately 825,000 deported or displaced forced agricultural laborers have survived.

The sheer volume of surviving laborers makes it clear that any defensible effort to provide a modicum of compensation to the involuntary labor population will require a significant contribution to the fund from both German industry and the German government. Whatever the amount, however, it will be considerably smaller than the amount that would have been necessary to compensate the millions of workers who did not survive the 50 years it has taken to deal with this issue. Using the $20,000 figure awarded by the United States to the thousands of Japanese-Americans placed in detention camps during WWII as the closest analogy, negotiators for the victims have suggested that each surviving slave laborer should receive $30,000; each surviving forced laborer $10,000, and each surviving agricultural laborer $6,500. The per capita figures suggested by negotiators for the victims are quite modest, translating into a $3,000 principal payment to each slave laborer, and an interest component for 50 years delay in payment of $27,000. The similar calculation for forced laborers yields a principal payment of $1,000, and an interest component of $9,000. Agricultural laborers would receive a principal payment of $650, with an interest component of $5,850.

We have also suggested that the future and remembrance fund, designed to honor the many millions of workers who failed to survive, should not be less than $4 billion.

Negotiators for German industry claim to be surprised by the magnitude of the numbers, despite the fact that we are using the figures provided by the German government's expert, and despite the fact that our suggested per capita amounts are based on the closest analogue - the American treatment of interned Japanese-Americans. Thus far, German negotiators have
declined to respond to our suggested figures, stating that a $20 billion fund jointly financed by
German industry and the German government is out of the question. By declining to respond to
our reasoned effort to quantify the fund’s size, the German negotiators have made future
negotiations extremely difficult. Although the parties are scheduled to meet again in
Washington, D.C., on October 4, 5, and 6, I am saddened to report that, in the absence of a good
faith response to our effort to quantify the fund, negotiations will be at an impasse.

Negotiators for German industry have also informed us that no payments will be made to
slave and forced laborers unless an agreement is reached insulating German industry from
litigation concerning profits from Aryanization, and failure to account for insurance policies
owned by Holocaust victims. There is no principled reason why such a resolution should not take
place, but a reasoned assessment of the unjust profits earned by German banks by acting as the
financial agents for the Aryanization program, and an assessment of the unjust profits earned by
German insurance companies as a result of the failure to have responded to Holocaust-era
insurance policies must be calculated. Such a calculation will undoubtedly add significantly to
the size of the fund, especially its “remembrance and future” component. Initial calculations
suggest that German banks reaped at least $2 billion in unjust profits, and that German insurance
companies reaped at least $1 billion in unjust profits.

3. Prospects for the Future

Count Lambsdorff closed the most recent round of discussion in Bonn with the dramatic
observation that “we are doomed to succeed. Fate demands it.” All parties accept the wisdom of
Count Lambsdorff’s words. Having made real progress during the past seven months toward
resolving moral and legal issues arising out of the Nazi era that have resisted resolution for 50
years, it would be tragic if the negotiators were unable to find reasoned avenues to compromise with our goal in sight. It is impossible, however, to fashion cut-rate solutions to real moral problems. The willingness of German industry and the German government to recognize their respective moral obligations to deal with the unjust profits earned by German industry during WWII, regardless of a binding legal obligation, deserves genuine admiration. A voluntary decision by German industry that seeks to atone for past moral wrongs creates an enormously important and highly visible precedent that will help to make the future a more civilized place. But the German moral gesture loses its significance if the material consequences of the gesture do not match the suffering and the unjust enrichment that made it necessary. German industry reaped immense unjust profits during WWII. A moral gesture of atonement that does not disgorge a portion of those profits to the surviving victims, and set aside another significant portion of those profits to remember those who did not survive, cannot purport to put an end to the moral controversy in this millennium. Indeed, it is almost certain to precipitate increased bitterness, and calls for reprisals.

I look forward to receiving a reasoned counter-offer from my German colleagues so that we can attempt to reach an expeditious and honorable solution to this controversy. An historic opportunity for moral growth is within our grasp. If, however, no reasonable counter-offer is forthcoming, let there be no misunderstanding. Those of us who have devoted the past several years to an effort to provide Holocaust survivors with a modicum of justice will not give up the struggle. If courts can provide relief, we will seek justice in court. If government sanctions can obtain relief, we will seek government sanctions against corporations that fail to disgorge unjust enrichment. If popular disapproval can stimulate just behavior, we will conduct a public
education campaign designed to acquaint our fellow citizens with the facts. If current negotiations fail to reach a just resolution of these issues, we will exhaust every lawful avenue open to us in a search for justice for the victims of the Holocaust.