

THE LOOTED ASSETS CLASS

I. INTRODUCTION

The Looted Assets Class consists of “Victims or Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Looted Assets or Cloaked Assets or any effort to recover Looted Assets or Cloaked Assets.”¹ “Assets” consist of “any and all objects of value including but not limited to personal, commercial, real, tangible, and intangible property, including, without limitation, cash, securities, gems, gold and other precious metals, jewelry, documents, artworks, equipment, and intellectual property.”²

“Looted Assets” are defined as “Assets actually or allegedly belonging in whole or in part to Victims or Targets of Nazi Persecution that were actually or allegedly stolen, expropriated, Aryanized, confiscated, or that were otherwise wrongfully taken by, at the request of, or under the auspices of, the Nazi Regime.”³ “Cloaked assets” are defined as “Assets wholly or partly owned, controlled by, obtained from, or held for the benefit of, any company incorporated, headquartered, or based in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946 or any other entity or individual associated with the Nazi Regime (regardless of where such entity or individual was or is located,

¹ Settlement Agreement, Section 8.2(b)

² *Id.* Section 1. In accordance with Section 1.2 of Amendment No. 2 to Settlement Agreement, the “definition of the term Assets . . . is hereby amended by adding the phrase ‘insurance policies’ after the word ‘equipment.’ The definition of Assets . . . is further amended by capitalizing the word ‘artwork.’”

³ *Id.*

incorporated, headquartered, or conducting business), the identity, value, or ownership of which was in fact or allegedly disguised by, through, or as the result of any intentional or unintentional act or omission of or otherwise involving any Releasee, including, without limitation, Internationale Industrie und Handelsbeteiligungen A.G. (a.k.a. 'Interhandel'), and its predecessors, successors, or affiliates.”⁴

As noted previously, a member of the Looted Assets Class is defined as a “Victim or Target of Nazi Persecution” who “ha[s] or at any time ha[s] asserted, assert[s], or may in the future seek to assert Claims against any Releasee” (Settlement Agreement, Section 8.2(b)). As more fully described elsewhere in the Special Master’s Proposal, the definition of “Releasee” includes virtually every governmental and private entity in Switzerland. Clearly, then, there must be a connection between the looted or cloaked asset and a Swiss entity - a “Releasee.”⁵

There is hardly a victim of the Nazi Regime who did not have his or her assets looted. The stripping of victims’ material possessions (including, infamously, even their gold teeth, skin and hair) was integral to the Nazis’ ideological and political aims. The scope of the Nazi measures to erase their victims’ every last vestige of human identity was without precedent and without limit.

The robbery by the Nazis of the Jewish population in Germany, Austria, and Czechoslovakia, and in the countries occupied by the German army during World War II, is unparalleled in history. Finally, the principle was simply to take from the Jews every scrap of material possessions and the means of subsistence; and it was executed with German thoroughness and with a macabre show of legality. Stage by stage their movable and immovable property

⁴ *Id.*

⁵ *See also* Initial Questionnaire, Item F(9) (“Do you have any evidence that your assets were taken by or transacted through a Swiss entity?”); *Id.* Item F (“Looted Assets Claim Against Swiss Persons or Entities”).

was confiscated, and they were excluded from all professional and economic life, used as slave labour in the war till they dropped, and then done to death. When the extermination culminated in the gas chambers of Auschwitz, the last bits of clothing, the dentures, and the hair of the victims was duly collected and listed.⁶

As shown below, the available information demonstrates that (1) Nazi victims' assets, and particularly those of Jews, were plundered with abandon and without precedent across all nations, all economic classes, and without regard to the ultimate fate of the victim - whether that victim was murdered in an extermination camp or work camp, or fled abroad or to the East; (2) some of this loot found its way to Switzerland, where it was often converted into hard currency to help finance the Nazi war effort; but (3) it is virtually impossible to recreate today precisely which victims lost which items to which Nazi or local apparatus, or where each looted item ultimately ended up. Very few victims, if any, can prove that their property is linked to a Releasee.

As the Matteoli Commission recently concluded following its three-year investigation into Holocaust-era looting in France:

We do not ... claim to have analysed the subject exhaustively [T]here are many uncertain aspects that require more analysis We should not labour under any illusions however. Even if all the archives were available, if no file had been lost, it would be a vain attempt to trace, almost two-thirds of a century after the events, what actually happened down to the finest detail. We must resign ourselves to the fact that many points will remain imperfectly explained.⁷

⁶ Norman Bentwich, Nazi Spoliation and German Restitution, 10 *Leo Baeck Institute Yearbook* 205-07 (1965).

⁷ See Summary of the Work of the Study Mission on the Spoliation of Jews in France, April 17, 2000 (available at <http://www.ladocfrancaise.gouv.fr>) (hereinafter, "Matteoli Report, April 17, 2000 Summary"), at 14.

The limitations imposed by the historical record compel the Special Master to fashion a remedy for the Looted Assets Class that takes into account the near-impossibility that a “Victim or Target of Nazi Persecution,” now “almost two-thirds of a century after the events,”⁸ can prove that his or her property is linked to a “Releasee.”⁹

It is beyond the scope of this Proposal to provide an exhaustive analysis of Nazi looting, an area only recently the subject of serious scholarship.¹⁰ The following discussion provides only a broad overview of the magnitude of the plunder, with some specific examples of the types of confiscation to which Nazi victims were subject, and some further examples of the difficulties in recreating and retracing, today, the paths taken by the stolen assets across Europe and beyond.

II. ASSETS CONFISCATED BY THE NAZIS

A. Overview of Looting

As succinctly summarized by Raul Hilberg, Nazi looting – particularly where Jews were concerned – knew no bounds:

[T]he machinery of destruction was turned on Jewish “wealth.” In increasing numbers, one Jewish family after another discovered that it was impoverished. More and more was taken from the

⁸ *Id.*

⁹ Certain looted or otherwise unpaid insurance policies may be traceable to Swiss entities, and a separate process will be established by the parties to adjudicate insurance policy claims. *See* Amendment No. 2 to Settlement Agreement, at pp. 7-12 (annexed to the Special Master’s Proposal as Exhibit 1 and also available at <http://www.swissbankclaims.com>).

¹⁰ *See e.g.*, Frank Bajohr, *The Beneficiaries of “Aryanization” : Hamburg as a Case Study*, Yad Vashem Studies XXVI (David Silberklang, ed., Jerusalem 1998) (hereinafter, “Bajohr”), at 173-174; Independent Commission of Experts Switzerland - Second World War (“Bergier Commission”), Switzerland and Gold Transactions in the Second World War - Interim Report (Bern 1998) (hereinafter, “Bergier Gold Report”), at 30, n.40 and at 36.

Jews; less and less was given in return. The Jews were deprived of their professions, their enterprises, their financial reserves, their wages, their claims upon food and shelter, and, finally, their last personal belongings, down to underwear, gold teeth, and women's hair.¹¹

Although those more fortunate victims who managed to escape in advance of the deportations and exterminations at least survived, by the time the Nazi regime had finished with them, they were left with little else but their lives.

In Germany and Austria, before the emigrant was able to flee, he was fleeced, totally and completely, in the manner of an assembly line. As he entered the hall, he found himself facing a long row of tables with ten or twelve booths, a Gestapo official sitting at each one. When he entered, he was still a German citizen, the owner of an apartment, perhaps a business, a bank account and some savings. As he went - or better, was pushed - from booth to booth, one possession after the next was taken from him. So that by the time he got to the other end of the hall and left, he had been reduced to the status of a stateless beggar, with the only thing he possessed clutched in his hand: an exit visa. At the first window, he had to present his entry visa for a foreign country, at another ... the "emigration fee" had to be paid. At still another window, the "Aryanization" of his business or his other real estate was finalized. Then he had to prove he was not leaving behind any unpaid debts, take care of any outstanding taxes, transfer his house or apartment and pay the gas and electric bill. Not until the very last window did he get his exit visa, approved and authorized.¹²

Beyond the Reich, in the "*Generalgouvernement*," Aryanizations began "as early as September 1939, when the administration was still in the hands of the military. Most of the property that was seized was taken over by *Haupttreuhandstelle Ost* (Main Trustee Office East),

¹¹ Raul Hilberg, The Destruction of the European Jews (Revised ed. New York: Holmes & Meier 1985) (hereinafter, "Hilberg"), at 83. Referring to this process as "expropriation," Hilberg details the dismissals, Aryanizations, property taxes, blocked money, forced labor and wage regulations, special income taxes and starvation measures that preceded the deportation and annihilation of the Jews of the Reich. Hilberg, at 83-154.

¹² Avraham Barkai, From Boycott to Annihilation: The Economic Struggle of German Jews, 1933-1945 (William Templer, trans., London: University Press of New England 1989) (hereinafter, *footnote continued on next page*)

operating on behalf of Herman[n] Göring's Four-Year Plan From 1939 to 1942, some 112,000 Jewish-owned businesses and shops and 115,000 workshops were confiscated. Only retail shops were left in Jewish hands, mostly small groceries and small workshops.”¹³

Following a registration decree of January 1940, “goods and valuables found in homes and in warehouses were also confiscated” along with businesses; “Jews who did not possess the kind of property that was officially subject to confiscation were not safe from being robbed,” either.¹⁴ “Requisitions” in such cases included furniture, books, pianos, art and apartments.¹⁵

In the Soviet Union, where the *Einsatzgruppen* annihilated entire Jewish communities within days, the looting was somewhat hindered - but by no means restrained - by the victims' relative lack of wealth. While “USSR Jewry could offer no major ‘objects’ to German industrialists, bankers, and economy experts,” because “no private person owned enterprises, warehouses, real estate, or art collections,” there were nevertheless “prizes to be taken from Soviet Jews,” such as their “apartments, furniture, utensils, small amounts of cash, bits of jewelry, and large quantities of old clothes,” and “[i]n spite of the meagerness of this loot, there were jurisdictional disputes over possession of the Jewish belongings.”¹⁶

“Barkai, From Boycott to Annihilation”), at 152-53 (internal citation omitted).

¹³ Eugeniusz Duraczynski, *Poland: The Jews in Poland*, in Encyclopedia of the Holocaust (New York: Macmillan 1990) (hereinafter, “Duraczynski”), at 1158.

¹⁴ *Id.* at 1156-59.

¹⁵ *Id.* See also Czeslaw Luczak, *Haupttreuhandstelle OST*, in Encyclopedia of the Holocaust, at 648 (“By 1942 HTO had confiscated in the annexed territories over 200,000 factories, transport agencies, workshops, and commercial shops; over 290,000 plots of land; the contents of 500,000 apartments; and movable property and valuables worth several billion zlotys”).

¹⁶ Hilberg, at 360. See also Martin Dean, “The expropriation of Jewish property in *Reichskommissariat Ostland, 1941-44*” (unpublished paper, December, 2000 CAHS conference at United States Holocaust Memorial Museum, on file with the Special Master) (hereinafter, “Dean, Ostland”), at 2
(footnote continued on next page)

In short, little belonging to the Jewish community was left untouched. Many of these items, or the cash value thereof, found their way back to the Reich.¹⁷ A few specific examples of the looting of the victims' communities across Europe - Aryanizations, ghetto confiscations, seizure of personal and cultural property, and plunder of victims at the death sites - are set forth below.

(“Certainly the value of Jewish-owned property in this region was less per head than in much of Europe. This was in part due to the effects of Soviet nationalization just prior to the German invasion. Detailed inventories of the property collected indicate that silver items and money, as well as furniture, clothing, jewelry and housing made up the bulk of Jewish property. Gold and foreign currency formed a small, but clearly important part of the loot collected. Those Jewish businesses that survived Sovietization were confiscated and administered together with other nationalized property”). Dean’s paper recently has been published in German: “Die Enteignung ‘judischen Eigentums’ im *Reichskommissariat Ostland* 1941-1944,” in Irmtrud Wojak und Peter Hayes (Herausgegeben im Auftrag des Fritz Beuer Instituts), Arisierung im Nationalsozialismus: Volksgemeinschaft, Raub und Gedächtnis (Frankfurt/New York: Campus 2000), at 201-218. Citations to “Ostland” hereinafter refer to the English language unpublished paper.

¹⁷ See *infra*; see also Hilberg, at 957; Martin Dean, *Jewish Property Seized in the Occupied Soviet Union in 1941 and 1942: The Records of the Reichshauptkasse Beutestelle*, in 14 Holocaust and Genocide Studies No. 1 (Spring 2000) (hereinafter, “Dean, *Reichshauptkasse*”), at 91-92 (“Clearly Jewish valuables seized in the occupied Soviet territories took a number of different routes into the accounts of the Reich. For example, some Einsatzgruppen deliveries to the RHK [the Reich Main Treasury] in Berlin came via the Head of the Security Police in Berlin and others through the SS-Wirtschaftsverwaltungshauptamt following its establishment in February 1942. One small delivery from Sonderkommando 4a was forwarded by the regional branch of the Reichskreditkasse in Zhitomir, which passed it on to the Deutsche Reichsbank. Military units generally handed in Jewish valuables through the paymasters of their superior units to the Beutestelle, as they did other ‘war booty.’ On the other hand the civil administration and the police had their own delivery channels, initially using the offices of the Reichskreditkassen in the main towns such as Minsk, Riga or Kiev for such purposes ... The funds raised by the sale of valuables through Berlin were intended to support the local administration in the occupied territories, minus 10 per cent to cover costs incurred”).

B. Examples of Looting

1. Aryanizations¹⁸

Almost immediately after Hitler came to power, a “systematic process of liquidation and ‘Aryanization’ set in,” directed at “small and medium-sized enterprises engaged in retail trade,” a process that “has not been sufficiently comprehended by the relevant research.”¹⁹ By the time “forced” Aryanizations began after the Kristallnacht pogrom of November 1938, the number of Jewish retail enterprises had been reduced from over 50,000 at the end of 1932 to 9,000.²⁰

Following Kristallnacht, the second stage of Aryanizations (which were “compulsory,” as opposed to the prior era of so-called “voluntary” Aryanizations), commenced in full force, primarily “the result of political developments and ... war preparations.”²¹ As part of this second stage, a “special regulation, which Göring enacted on December 10, 1938, provided for the first time that a part of the profits of *Arisierung* [Aryanization] would go to the state. Compulsory *Arisierung* was applied to all Jewish businesses, factories, and workshops that were still in existence at the time.”²²

¹⁸ “Aryanization” has been defined as “the transfer of Jewish-owned independent economic enterprises to ‘Aryan’ German ownership throughout the Third Reich and the countries it occupied.” Avraham Barkai, *Arisierung*, in Encyclopedia of the Holocaust, *supra*, (hereinafter, “Barkai, *Arisierung*”), at 84.

¹⁹ Avraham Barkai, *German Entrepreneurs and Jewish Policy in the Third Reich*, Yad Vashem Studies XXI, 125 (Jerusalem 1991) (hereinafter, “Barkai, *German Entrepreneurs*”), at 131.

²⁰ *Id.* at 132; *see also* Barkai, *Arisierung*, at 84 (60 to 70% of Jewish enterprises in Germany had been liquidated by the spring of 1938).

²¹ Barkai, *Arisierung*, at 85.

²² *Id.*

Larger and more profitable businesses were Aryanized at this later date, sometimes with the cooperation of business and the Reich, as mandated in Göring's order, other times not. "[T]he more successful cases of Aryanization cannot be attributed so much to friendly relations between industry and state as to their common goals."²³

When the Regime "need[ed] to maintain the appearance of lawful business," a large German company such as the Friedrich Flick Concern - "opportunists willing to involve themselves in the persecution of Jews if it was advantageous to business" - was able to benefit from Aryanization measures.²⁴ "Conversely, the Flick group proved useless" in other Aryanizations, with lucrative enterprises "ultimately expropriated by the state after appearances no longer mattered."²⁵

In addition to the Nazi Regime and private industry, the German banks also made an enormous contribution to Aryanization:

In German business parlance, the Jewish enterprises had now become *Objekte* (objects). Since it was not always easy to find an Objekt, the process of searching became a specialized business in itself. The institutions that specialized in this business were the banks. It was a lucrative activity. The banks collected threefold profits from the Aryanization transactions: (1) the commissions (ca. 2 percent of the sales price) for work done in bringing together buyers and sellers, (2) interest on loans extended to buyers, and (3) profits from subsequent business contracted between the bank and the Aryanized firm Moreover, the banks were not only agents ... they were buyers themselves, and they missed no opportunity to buy out a Jewish bank or some choice industrial shares. Every

²³ L. M. Stallbaumer, *Big Business and the Persecution of the Jews: The Flick Concern and the "Aryanization" of Jewish Property Before the War*, 13 *Holocaust and Genocide Studies* No. 1 (Spring 1999), at 15 (hereinafter, "Stallbaumer"); see also Barkai, *Arisierung*, at 86 ("The more profitable and well-established of these enterprises were no doubt highly attractive prizes to large, well-known German firms, individual Nazis bent on getting rich, and ordinary Germans").

²⁴ Stallbaumer, at 15.

²⁵ *Id.*

type of German business was in the scramble, but the banks were in the very midst of it.²⁶

The “biggest profiteer from Aryanization,” however, was “indubitably the Nazi state, which eventually raked off 60-80 percent of the price paid for large-scale property transfers within the Reich, and a total of some 3 billion of the 7.1 billion marks in wealth that native and stateless Jews possessed according to the compulsory property declarations of April 1938,” which contributed “some 5 percent of the national budget in the final year prior to the Second World War, precisely at a time when laggard sales of government bonds would otherwise have forced a cutback in military expenditures.”²⁷

As to valuation, a host of rules and regulations ensured that the “seller” would not come close to obtaining a reasonable price. “Thus, for example, in determining the sale price, it was forbidden to include the intangible value of a firm In the Nazi view, Jewish companies did not enjoy such public ‘good will.’ Furthermore, there were specific instructions to underestimate the value of the stocks, inventory, and net book amount Many stocktaking procedures, which customarily had taken several days in the annual firm inventory, lasted only a few hours; more often they were perfunctorily completed in a couple of minutes.”²⁸

Moreover, while “[o]n the surface these transactions seemed to constitute fair, indeed ‘amicable,’ Aryanization,” they were actually “an out-and-out swindle. Even the moderate forms assumed by this property transfer did nothing to change that fact, since the fair

²⁶ Hilberg, at 100.

²⁷ Peter Hayes, *State Policy and Corporate Involvement in the Holocaust*, in *The Holocaust and History: The Known, the Unknown, the Disputed, and the Reexamined* (Michael Bernbaum and Abraham J. Peck, eds., Bloomington: Indiana University Press in association with the United States Holocaust Memorial Museum 1998) (hereinafter, “Hayes”), at 208, *see also* Hilberg, at 138.

²⁸ Bajohr, at 186.

compensation received by the Jewish owner was gobbled up by the voracious web of National-Socialist fees and levies.’²⁹

2. Operation of the Ghettos

The expropriation process continued unabated after the Nazi victims had been forced into the ghettos:

If we were to look back at Poland under the German occupation, we could see several million Jews incarcerated in closed-off sections of hundreds of cities and towns - the ghettos erected by the Nazi regime. Most of the ghettos were gone by the end of 1942, but their relatively short existence in the interim period between prewar freedom and wartime annihilation marks the last moments of organized life in the Jewish communities.³⁰

In Warsaw, for example, the largest of the ghettos with nearly one-half million inhabitants, economic and physical conditions deteriorated unimpeded.

For many years, the occupational structure of the Warsaw Jews had been unbalanced. Their distribution in various economic sectors (in considerable measure traceable to exclusionist policies pursued by the Polish Republic) shows heavy Jewish participation in the following areas: independent professions (doctors and lawyers - but *not* teachers); skilled trades in which people were self-employed or working in small shops as tailors, furriers, and leatherworkers; piecework in the home; residential real estate ownership and operation (particularly in the Jewish sections); ownership of small stores or stalls selling food and sundries; auxiliary and marginal activities conducted mostly in the street (rag pickers, peddlers, porters, etc.). There was weak or sparse

²⁹ Bajohr, at 181. Bajohr describes the example of the Hamburg M.M. Warburg & Co. bank, which was Aryanized in 1938 with a payment to the Warburg family of 11.6 million Reichsmarks, seemingly an “amicable” transaction. *Id.* at 181. However, “the actual proceeds from the sale were reduced to RM 6.4 million” to take into account the value of the Warburg affiliate in Amsterdam. Another 3 million marks on “silent deposit” were shortly paid out, followed by a payment by the family of a flight tax of 850,000 Reichsmarks, a one million Reichsmark authorization fee for the Aryanization, over 1,200,000 Reichsmarks in Jewish property taxes, and a 450,000 Reichsmark emigration fee. *Id.*

³⁰ The Warsaw Diary of Adam Czerniakow: Prelude to Doom (Raul Hilberg, et al., eds.; Stanislaw Staron, et al., trans., New York: Stein and Day 1978) (hereinafter, “Czerniakow”), at 25.

Jewish representation in management and in the work force of: wholesale trading; large-scale industrial enterprises; municipal government; and state enterprises (distilleries, etc.). It is likely that this stratification made Warsaw Jewry specially vulnerable to the great depression which had spread also to Poland's cities and which lingered in them for years.

With the beginning of war and occupation, there was a further disintegration of economic conditions, and before long the progressive impoverishment of the community was intensified by such German actions as looting, requisitions, fines, prohibition on sales of Jewish property, and blocking of bank deposits. The decline in the number of Jewish industrial and commercial concerns was precipitous: before the war, there were 193 of them with a labor force of 20 or more; by the end of April, 1940, only 38 were still operating. The German Trusteeship Office in Warsaw liquidated small Jewish enterprises and seized their inventory, selling the merchandise and banking the proceeds in three separate accounts credited to the office and labeled as receipts from the disposal of Jewish textiles, leather, and furs. The Trusteeship Office also sequestered Jewish real estate and systematically collected the rent from tenants. The office paid the taxes and wages and undertook renovations. A small sum was allocated as an "advance" to "Aryan" co-owners of houses. A cash reserve was maintained and the remaining surplus was banked in yet another account. The Jews of Warsaw were thus deprived of assets and income, both big and small. The result was a monetary loss from which there would be no recovery.³¹

³¹ Czerniakow, at 34-35. The confinement of thousands of victims to the ghettos also enabled the Nazis to continue to strip the victims of their most personal possessions at the whim of the Reich. See Bogumila Michalewicz, *The Gypsy Holocaust in Poland*, Papers from the Sixth and Seventh Annual Meetings, Gypsy Lore Society, North American Chapter (Joanne Grumet, ed.) (New York 1986) (hereinafter, "Michalewicz"), at 174-75 (KRIPO registry of confiscated property of victims confined to Lodz ghetto includes an "extremely detailed description of the jewels taken from a German Gypsy family ...: 2 gold watches, 1 gold brooch, 4 gold, platinum and diamonds [sic] brooches, 4 pairs of gold, platinum and diamond earrings, 2 pairs of earrings with Hungarian gold coins, 2 pairs of earrings with French gold coins, 11 gold and stone rings, 2 gold and stone belts, 12 gold and diamonds [sic] hair pins"); Avraham Tory, Surviving the Holocaust: The Kovno Ghetto Diary (Martin Gilbert, ed., Cambridge: Harvard University Press 1990) (hereinafter, "Tory"), at 75 (describing an April 1, 1942 order issued from "SA Colonel Cramer" to the Kovno ghetto "Jewish Council," demanding an immediate collection of "all metal in the Ghetto," including copper, tin, nickel, lead, brass, bronze, silver and gold, for items "such as: ashtrays, tabletops, decorative pieces, bronze items, cans and kettles, trays and table utensils, household items - especially cooking utensils - birdcages, door signs and fixtures, ledges, door handles, window handles, hooks, doors,

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3. Seizure of personal and cultural property

“The assault on the Jewish community, ultimately ending in mass murder, was preceded by the seizure of property, with art and cultural treasures as particularly valuable spoils Alfred Rosenberg, the leading Nazi Party ideologue, set up a ‘Research Institute’ near Frankfurt to study the ‘Jewish Question.’ As the war went on, Rosenberg, using his notorious Einsatzstab Reichsleiter Rosenberg (‘ERR’), seized Jewish collections from France, the Netherlands, Belgium, and Italy. Hundreds of thousands of books, manuscripts, religious items, silver, and art works were seized from institutions and private owners, many of whom were fated to perish.”³² The looting extended far to the East: a “report in the Black Book describes how perfectly packed boxes of Jewish books were removed from the main libraries of Kiev to be sold by the Nazis through agents in neutral countries.”³³

“Smaller” items of limited cultural, but certainly great personal value, were equally subject to seizure and transfer back to the Reich. Clearly, it was “not only the big fortunes, palaces and art treasures” that were destroyed by the Nazis. For “the less wealthy

railings, figures, carriages, reliefs, clothing, wall and door plates, as well as coins, copper roofs, wall coverings, stairtops, brass weights, all kinds of hooks, hot water bottles, musical instruments, [and] lead pipes”); *id.* at 89 (a May 16, 1942 order from the City Governor’s Office to the Kovno Ghetto Jewish Council demanded, within eight days, a “detailed list . . . specifying all motorboats, racing boats, folding boats, paddleboats, sailing boats, and all other watersports equipment formerly owned by Jews,” describing the boats as well as whether the “sports equipment has been deposited for safekeeping with the Lithuanian population”).

³² Michael J. Kurtz, “The Holocaust: Moral & Legal Issues Unresolved - Looted Art, Inheritance of Jewish Property,” 20 *Cardozo L. Rev.* 625, 626-27 (December 1998). *See also* Dean, *Ostland*, at 10 (cultural property from Eastern territories such as Latvia, “including Jewish books, was dealt with mainly by the” ERR).

³³ Report to the Special Master prepared by the Russian Jewish Congress, February 17, 2000, at 2-3, citing Vasili Grossman and Ilya Erenburg, “Black Book” (YAD publishers, Vilnius 1993), at 23. The “Black Book of Soviet Jewry” is a “book of testimonies and documents (descriptions, letters, and excerpts from diaries) concerning Nazi crimes in the Soviet Union, the principal source of which were Jewish survivors and non-Jewish eyewitnesses.” Haya Lifshitz, *The Black Book of Soviet*
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families[,] the small merchants, the cobblers, the peddlers, the school teachers, the water carriers, the beggars,” the “enemy robbed them of their poverty.”³⁴

In a recent analysis of newly available archives containing Nazi-era documents, Dr. Martin Dean of the United States Holocaust Memorial Museum describes the meticulous records kept by the Nazis which show just how complete was the robbery. The records in these new archives – including German civil administration files from the Belarussian National Archives in Minsk and those of the *Reichshauptkasse Beutestelle* or War Booty Office of the Reich Main Treasury of the Reichsbank, stored until recently in the East German Central State Archive and now part of the *Bundesarchiv* in Berlin³⁵ – demonstrate that scarcely a coin was overlooked by the Nazis as they pushed eastward:

German civil administration reports from the summer of 1942 provide a detailed picture of the wealth officially looted from the Jewish community. District Commissar Petersen in Glebokie [Belarus] calculated that up to 31 August 1942 a total of RM 358,000 had been collected and transferred to the Reich Credit Bank (RKK) in Minsk. The main components of this income were the Jewish contributions [i.e., ransoms], profits raised from the sale of clothing, livestock and Jewish real estate, and income from Jewish labor farmed out on a contract basis, mainly to the *Wehrmacht*. Not included in this total were 5875 gold rubles (in coins), almost 10kg of gold objects, over 112 kg of silver coins and 36 kg of Polish nickel coins that were sent to the Reich Credit Bank in Riga separately. Still in storage locally in the autumn of 1942 were 351 kg of various silver items and a number of bond certificates, which were kept in the safe The files of the War Booty office of the Reich Treasury (*Reichshauptkasse Beutestelle*) indicate that considerable amounts of silver were received from the east. Shipments containing hundreds of kilos of silver were

Jewry, in Encyclopedia of the Holocaust, *supra*, at 217.

³⁴ Elie Wiesel, “Opening Remarks,” Proceedings of the Washington Conference on Holocaust-Era Assets, November 30-December 3, 1998, Washington: Government Printing Office, 1999 (hereinafter, “Washington Conference on Assets”), at 16.

³⁵ Dean, *Reichshauptkasse*, at 83.

received from Volhynia and Galicia, for example, during the course of 1942. They included much ritual and personal silver collected from the local Jewish population in the summer and autumn of 1941.³⁶

The documents filed by killing squads and Nazi administrators included the following:

- A November, 1941 report of the discovery during a search of Jewish property of “ownerless” items – “40 gold rubles, 80 various silver coins, and 81 dollars” – and the subsequent SS order “that empty Jewish houses be locked in order to prevent local inhabitants from looting”;
- A report of a delivery to the Reichsbank of “more than 40 items of jewelry and coins” handed in to the *Ortskommandantur* (OK) I (V) unit by a member of the Ukrainian militia “following a killing of Jews in Gaissin” in September 1941, with a later delivery by the same unit, on December 17, 1941, of “two savings account books confiscated during an action against the Jews in nearby Dashev”; and
- A report of a January, 1942 delivery to the Reichsbank by *Einsatzgruppe* A of “some 32,446 items packed into 150 chests, cases, and sacks, which items reportedly originated from Jewish apartments searched by *Einsatzkommando* 3 in Dunaberg (Daugavpils) and from Jewish safe deposit boxes seized at the Lithuanian State Bank in Kaunas,” including “\$1,822 in cash, 2,850 teaspoons, 527 silver napkin rings, 1,141 small coffee spoons, more than 5,000 men’s watches, 15.5kg of gold wedding rings, 6.5kg of gold earrings, 61 diamonds, 9.3kg of gold chains, and 0.57kg of dental gold.”³⁷

Although far less scholarship exists concerning the looting that accompanied the persecution of other “Victims or Targets” of the Nazis, anecdotal evidence demonstrates the magnitude of the plunder of the Jehovah’s Witness and Roma communities, and surely the disabled and homosexual Nazi victims as well.

³⁶ Dean, *Ostland*, at 6. See also Martin Dean, “Co-operation and Rivalry: Civil and Police Authorities and the Confiscation of Jewish Assets in the *Reich* and the Occupied Soviet Territories,” unpublished paper, September 2000 (on file with the Special Master).

³⁷ Dean, *Reichshauptkasse*, at 91, 90, 85.

Thus, the Jehovah's Witnesses, who have provided the Special Master with a report compiling the "Available Information on Possessions Confiscated and Other Financial Impact,"³⁸ describe the "three types" of loss sustained by Jehovah's Witnesses at the (1) individual, (2) local (congregational), and (3) national level.³⁹ Although, as the Jehovah's Witness report makes clear, little information exists concerning losses in most of the countries invaded by the Nazis, plunder of Jehovah's Witnesses within the territory of the Reich was significant. In Austria, for example, printing presses and other machinery were confiscated by the Nazis in 1940.⁴⁰ In Germany, it is estimated that nearly 1,700 Jehovah's Witnesses lost their jobs, over 700 suffered other business losses (including nearly 300 who lost their businesses), and approximately 129 individuals "had their properties confiscated," including three families who lost their homes.⁴¹ Other losses were attributable to the destruction of books, Bibles, and other property held by congregations or national organizations.⁴²

Roma victims likewise were subject to confiscations, taxation, and looting during the period following the Nazis' rise to power and prior to the victims' physical destruction. Thus, in Germany, the approximately 2,500 Roma deported in accordance with an October 1939 decree were "allowed to take along up to fifty kilo of luggage and twenty zloty (ten marks), Jewelry, stocks and bonds and money beyond the sum of RM 10 had to be left behind, either

³⁸ See "Jehovah's Witnesses Report on Looting," provided to the Special Master as part of the Jehovah's Witness report entitled "Spiritual Resistance and Its Costs for a Christian Minority: A Documentary Report of Jehovah's Witnesses Under Nazism 1933-1945" (Oct. 1999) (hereinafter "Watch Tower Information"), Part II: An Overview of the Nazi Persecution of Jehovah's Witnesses.

³⁹ *Id.* at 1.

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 5-6.

⁴² *Id.* at 7-8.

with other [Roma] not subject to deportation or in special bank accounts.”⁴³ Much of the property left to the care of other Roma eventually was seized by the Nazis.⁴⁴

In addition to property confiscations prior to deportation, Roma, like Jews, were forced to pay a 15 percent surtax on income “justified on the grounds that, unlike Germans, they were not required to pay dues to the German Labor Front....”⁴⁵

4. Plundering of victims at the killing sites

The very body of a Nazi victim was considered an asset. Profits could be gleaned from the moment the victim stepped off the deportation train (or arrived at the site of the mass grave), up to and after the victim’s murder.

The highest echelons of the SS once estimated the profit generated by the average concentration camp prisoner. Based on an average prisoner life expectancy of nine months, the profit totaled 1,431 RM (about \$654) per prisoner after deducting costs of upkeep. The value of money, valuables, clothing, personal belongings, and teeth of precious metals reached 200 RM (\$91) after the costs of burning the body had been deducted. Thus, according to

⁴³ Guenter Lewy, The Nazi Persecution of the Gypsies (New York: Oxford University Press 2000) (hereinafter, “Lewy”), at 72. *See also* Gypsy Research Center, From “Race Science” to the Camps: The Gypsies During the Second World War (Vol. I) (Donald Kenrick, trans., Hatfield: University of Hertfordshire Press 1997) (hereinafter, “From ‘Race Science’ to the Camps”), at 35. (“Detailed instructions were issued to the individual officials who were to oversee the deportation of Sinti and Romanies. All identity documents, food and clothing were to be confiscated, as was all [jewelry] and any cash over the value of ten marks”); *id.* at 36 (“A special dispatch dated January 1943 once again ordered Criminal Police offices ‘to confiscate the remaining possessions of the Gypsies who are being sent to a concentration camp on the orders of the Head of the SS’”).

⁴⁴ Lewy, at 75. *See also* Sybil Milton, *Holocaust: The Gypsies*, in Century of Genocide: Eyewitness Accounts and Critical Views 174 (Samuel Totten, et al., eds., New York: Garland Pub. 1997) (hereinafter, “Milton”), at 219 (“The property and possessions of the deported Gypsies were confiscated and the deportees were compelled to sign release forms acknowledging the transfer of their possessions [as enemies of the Reich] The same confiscatory procedures were also employed during the earliest deportations of Jews, prior to the passage of the 11th Ordinance”). The 11th Ordinance to the Reich Citizenship Law, decreed on November 25, 1941, enshrined the principle that one who took up residence abroad - even if “residence” was in the camps or ghettos - no longer was a citizen of the Reich, and his or her property therefore became the Reich’s. Hilberg, at 472.

⁴⁵ Lewy, at 100.

calculations made by Nazis themselves, the total average profit from one prisoner, not including the value of the victim's bones, totaled 1,631 RM (\$745).⁴⁶

At Auschwitz, for example, Jews - who had been told that they were being “resettled” and who had been ordered to prepare for their new lives in the East - arrived with luggage of up to 100 pounds, including “clothes; food; personal belongings; assorted household articles, such as sleeping blankets, sheets, pots, and rugs; and professional tools and other necessities. For example, physicians usually arrived with their medical instruments and drugs.”⁴⁷

Once the killing was accomplished, the victims' remains were looted with a completeness that ensured that neither their ashes and bones (used as fertilizer and landfill), nor their hair (used for fabric and clothing), nor their gold teeth (originally recycled for dental gold, and later melted down into gold bars), went unclaimed by the Reich.⁴⁸

⁴⁶ Andrzej Strzelecki, *The Plunder of Victims and Their Corpses*, in Anatomy of the Auschwitz Death Camp, (Yisrael Gutman, et. Al, eds., Bloomington and Indianapolis: Indiana Univ. Press in association with United States Holocaust Memorial Museum 1994), at 262 (hereinafter, “Strzelecki”).

⁴⁷ *Id.* at 249.

⁴⁸ *Id.* at 261, 259; *see also* Bergier Gold Report, at 34-35.

A World War II intelligence report of the United States government, declassified in 1996, describes the extraction and processing of gold teeth:

“The monthly report submitted to the SS Wirtschaftsbund Verwaltungshauptamt, Amt D III (SS Economic Office, Section D III), Oranienberg/Berlin, by the SS HQ dental stations of all concentration camps, included a secret account of the dental gold recovered from deceased prisoners. The SS Economic Office had ruled that this gold was the property of the SS and that it was to be delivered at specified dates to Section D III ... [to be] reissued to members of the Waffen-SS and their families for new dental work At the Mauthausen concentration camp, where informant was assigned to the dental station, the actual practice was as follows: a. Those prisoners who had a conspicuous amount of dental gold were either assigned to special labor camps where they soon died of hunger and fatigue, or were kept at Mauthausen and taken care of by the SS guards and the prisoners (mostly professional criminals) whom they had appointed overseers and block-leaders. b. A large amount of the gold thus made available for plunder was disposed of directly by the guards and their prisoner accomplices. The rest was collected either in the hospital or crematorium ... by low-ranking SS officials. They delivered it, more or less

(footnote continued on next page)

As posited by Hilberg: “Everything was collected, and nothing was wasted. How was it possible to be so thorough?”⁴⁹

The answer lies in the assembly line, a method that was foolproof. Inmate work parties picked up the luggage left in the freight cars of the transports and on the platform. Other inmate Kommandos collected clothes and valuables in the dressing rooms. Women’s hair was cut off in the barber shops near the gas chambers. Gold teeth were extracted from the mouths of the corpses, and the human fat escaping from the burning bodies was poured back into the flames to speed the cremations. Thus the two organic processes of the death camp, confiscations and killings, were fused and synchronized into a single procedure that guaranteed the absolute success of both operations.⁵⁰

Some bodies were preserved - and in fact obtained - to further Nazi notions of medical research. Thus, the infamous Dr. Josef Mengele, who was particularly intrigued by the Roma, chose to study eye color by dissecting the eyes of concentration camp victims, including “six Gypsy twins” and “an entire family of eight [who were] killed so their heterochromatic eyes could be sent to Berlin.”⁵¹

The accumulation of loot in the East was somewhat less orderly, but nevertheless equally complete, continuing, as in the extermination camps, right up to the moment of death.

The Germans were able to work quickly and efficiently because the killing operation was standardized. In every city the same procedure was followed with minor variations. The site of the shooting was usually outside of town, at a grave The Jews were taken in batches (men first) from the collecting point to the ditch Before their death the victims handed their valuables to the leader of the killing party. In the winter they removed their

intact, to the director of the dental station ... who turned it over ... for computation and recording.” See June 11, 1945 Report of the Office of Strategic Services, “Dental Gold from Deceased Prisoners” (identified in this proceeding as document number SB 20318).

⁴⁹ Hilberg, at 951.

⁵⁰ *Id.*

⁵¹ Lewy, at 160.

overcoats; in warmer weather they had to take off all outer garments and, in some cases, underwear as well.⁵²

C. The Jewish Wealth That Was Looted⁵³

As one researcher has observed:

No one knows how much property was stolen, spoiled, destroyed, and lost during the Nazi rampage. The traditional figure is one that was derived more than fifty years ago - in 1944 - by Nehemiah Robinson. He used a sophisticated matrix of Jewish wealth, occupational patterns, land distribution, currency values, and population figures throughout Europe to measure Jewish material losses. And even then he qualified his estimate of \$8 billion, which was based on the exchange rates prevailing before the outbreak of war. The endurance of Robinson's calculation, adjusted for inflation, says much about his skill. It also is a tacit acknowledgment that measuring losses has never been easy and that it becomes more difficult over time. It may also mask a certain discomfort in talking about properties; it feels so unseemly

⁵² Hilberg, at 318; *see also* Donald Kenrick and Grattan Puxon, Gypsies Under the Swastika (Hertfordshire: Gypsy Research Center, University of Hertfordshire Press 1995) (hereinafter, "Kenrick and Puxon"), at 118 (following executions of women and children at the edge of a ditch that had been dug by other victims, "[t]he murdered Gypsies' clothes were sent to a rag factory in the camp and from there to a factory in Zagreb").

⁵³ The Special Master is aware of no comparable figures that exist for other "Victims or Targets of Nazi Persecution." *See, e.g.*, Watch Tower Information, Jehovah's Witnesses Report on Looting, at 2 and *et seq.* ("[i]n their biographies, the survivors hardly ever mention explicitly the loss of their material possessions - only that they were happy to come out alive. And in later years, it has been even more difficult for them to recall exact amounts and details about what they have lost"; accordingly, while some data exists regarding losses in Germany and Austria (*see supra*), little data exists on Jehovah's Witnesses' losses for most other European countries); Philip Friedman, The Extermination of the Gypsies: Nazi Genocide of an Aryan People, in Roads to Extinction: Essays on the Holocaust, Conference on Jewish Social Studies (New York: The Jewish Publication Society of America 1980), at 383 ("There has been little study of the tragedy of the Gypsies under Nazi rule Compared with the extensive literature on the extermination of the Jews and on the tribulations of other peoples under the Nazi yoke, the literature on the Gypsies is meager and full of gaps"); Ian Hancock, Romani Victims of the Holocaust and Swiss Complicity, in When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice (Roy L. Brooks, ed., New York: New York University Press 1999) (hereinafter, "Hancock"), at 71 ("Because most Roma carried their wealth on their person little documentation exists for property stolen by the Nazis from the Romani people").

to be calculating their value, to be scavenging, when so many people were murdered.⁵⁴

A study prepared by Helen B. Junz for the Independent Committee of Eminent Persons (“ICEP,” also known as the Volcker Committee), investigated Jewish pre-War assets in Germany, Austria, the Netherlands, France, Hungary and Poland for purposes of estimating the amounts available for “transfer to, or already lodged in, a safe haven destination.”⁵⁵ The six countries chosen together had an estimated pre-War Jewish population of 5,000,000, constituting “more than three-quarters of European Jewry outside the Soviet Union,” which “could be considered representative of a yet larger segment.”⁵⁶ The total assets estimated to have been held by this population were approximately \$12 billion in 1938 dollars.⁵⁷ Another researcher has estimated that the Nazis looted “between \$9-\$14 billion in Jewish assets” throughout Europe, or \$90 to \$140 billion in current values.⁵⁸

Germany and Poland, each with Jewish assets of \$2-\$3 billion (\$20-\$30 billion), account for nearly half the total. Hungary, Czechoslovakia, and Romania together total another 25 percent. Ten of the other countries combined add up to only 5 percent of the total assets mainly because the Jewish population in each was much less than one percent of the total population Although the German occupied portion of the USSR accounted for about a

⁵⁴ Marilyn Henry, The Restitution of Jewish Property in Central and Eastern Europe (New York: American Jewish Committee July 1997), at 10.

⁵⁵ “Report on the Pre-War Wealth Position of the Jewish Population in Nazi-Occupied Countries, Germany, and Austria,” Volcker Report, Appendix S (hereinafter, the “Junz Report”), at A-130. The Junz Report acknowledges Nehemiah Robinson’s “path breaking” work in this area. *Id.* at A-128, citing Nehemiah Robinson, Indemnification and Reparations, Institute of Jewish Affairs (New York 1944) and Nehemiah Robinson, Spoliation and Remedial Action, Institute of Jewish Affairs (New York 1962).

⁵⁶ Junz Report, at A-129, A-130.

⁵⁷ Junz Report, at A-130, A-131.

⁵⁸ Sidney Zabłudoff, “And it All But Disappeared: The Nazi Seizure of Jewish Assets” (Jerusalem: Institute of the World Jewish Congress (Policy Forum No. 13) 1998) (hereinafter, “Zabłudoff”), at 5 (also cited in the Junz Report, at A-128 n.2).

quarter of the Jewish population in the Nazi domain, the estimated value of looted assets is only \$400-\$600 million (\$4-\$6 billion) because the communists had 'nationalized' homes and businesses much earlier, reducing the capital holdings of the Jews.⁵⁹

Although absolute wealth may have been smaller than in Western Europe, the Nazi victims of Central and Eastern Europe were not without their own assets - which fell into Nazi hands just as readily and completely as in the West.

Once the Communists stopped their economic experimentation around the end of the 1930s, the standard of living began to rise. The first signs of this material well-being were generally quite simple things - basic furniture like a table or bed, a sewing machine, or even a warm hat. The greatest luxury of all was a bicycle or radio After two decades of a hungry, poor life, it was not easy to part with these possessions For those Jews whose shtetls were turned into [collective farms], and for thousands of Jewish [peasants], ... these belongings might also include a plot of land, a cow, and farm implements. Peasants were even more reluctant to part with their [livestock] than were townspeople, and it is therefore not surprising that almost all Jewish peasants were exterminated during the war.⁶⁰

III. SWISS CONNECTIONS TO LOOTED ASSETS

Plundered loot took a variety of paths once it had been stolen from the victims. The Third Reich went to great lengths to centralize looting to ensure that much of what was stolen was sent to Berlin for processing. Beginning with the compulsory surrender of precious metals and jewelry by Jews decreed in February 1939,⁶¹ the Third Reich sought to sell and

⁵⁹ Zabludoff, at 26.

⁶⁰ Daniel Romanovsky, *Soviet Jews Under Nazi Occupation in Northeastern Belarus and Western Russia*, in Bitter Legacy: Confronting the Holocaust in the USSR (Zvi Gitelman, ed., Bloomington: Indiana Univ. Press 1997), at 235-36 (hereinafter, "Romanovsky").

⁶¹ Joseph Walk (Hrsg.), Das Sonderrecht für die Juden im NS-Staat 2. Auflage (Heidelberg: C.F. Mueller 1996) III, at 146 and 149.

exchange the most valuable items overseas. An important aim was to gain hard currency necessary for the purchase of vital raw materials to sustain the German war economy.⁶²

Instructions issued by the German Economics Ministry to the Finance Ministry in May 1941 stressed that all jewels collected by government offices were to be processed in the same way as items surrendered by the Jews, namely, exclusively in the interest of German requirements for raw materials and hard currency.⁶³ A subsequent directive issued in October 1944 by the Economics Ministry to the Municipal Pawn Shop in Berlin referred back to the above instructions giving detailed guidelines on the selection of suitable valuables, including diamonds, for sale abroad. Amongst the countries named specifically as a possible destination for such sales was Switzerland.⁶⁴

However, the research concerning the “beneficiaries” of Nazi seizures still remains incomplete.⁶⁵ For example, with respect to property expropriated through “Aryanization”:

Although the ‘Aryanization’ of Jewish assets under National-Socialist rule was one of the most prodigious property transfers in modern times, historians have exhibited only limited interest in this important aspect of the Nazi persecution of Jews in Germany. The groundbreaking studies by Helmut Genschel and Avraham Barkai are significant surveys of the destruction of German Jewry’s economic basis under Nazism, and these works have been

⁶² See, e.g., Jonathan Steinberg (in cooperation with the Members of the Historical Commission Appointed to Examine the History of the Deutsche Bank in the Period of National Socialism: Avraham Barkai, Gerald D. Feldman, Lothar Gall, Harold James), The Deutsche Bank and its Gold Transactions during the Second World War (C.H. Beck: Munich 1999), at 14-15. Steinberg’s comments with regard to gold apply equally to jewels and other looted valuables.

⁶³ NARA RG-260 OMGUS Finance Adviser, FED Central Files, Box 423 Folder 940.304 Melmer Deliveries, German Economics Ministry to Finance Ministry on May 12, 1941.

⁶⁴ Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10 (IMT Green Series) (Buffalo, New York: William S. Hein & Co. 1997), Vol. XIII, at 374.

⁶⁵ Bajohr, at 173.

subsequently supplemented by a number of other articles and regional studies. Nonetheless, our knowledge about key facets of this topic remains inadequate. One of the remaining intriguing questions pertains to the persons who profited from this expropriation process, which began its insidious course in 1933, and was then systematized in a raft of pseudo-legal forms in 1937-38. Who were the beneficiaries?⁶⁶

In recent years, there has been extensive analysis of Switzerland's role as one such "beneficiary" of Nazi looting. Much attention has been focused upon the involvement of Swiss banking entities in the economy of Nazi Germany, especially as to the receipt of looted gold. To date, the most significant evidence of the connections between certain Swiss entities and plundered assets are the relatively recent "Nazi gold" reports prepared by historical commissions appointed by the governments of Switzerland, the United States and Great Britain. German slave labor-using enterprises also had financial ties to Switzerland, including Swiss banks, as set forth below and more fully described in Annex H to the Special Master's Proposal ("Slave Labor Class I"); *see also id.* Exhibit 1 (the "Slave Labor Class I List"). There is evidence of other Swiss connections to Nazi plundering, such as the receipt by some entities of looted art and jewelry, although much of the information is anecdotal.

A. Swiss - German Gold Transactions

At least three major research reports prepared on behalf of the governments of Switzerland, the United States and Great Britain, have concluded that Swiss entities continued to handle looted gold for Germany even after warnings by the Allies about the likely source of the gold as well as the consequences to Switzerland for participating in such transactions.⁶⁷

⁶⁶ *Id.* at 173-74.

⁶⁷ *See* Bergier Gold Report; U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II - Preliminary Study (May 1997) (hereinafter, "Eizenstat Report"); *see also* Foreign & Commonwealth Office General Services Command, History
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The July, 1998 “Interim Report” on gold transactions prepared by the Bergier Commission on behalf of the Swiss government concluded that the Swiss National Bank, an institution “supervised by the [Swiss] government,”⁶⁸ played a significant role in handling Reichsbank gold. Less significant, but also noteworthy, was the part played by private banks.

Thus, according to the Bergier Commission:

- “During World War II, Switzerland was the most important conduit for gold originating from countries occupied or controlled by the Third Reich. Roughly 79 percent of all gold shipments from the Reichsbank to other countries was routed through Switzerland. In terms of volume, the SNB [Swiss National Bank] accounted for 87 percent of this bar, with Swiss commercial banks handling the remaining 13 percent [T]he value of the gold delivered by the Reichsbank to the SNB was between SFr. 1.6 and SFr. 1.7 billion.”⁶⁹
- “As a monetary institution supervised by the government, the SNB is, of course, not oriented towards making a profit; but as a privately organised public limited company, it seeks to make a profit. During World War II, revenues from gold and foreign currency transactions contributed substantially to the bank’s being able to report any earnings at all. The contribution of such transactions to gross income rose from 49% in 1939 to 67% in 1942, and amounted to around 55% on average from 1939 to 1945. The SNB generated high profits during the war years by selling gold coins on the domestic market. In 1943 and 1944 most of the coins used by the Bank for such sales were foreign coins that it had acquired from the Reichsbank, and the majority of them, as we now know, had been stolen.”⁷⁰
- “[W]e can say in conclusion that the SNB earned about SFr. 18.4 million on trade in gold that it acquired from the Reichsbank during World War II and re-sold. The purchase and sale of gold (especially coins) for its own account was the sole source of income in the bank’s gold transactions.

Notes, “Nazi Gold: Information from the British Archives” (Historians, LRD, No. 11, Second Edition - Revised January 1997) (hereinafter “British Archives Report”).

⁶⁸ Bergier Gold Report, at 133.

⁶⁹ *Id.* at 191.

⁷⁰ *Id.* at 133.

The fees that it charged for administering customers' custody accounts did not even cover the costs involved.”⁷¹

- “The gold received from Germany included some that had already come into the Reichsbank's possession prior to 1933 or that had been acquired thereafter in a legal manner. It also included gold which had become available to the German central bank as a result of government measures of confiscation and expropriation before World War II. Once the war had begun, victim gold became an important source of foreign exchange for the Third Reich. The term ‘confiscated and plundered gold’ is used to denote gold which had been confiscated or stolen from its rightful owners as well as precious metal that the Nazi regime had taken from those killed by its genocidal policies. Lastly, gold also includes the looted currency reserves of central banks in countries which came under German control.”⁷²
- “The total value of the gold shipped by the Reichsbank to Switzerland which is known to have been stolen from the victims of Nazi oppression is SFr. 581,899. Although the subject of gold confiscated from Jewish deportees was discussed by the SNB management in late 1943, there is no indication that those responsible for deciding SNB policy were aware of the origin of such gold shipped by the Reichsbank to Switzerland.”⁷³
- “At the beginning of the war, the SNB made no effort to distinguish between legally obtained and looted gold supplied by the Reichsbank. As early as 1941 the responsible SNB authorities were aware that Germany had amassed quantities of looted gold. This very fact was a topic of discussion in a number of internal meetings, and in 1942 the SNB Governing Board even considered melting down and recasting gold received from Germany. The Governing Board had received information that gold had been confiscated from private individuals in Belgium and the Netherlands.”⁷⁴
- “The official warnings issued by the Allies after the beginning of 1943 prompted the SNB to take precautionary measures and to ask for guarantees that all gold delivered by the Germans was of impeccable provenance, originating from the country's prewar gold reserves. This change in the SNB's position was not made on the central bank's own initiative but came about only as a result of external pressure. The SNB

⁷¹ *Id.* at Appendix 2, pp. 10-11.

⁷² *Id.* at 191.

⁷³ *Id.*

⁷⁴ *Id.* at 192.

Governing Board was extremely slow in recognizing that the Nazi regime was systematically operating a policy of theft and plunder and the murder of individuals and entire segments of the population. Although it was plain for all to see that Germany was acquiring gold by illegal means, the SNB authorities appear to have remained wedded to 'business as usual.'⁷⁵

- “Despite their awareness of the dubious provenance of the gold that was being shipped and of the warnings issued by the Allies, the official representatives of Swiss banks and insurance companies continued to pressure the SNB to continue taking gold from Germany even as the war was entering its final stages ... [and] as late as April 1945.”⁷⁶
- “From today’s perspective, the SNB’s claims that it acted in good faith and that Switzerland’s neutrality obliged it to accept the gold offered by Nazi Germany are clearly not justified SNB officials became aware while the war was still in progress that the precious metal being shipped by the Reichsbank to Switzerland included gold that had been looted. Swiss neutrality in no way obliged the country to accept stolen gold [E]conomic deterrence [of an alleged possible German invasion] was an argument cobbled together *a posteriori* to justify the previous gold policy.”⁷⁷

⁷⁵ *Id.* at 192. *See also id.* at 124 (“It was not until the warning from the Allies raised the spectre of possible restitution claims that the SNB even attempted to obtain assurances that the gold delivered from Berlin originated from German prewar holdings. In the first four years of the war until mid-1943, the SNB did not ask [Reichsbank Vice President Emil] Puhl a single time where the money arriving in Bern came from”).

⁷⁶ *Id.* at 192.

⁷⁷ *Id.* at 193; *see also id.* at 121 (“The fact that the good faith exercised by the SNB was a retroactive construct used to justify its own actions becomes further apparent when one considers how the top management of the Swiss central bank was well aware of the means used in the Third Reich to procure gold, and how they were aware of this long before they began to pay for large shipments of gold from Berlin using Swiss francs. There is no longer any doubt: the Governing Board of the National Bank was informed early that gold from the central banks of occupied nations was being held by the Reichsbank. The SNB was also aware of the other methods used by the Germans to confiscate gold from private individuals before and after the outbreak of the war”).

Martin Dean has concluded, based upon the “[d]irect references to shootings and Jewish property in the ‘war booty’ ledgers” of the *Reichshauptkasse Beutestelle*, that Reichsbank officials “had clear evidence as to the sources of the property they were handling on a daily basis. A detailed examination of the paperwork enclosed in the ‘war booty’ records demonstrates that the Reichshauptkasse of the Reichsbank received more Jewish property at an earlier stage, and with greater awareness of its origins, than historians have previously appreciated.” Dean, *Reichshauptkasse*, at 95. According to the British Archives Report, moreover, testimony from the Nuremberg War Crimes trial of Emil Puhl indicates that certain Swiss banking officials likewise may

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- As to the commercial banks, the Bergier Gold Report notes that the research remains incomplete,⁷⁸ and “[b]ased on current sources and literature, no reliable statement can be made about the banks’ profits from gold commerce,”⁷⁹ but also observes that “[i]n the first two years of the war, the Reichsbank carried out its gold transactions in Switzerland primarily through commercial banks.”⁸⁰ One example of profits that may have been earned by at least one commercial bank during this earlier period, derived from the archives of Credit Suisse Group, suggests that that bank “attained a profit (presumably gross) of SFr. 1.63 million on gold transactions between 1939 and 1941, corresponding to about 1.7 percent of total gross profits for this period. When the SNB tried to enforce a gentleman’s agreement to stem the gold trade which was driving prices upwards, [the bank’s] management feared that the ‘very attractive profit’ from recent gold transactions could be endangered.”⁸¹
- Finally, the Bergier Gold Report concludes that “[t]here are many gaps in the research which cannot be filled on the basis of the source material presently available. They include the question of the amount actually earned on gold transactions made by the individual commercial banks during the war [F]uture investigations should pay more attention to the large number of non-bank participants in wartime gold trade. Whereas purchases of large quantities of foreign gold were centralized by the SNB during the war, other participants found new niches, be it in international dealings beyond Swiss borders or on the black market.”⁸²

have known that the gold they were handling for Germany had been stolen. See British Archives Report, at 14 (“[T]he interrogation report of Dr. Puhl of the Reichsbank, who had dealt with the Swiss National Bank, stated clearly that in his view Swiss bank officials had been aware that the gold in question was looted”).

⁷⁸ Bergier Gold Report, at 157.

⁷⁹ *Id.* at 164.

⁸⁰ *Id.* at 191.

⁸¹ *Id.* at 164.

⁸² *Id.* at 169. See also *id.* at 154 (“The list of Swiss licensees for the period after December 1942 includes more than 100 names and lists companies from many different sectors of the economy. These companies, in one form or another, appeared in the gold market. In addition to banking institutions and gold refineries, there were numerous smaller and medium-sized companies, which dealt primarily in gold jewelry and gold coins. Currently, very little is known about the large number of licensees and their commerce in gold during World War II. Transactions by coin dealers, jewelry stores and other smaller licensees are therefore still obscure”).

The Eizenstat Report similarly concluded that certain Swiss entities, and the SNB in particular, handled some portion of Germany's looted gold⁸³:

- “During the War, Germany seized from eleven occupied European nations monetary gold worth an estimated \$579 million (\$5.6 billion today). From \$398 million to \$414 million went to Switzerland, either to the Swiss National Bank's own account or the account of other countries at the Swiss National Bank. The bulk of this gold was looted from the central banks of occupied Western Europe. At least some of the gold traded abroad contained a portion confiscated from individuals, both concentration camp victims and other civilians.”⁸⁴ The Eizenstat Report further contends that “Switzerland was Nazi Germany's banker and financial facilitator, taking and transferring German gold - most of it looted - and providing Germany with Swiss francs to purchase needed products. Switzerland also supplied Germany with key war materials such as arms, ammunition, aluminum, machinery and locomotives.”⁸⁵
- According to the Eizenstat Report, an April, 1945 report to the United States Office of Strategic Services set forth “an extensive summary of Nazi gold and currency transfers arranged via Switzerland throughout most of the war,” which included “[g]old and bonds looted by the Nazis from all over Europe and received by certain Swiss banks”; “[f]unds sent by the Deutsche Verkehrs-Kreditbank of Karlsruhe to Basel”; “[s]ecurities held in Zurich by private firms for the Nazi Party”; “[l]arge quantities of Swiss francs credited to private accounts in various Swiss banks”; “[m]oney and property held in Liechtenstein”; “[m]ore than 2 million francs held by the Reichsbank in Switzerland”; and “[f]orty-five million Reichsmarks held in covert Swiss bank accounts.”⁸⁶
- As a result of the infamous discovery of gold (including dental gold), jewels and other Holocaust victims' belongings at the Merkers mine in Germany, and subsequent interrogations of Albert Thoms, Bruno Melmer and other Nazi officials, according to the Eizenstat Report, “the U.S.

⁸³ It should be noted that the Swiss Federal Council criticized the Eizenstat Report as being “one-sided” and containing “unsupported” conclusions and “political and moral judgments that go beyond the historical report.” See, e.g., William Drozdiak, *Swiss Defend Wartime Policy, Reject Criticism; Bern Calls U.S. Report “One-Sided” Judgment*, Washington Post, May 23, 1997, at A31; Marilyn Henry, *Swiss Slam Eizenstat Report*, Jerusalem Post, May 25, 1997, at 12.

⁸⁴ Eizenstat Report, at xxi; see also *id.* at 65 (discussing estimates of gold movements through Switzerland).

⁸⁵ *Id.* at xxi.

⁸⁶ *Id.* at 40.

Military Government knew ... that, beginning in August 1942, the Reichsbank received and converted gold and other valuables that the SS had looted from Jews it enslaved and murdered in Poland and from Jewish and non-Jewish concentration camp inmates. In fact, Puhl's role in arranging for 'the receipt, classification, deposit, conversion, and disposal of properties taken by the SS from victims exterminated in concentration camps' formed the basis for his indictment" at Nuremberg.⁸⁷ Melmer's file, the so-called "Reinhardt" file, "referred to Operation Reinhardt, the SS program for exploiting Jewish property and labor and murdering millions of Jews in killing centers in Eastern Poland Some of the Operation Reinhardt documents also revealed how gold and other valuables robbed from murdered Jews passed from the Lublin camps and Auschwitz via the SS Economic Administrative Main Office to the Reichsbank. On August 12, 1942, Himmler ordered all the Higher SS and Police Leaders in the Eastern Territories to send all precious metals and other valuables confiscated from Jews to the SS-WVHA, which would distribute them to the appropriate Reich agencies," including the Reichsbank.⁸⁸

- The "'Melmer loot' captured at Merkers represented only those parts of the SS shipments that the Reichsbank had not yet processed through its normal disposal channels [T]he Reichsbank, in disposing of the SS shipments, bought the looted gold coins and bullion at full value and incorporated them into the gold reserves of the German Reich. Furthermore, the ingots smelted by the Prussian Mint from dental gold and small gold items also became the property of the Reichsbank, as did any gold smelted by Degussa in excess of its legal allotment."⁸⁹ It "must be

⁸⁷ *Id.* at 162.

⁸⁸ *Id.* at 163. As a result of this August, 1942 instruction from Himmler, "it is possible that some valuables from the occupied Soviet territories may have arrived in conjunction with the Melmer deliveries from 'Operation Reinhardt' in the General Government." Dean, Ostland, at 11. Subsequently, following an August 27, 1942 directive by F. Vialon, "head of financial department of the Ostland Reichskommissariat," the "General Commissars in Riga, Kaunas and Minsk" were ordered to "precisely count, list and send to his disposal all gold and silver articles via the imperial credit bank in Riga. The valuables were to be handed in from Riga to the office in Berlin in a centralised manner. However, the German administration of the General Region of Byelorussia started sending parcels directly to Berlin where all gold plundered by the Nazis was collected," contrary to Vialon's instructions. *See* Report of the National Archives of the Republic of Belarus, Nazi Gold from Belarus: Documents and Materials (Minsk 1998) (hereinafter, "Nazi Gold from Belarus"), at 13. A January 25, 1943 directive was issued thereafter which, "taking into account the special situation in Byelorussia and problems of road connection with Riga," confirmed that "the valuables may be sent directly to the Berlin Pawnshop." Each parcel was to be "accompanied by a list of contents which, as far as possible, was to contain a clear description of the articles." *Id.*

⁸⁹ Eizenstat Report, at 163-64.

assumed that a significant portion of the persecutee-origin gold acquired by the Reichsbank from the SS was traded abroad. Indeed, a 1946 Foreign Exchange Depository study tracing Dutch gold, based on the records of the Prussian Mint, notes that 37 kilograms of fine gold from the 'Melmer' gold was added to a 1943 smelting of looted Dutch guilders; of the resulting bars, 83 percent were traded to Switzerland, the rest to Italy No proof has been found that the countries to which Germany traded gold robbed from persecutees knew of the origin of such gold."⁹⁰

- “While the Reichsbank acquired the gold coins and bars taken from German Jews, the German Foreign Office assisted in liquidating the gems and jewelry confiscated both from the German Jews and from individuals and businesses in the countries conquered by Germany by exchanging them abroad either for commodities essential to the German war effort or for the foreign currency needed to buy them. The Foreign Office regularly transferred via diplomatic pouch to its Legation in Bern packages of jewelry specifically referred to as Judenschmuck or ‘Jewish jewelry.’ The packages were given to a German agent in Bern who exchanged them for industrial diamonds, described as ‘vitally important’ to the German war effort. The sale and export of industrial diamonds were banned under Swiss law. In at least one instance, the German Foreign Office arranged for gem diamonds to be sold to a Swiss citizen in Bern for Swiss francs.”⁹¹

Like the Swiss and United States historical commissions, a British scholarly inquiry likewise concluded that Swiss entities handled gold from Germany with little regard to its provenance:

- “[I]nformation received by British and American economic warfare bodies suggested that Switzerland continued to receive consignments of gold during 1943 from Germany, both for banking in Switzerland and en route to third countries. The US estimate of German gold reserves in 1939 had also been revised downwards, making the amount of looted gold sent outside Germany more apparent. In addition, the tide of war seemed now to be turning firmly in favour of the Allies. Thus M. Gautier of the Swiss Embassy in London, seeking reassurances from Mr. Cobbold of the Bank of England as to the implications of the Gold Declaration for Switzerland, found little: ‘I said that I was unable to give him any comfort and told him frankly that I thought one of the objects of the measure was to make difficulties for people who bought gold from Germany at first or second

⁹⁰ *Id.* at 178; *see also id.* at 168 n.4.

⁹¹ *Id.* at 166.

hand. I thought he could rely on having the maximum amount of trouble after the war over any such gold.”⁹²

The willingness of certain Swiss entities to accept gold from Nazi Germany was due at least in part to a view that wartime looting was “legal.”⁹³

“While the Swedish government and banks generally took the line that gold and foreign exchange seized by the Germans in their conquest of Western Europe and elsewhere left open serious questions of legal title, the Swiss government and banks took an entirely different stand both during and after the war. The official position of Switzerland then as well as in the negotiations after the war always was that looting is legal. If a country invades another country and steals its gold reserve out of the vaults of its banks, takes property out of the homes of individuals, or takes gold out of the mouths of those it kills, legal title to those assets belongs to the looters. They can, therefore, transfer legal title to anyone of their choice, preferably financial institutions in Switzerland. And these institutions can then honor drafts drawn against such deposits for purchases inside Switzerland or, alternatively, outside Switzerland in such other neutrals like Portugal where the Germans were eager to make purchases.”⁹⁴

⁹² British Archives Report, at 7.

⁹³ Gerhard L. Weinberg, “German Wartime Plans and Policies Regarding Neutral Nations,” statement before American Historical Association, January 10, 1998 (hereinafter, “Weinberg, AHA Statement”), at 3.

⁹⁴ *Id.*; see also Gerhard Weinberg, testimony before the House of Representatives Committee on Banking and Financial Services Subcommittee on Capital Markets, Securities and GSEs, June 25, 1997 (the “legal position of the Swiss government at the time and in the immediate postwar years was always that looting is legal; the looter acquires legal title to the loot, and can convey legal title to you or anyone else”).

As Weinberg further pointed out in his 1997 testimony before Congress, the Eizenstat Report observes -“without the emphasis” Weinberg “believe[s] it deserves,” *id.* - that the Swiss position regarding looting “was held not only towards Nazi Germany but also toward Communist Poland [I]n 1949 the Swiss government signed a secret agreement with the Communist government of Poland under which the Swiss government with the agreement of the regime in Warsaw looted the accounts in Swiss financial institutions of those Polish citizens who had been murdered and who either had no heirs or whose heirs had been stonewalled. The proceeds of this looting operation were then paid over to Swiss citizens who had claims on Poland arising out of the nationalization and/or confiscation of their property in Communist Poland. Note that suddenly the accounts which either

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B. Ties Between German Industry and Swiss Entities

As discussed in greater detail at Annex H (“Slave Labor Class I”), the links between German industry and Swiss entities are intricate and numerous.

To set forth but a few examples, the following major German companies - notorious for their use of **slave labor** during the Nazi years, as described in the seminal work, Less Than Slaves⁹⁵ - are known also to have held bank accounts in Switzerland as of February 16, 1945, at which time Switzerland instituted a freeze of German assets:⁹⁶

- IG Farben
- Friedrich Krupp

could not be located or did not exist - depending on which week the Swiss negotiators were speaking to the Allies or the organizations looking after Holocaust survivors - COULD be located the moment the accounts were to be identified and emptied so that payments could be made to Swiss citizens. I am not suggesting that the individual recipients knew that there was blood on this money; however, everyone concerned in the government and banks knew, since by definition, the accounts emptied were those of the murdered.” *Id.* (emphasis in original). *See also* Weinberg, AHA Statement, at 3-4 (a similar arrangement was made with Hungary; thus: “Please note what is going on here: accounts which previously have been announced in diplomatic negotiations as either not existing or incapable of being located, and which have been withheld from the heirs either for those reasons or because the heirs cannot produce documents acceptable to the financial institutions, can suddenly be identified, their contents removed, and legal title to the assets transferred to Swiss citizens whose claims against Poland or Hungary might hinder future profitable Swiss trade with those countries”).

⁹⁵ *See* Benjamin B. Ferencz, Less Than Slaves (Cambridge, Massachusetts: Harvard University Press 1979) (hereinafter, “Ferencz”). *See also* Annex E (“Holocaust Compensation”), Section VI, describing 1950s and 1960s slave labor settlements reached between each of the companies listed above and the Conference on Jewish Material Claims against Germany, Inc., on behalf of each respective company’s former slave laborers.

⁹⁶ The asset freeze of 1945, and the two “frozen assets lists” graciously provided to the Special Master by the Swiss Federal Archives and the Volcker Committee - showing German and other entities which had assets in Switzerland frozen once the freeze went into effect - are described in further detail at Annex H (“Slave Labor Class I”) and its accompanying “Slave Labor Class I List.” The “Slave Labor Class I List” was prepared by the Special Master by matching the two frozen assets lists to the lists of German companies known, from sources such as the International Tracing Service of the Red Cross at Arolsen, Germany (“ITS”), to have used slaves during the War. If a company is shown on the Slave Labor Class I List, then that company appears on the Swiss Federal Archives frozen assets list or the Volcker Committee frozen assets list (or both), and also appears on the ITS or comparable list of known slave labor-using entities.

- AEG-Telefunken
- Siemens-Halske
- Rheinmetall
- Dynamit Nobel (Flick)⁹⁷

Hundreds of other such examples can be found on the “Slave Labor Class I List,” which provides as near complete a listing as currently available of the known ties between German industry and Swiss banks and other entities at the time of the 1945 asset freeze. At a bare minimum, then, much of German industry may have deposited into Swiss banks some of the profits gained from the uncompensated abuse of what may have been the last asset left to the slave laborers: their remaining mental capacity and physical strength.

Certain German entities with financial relationships to Switzerland as of the date of the 1945 asset freeze are known to have taken advantage of Nazi **Aryanization** policies, including the following:

- IG Farben: IG Farben “acquired the large chemical plants in Austria and Czechoslovakia beginning in 1938. The bulk of shares of Skoda Wetzler, the largest Austrian chemical company, were in the hands of the Rothschild family,” and IG Farben “did in fact succeed in persuading the latter to sign the ‘sale contract’ though only after the former director, Isidor Pollack, had been arrested and almost beaten to death by the SA.”⁹⁸
- Dresdner Bank: “In particular, the Dresdner Bank began setting the standard for rapacity, largely because its conversion during the bank crisis of 1931-1932 into a virtually state-owned operation, coupled with the presence of ten Jews among its fifteen principal officers in 1933, had made it immediately and especially vulnerable to the penetration of Nazi

⁹⁷ See “Slave Labor Class I List.”

⁹⁸ Barkai, German Entrepreneurs, at 139. IG Farben appears on the “Slave Labor Class I List,” indicating that it held Swiss assets, including numerous bank accounts, as of the date of the asset freeze. As noted previously, IG Farben also made extensive use of slave labor, particularly at Auschwitz and its satellite camps. See Annex H (“Slave Labor Class I”) and Annex E (“Holocaust Compensation”).

personnel and policies.”⁹⁹ A member of Dresdner’s managing board, Karl Rasche, an enthusiastic Nazi, ousted Jews, including the owner, from the management of the prominent firm of Orenstein & Koppel and then resold shares of stock. “The economic and political rewards of such activity proved so irresistible to the still-struggling bank that it opted, sometime late in 1936 or early in 1937, to establish a special section ... to drum up Aryanization business.”¹⁰⁰

- Later, after invasion of Poland, the “ubiquitous Dresdner Bank set up a subsidiary, the Ostbank A.G.,” which “specialized in substantially the same business as its parent company: the ‘reprivatization’ of Polish and Jewish enterprises under trusteeship.”¹⁰¹ Similarly, in the Netherlands, “the Dresdner Bank subsidiary, Handelstrust West, got the lion’s share” of expropriation fees, while the Dresdner Bank itself bought Jewish securities.¹⁰²
- Deutsche Bank: “[T]he Deutsche Bank had collected data on some seven hundred target firms [for Aryanization] by July [1938]; by the end of October, it had played the role of intermediary or financier in approximately three hundred and thirty Aryanizations; and by the close of the calendar year, it could take credit for assisting in probably seventy-five major takeovers, including those of such substantial firms as Roth-Handle (tobacco), Bachmann & Ladewig (textiles), and Adler & Oppenheimer (leather).”¹⁰³ Nor were Deutsche Bank’s profits limited only to Germany. “Hitler’s Ministry of Economics tipped off the Deutsche Bank to Germany’s plan to march into Austria in early 1938, well before the Anschluss. Deutsche Bank director [Hermann] Abs quickly assembled a team of the bank’s foreign trade specialists to identify Austria’s choicest Jewish-owned businesses and real estate for acquisition. At the top of Abs’s list was the Rothschild-owned bank Creditanstalt-Bankverein AG Abs’s team began a campaign” - which was successful - “to use the Anschluss and Aryanization to take total control of the Rothschild bank.”¹⁰⁴

⁹⁹ Hayes, at 203.

¹⁰⁰ *Id.*

¹⁰¹ Hilberg, at 245.

¹⁰² *Id.* at 575 n. 22. Dresdner Bank appears on the “frozen assets lists” provided to the Special Master by the Swiss Federal Archives and the Volcker Committee.

¹⁰³ Hayes, at 206.

¹⁰⁴ Christopher Simpson, The Splendid Blond Beast, Money, Law and Genocide in the Twentieth Century (New York: Grove Press 1993) (hereinafter, “Simpson”), at 70. “For those more critical observers, Hermann Abs was not only the director of Germany’s most powerful war industries, he

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- Lippmann, Rosenthal & Co (Liro): “All Jews had to hand over their assets to the Bank of Lippmann, Rosenthal & Co (Liro) in ... Amsterdam, in accordance with two ordinances: one (VO 148/41) concerning financial assets of all kinds, including insurance policies, and the other (VO 58/42) concerning tangible assets of every kind Jewish associations and foundations were liquidated without exception. Jewish businesses were “Aryanised” in order to exclude Jews from Dutch economic life. Smaller businesses were usually wound up; larger businesses proved difficult to sell and continued to operate under an administrator appointed by the Germans. Real estate and securities belonging to Jews were sold off by the Nazis, and their household and personal effects were collected and often sent to Germany.”¹⁰⁵
- Zellstoff Waldhof AG: “For a mere 7.5 million marks, Waldhof obtained control over a network of firms in Germany, Austria, Poland, and the Balkans whose core operations had total sales of 42 million marks in 1937, reported assets of almost 26 million, and open and hidden reserves of almost 14 million marks.”¹⁰⁶

C. Other Connections Between Certain Looted Assets and Swiss Entities

Switzerland also served as a market for disposal of some of the plundered goods, including “money and valuables flowing from Auschwitz and other killing centers to the SS center,” which “were regularly transferred to the Reichsbank in Berlin Institutions

was also the financier of slavery and Aryanization.” *Id.* Deutsche Bank appears on the “frozen assets lists” provided to the Special Master by the Swiss Federal Archives and the Volcker Committee.

¹⁰⁵ See <http://www.ushmm.org/assets/netherlands/assets4.htm> (hereinafter, “USHMM online: The Netherlands”); see also http://www.house.gov/international_relations/crs/measures/netherlands.htm (hereinafter, CRS online: The Netherlands, CRS online: Belarus, and so forth), citing, e.g., Hilberg (First Edition), at 379-80. The “Liro” bank was established in Amsterdam by the Nazis specifically as a holding place for Jewish assets. “They used the name of an old, established Jewish bank to make Jews believe that their assets were secure. The assets were primarily confiscated by two agencies: Liro and the [ERR]. They were accountable to the German General Commissariat for Finance and Economic Affairs.” CRS online: The Netherlands, n. 6, citing Hilberg, at 379, and Elizabeth Simpson, ed., The Spoils of War: World War II and Its Aftermath: the Loss, Reappearance, and Recovery of Cultural Property (New York: Harry N. Abrams, Inc. 1997), at 56. The “Liro” bank appears on the frozen assets list provided to the Special Master by the Swiss Federal Archives.

¹⁰⁶ Hayes, at 207. Zellstoff Waldhof appears on the frozen assets lists provided to the Special Master by the Volcker Committee.

subordinate to or in collaboration with the Reichsbank appropriated some jewelry and gems Some of the looted valuables were sold in Switzerland, among other places.”¹⁰⁷ In “at least one instance, the German Foreign Office arranged for gem diamonds to be sold to a Swiss citizen in Bern for Swiss francs.”¹⁰⁸

Additionally, in some instances, Switzerland served as a base from which looted ““degenerate art”” was sold, “with the consent of the [Reich] Economy Ministry.”¹⁰⁹ In a February 1, 1943 memorandum prepared on behalf of the Division of Monetary Research of the United States Treasury Department, “Switzerland and the Axis,” declassified on April 16, 1996 and reproduced at the National Archives, it was noted that:

Gold is by no means the only asset disposed of by the Germans in Switzerland There is also an active market in paintings and other works of art, obtained primarily from French galleries and private collections. Reportedly these sales yield the Germans approximately 10 or more million francs annually and the Swiss themselves benefit from a nominal customs tariff and a 2 percent import fee.¹¹⁰

A February 1945 Swiss Army document, prepared by a Swiss General Staff Officer in the Office of the Army Command and addressed to the Director of the Federal Swiss Finance Administration, describes the movement of capital to Switzerland:

“In re: Shifting of German flight capital to Switzerland. The following report from a reliable source has just been received, part of whose contents I am quoting as follows:

‘Schulthess, the director of the Schweizer Bodenkreditanstalt is currently shifting considerable amounts of flight capital from

¹⁰⁷ Strzelecki, at 255.

¹⁰⁸ Eizenstat Report, at 166.

¹⁰⁹ Hilberg, at 595.

¹¹⁰ Memorandum from Mr. Tomlinson to Mr. Delman, Treasury Department Division of Monetary Research, February 1, 1943 (identified in this proceeding at document number SB09135-SB09143).

Germany to Switzerland. [This is being done for] high-ranking members of the Nazi regime or those who were at least close to it. On some of the title deeds being shifted to Switzerland, the names of the French owners were written in ink. In these cases, the bank's legal consultant has pointed out that there could be trouble because of these titles, some of which bore the names of the [legal] owners, who doubtless died in concentration camps or were otherwise murdered. The amounts of this flight capital are very large. Our contact did not wish to give exact figures, because he had suddenly become anxious about banking secrecy, but he did indicate a sum in the neighborhood of 11 million.'" (Bracketed portions in original).¹¹¹

Some Swiss banks also apparently held accounts on behalf of Nazi officials or collaborators. In its report of December 6, 1999, the Volcker Committee pointed out that

the audit firms matched the accounts databases against the names of some 1,934 potential looters (for example, senior Nazi officials and European Nazi collaborators). The total number of Relevant Period [1933 through 1945] accounts that were matched is 1,622.¹¹²

¹¹¹ Letter from Oberst i. Gst. Muller, General Staff Officer, Swiss Army Command, to Dr. E. Reinhardt, Director of the Federal Swiss Finance Administration, February 16, 1945, translation from German provided by Congressional Research Service.

¹¹² Volcker Report, at 16, ¶ 55.

Similarly, according to a 1997 report in The New York Times, historian Monika Tatzkow investigated archives held in the former East Germany which indicate that at least three private Swiss banks "held numbered accounts for the SS and extended credit to Deutsche Wirtschaftsbetriebe, the SS front company set up to dispose of the gold and other assets stolen from Jews. One SS directive refers to gold stolen from Jews, saying 'all gold objects are to be smelted down' and export markets were to be sought Some documents also suggest that private banks were closely involved, chronicling deals from 1939 to 1942 between the Swiss Bank Corporation and Deutsche Golddiskontbank, a branch of the Reichsbank. The documents refer to financial transactions under which the German bank transferred gold to the Swiss bank to cover credits in Swiss francs held either in Germany or in Switzerland in favor of I.G. Farben, the German chemicals giant whose 50 factories were vital to the German war effort. Swiss Bank Corporation officials acknowledged that their bank had a close relationship in the 1920's with I.G. Farben but said it was reduced in the 1930's. The bank has begun its own research into its wartime history, but has had no direct comment on Ms. Tatzkow's discoveries." Alan Cowell, *In Berlin, Evidence of Private Swiss Banks' Role in Nazi Trade*, The New York Times, May 22, 1997, at A7. Deutsche Golddiskontbank and Deutsche Reichsbank held bank accounts in Switzerland that were frozen at the time of the asset freeze, according to the lists provided to the Special Master by the Swiss Federal Archives and the Volcker Committee.

IV. DIFFICULTIES IN TRACING LOOTED ASSETS

Holocaust victims' assets were looted on an almost incomprehensible scale. It is the very enormity of the plunder that makes it exceedingly difficult, if not impossible, to trace the chain of custody of any given asset back to any given victim or heir. Documentation of the looting, although comprised of millions of records in archives around the world, nevertheless remains incomplete or in many cases inaccessible. Moreover, while some of the profits of looting – and certainly in specific instances, looted objects themselves – ended up in Switzerland, other stolen property often went no farther than the house next door, into the hands of neighbors who were perfectly willing to accept the Nazi spoils for themselves. Reconstruction of victims' losses, particularly those that may be traceable to Swiss entities, is largely impossible.

A. Limitations Imposed By Existing Documentation

Many challenges would be confronted in any attempt to recreate, on an individual basis, a snapshot of pre-Holocaust assets. Even in the immediate aftermath of the War, efforts to reconstruct data were frustrating, costly and time-consuming. Primary source materials are scattered throughout Europe (and in some cases throughout the world), and are not fully accessible or only recently have become available. Surveys which have already been undertaken may be incomplete.

The considerable difficulties in relying upon archives to assess individual losses have been summarized by one researcher as follows:

Determining the value of Jewish wealth lost during the Nazi era is almost impossible and impracticable. Considerable records do exist on ... assets of individuals and businesses. They include records meticulously kept by Nazis on property they confiscated, land and real estate registries, tax data, bank information and

censuses. The data, however, is far from complete and its accuracy often questionable. To cloud the issue, considerable Jewish possessions were stolen by Nazi collaborators and went unrecorded. In the eastern areas occupied by the Nazis, most property already had been “nationalized” by the USSR. Several key data bases do not distinguish between Jews and non-Jews and trying to pick out Jews by the spelling of their names can lead to the wrong results Even in the unlikely event that the quality problems of this data could be overcome, the time and money needed to exploit all available records would be enormous.¹¹³

An interim report surveying recent research on Holocaust-era looting in France reached a similar conclusion:

[Incomplete investigation] already provide[s] an idea of the impressive volume of the records involved, containing millions of pages of documents which, for the most part, have never been sorted or systematically inventoried. For example, the *Archives Nationales* alone contain thousands of boxes and tens of thousands of individual files relating to ‘aryanisation,’ which have been, up until now, only very patchily sorted and inventoried. No serious analysis of a body of records of this nature is possible without an inventory. But above all, thorough study of them would require several years if it is to be done with care.¹¹⁴

To provide just a few specific examples of the difficulties in reconstructing individual victims’ pre-War wealth and subsequent losses based upon documentation:

- In **Belarus**, the government has supported the documentation of Nazi confiscation of jewelry. However, “[d]espite the fact that Belarus was a major center of Jewish life in the former Soviet Union and that nearly 800,000 Jews were killed in Belarus, only 5 percent of the jewelry listed in these documents has been identified as belonging to Jews.”¹¹⁵

¹¹³ Zabludoff, at 8-9.

¹¹⁴ The Prime Minister’s Office, Study Mission into the Looting of Jewish Assets in France, Progress Report, December 31, 1997, at 76 (hereinafter, “Assets in France”) (available at http://www/texte_generique?repertoire) (also describing additional difficulties posed by the “dispersed locations of the sources” and the “inadequacy of the sources”).

¹¹⁵ See CRS online: Belarus.

- In **France**, the government only recently has made publicly available the archives of the post-War Office of Restitution and the General Board for Jewish Affairs, responsible for all matters relating to Jewish property from 1941 through the end of the war. It is estimated that approximately 62,500 files "specifically concern the confiscation of Jewish property."¹¹⁶ Yet "[t]here can be no question of analysing all 62,460 aryansation files [I]t would ... be, even if it were possible, a colossal task requiring several years for a result which could not be guaranteed."¹¹⁷
- In **Germany**, although "the volume of books, lists and files of the Precious Metals Department of the Deutsche Reichsbank (German Reichsbank) that had survived the end of the war was greater than had previously been known", a "source of increasing displeasure [in the course of research] was in particular the realization that the 26 'Melmer' folders, which had not been microfilmed, had disappeared without a trace. It is assumed that these folders contained the acceptance and delivery receipts for jewelry, other valuables and dental gold that SS Hauptsturmführer (Captain) Bruno Melmer and another SS officer had brought along with 76 shipments delivered to the Deutsche Reichsbank."¹¹⁸
- In **Latvia**, the "State History Archive alone has more than 3,000 files related to the Holocaust and properties confiscated from Jews."¹¹⁹
- In **the Netherlands**, a committee established to research the Liro bank assets only recently has completed the "first part of its work," an "investigation of the reports of the sale of jewelry from the vault of

¹¹⁶ CRS online: Measures-France, citing *Spoliations*, Le Monde, March 18, 1999.

¹¹⁷ Assets in France, at 50. See also Matteoli Report, April 17, 2000 Summary, at 18 (among the "vast wealth of preserved documentation" are "6,422 boxes of archives" which include "60,000 individual case records of aryansation....," "28,000 individual consignment records ... relative to the Seine department," "more than 60,000 individual dossiers ... kept at the Nantes Diplomatic Archives Centre," and "almost one million dossiers ... kept in Berlin at the *Oberfinanzdirektion* [which] are produced within the framework of the German [restitution] law known as the Brug," of which "some 30,000 dossiers, pertains to France." As the Matteoli Commission further notes, "[o]ver and above these numbers, it is clear that any research into the spoliation and restitution bears some resemblance to an outright battle, or even to the victim of a battle, or perhaps to a puzzle where only some of the pieces fit together, but not all of them. The children and grandchildren of those whose property was [looted] prior to their extermination are invariably frustrated by the existing documentation, since, of course, nothing can make up for the loss of a family member." *Id.*

¹¹⁸ *Bundesarchiv* (Federal Archives), The Whereabouts of the Records of the Deutsche Reichsbank: A Research Report compiled by the Bundesarchiv with the assistance of the Deutsche Bundesbank (F 2 Historical Archives) R 4- 2850/18 (August 1998), at 1.

¹¹⁹ CRS online: Latvia.

Lippmann, Rosenthal & Co”; the second part of the investigation is concerned with records which are or were relevant to the settlement of Jewish claims (the Liro card index, other Liro records and other records)” and was to have been completed by the end of 1998.¹²⁰

- In **Poland**, “[t]he documentation on the registration of Jewish assets does not appear to have survived; a fragmentary paper trail of part of the loot transferred to Berlin can still be found, but has not been fully reviewed by researchers or archivists. Access to what archival material still exists is difficult and in many instances not possible.”¹²¹

Archival resources therefore pose conflicting but equally troublesome obstacles.

The materials often are incomplete and inaccessible, yet the available data nevertheless is overwhelming and in many instances still unexplored:

Of course, much documentation is probably gone forever, lost in the destruction attendant on orders like the Reich Economics Ministry’s directive of February 1945 that ‘the historically and politically important records of ‘dejewification’ [Entjudungsakten] ... must be prevented under all circumstances from falling into enemy hands’ (internal citation omitted). But a growing body of monographs has brought to light previously unknown or unresearched official papers, and an increasing number of long-reticent German corporations have started to open their files to scholarly scrutiny. Above all, the end of the cold war has brought access to vast, long-concealed or neglected archival holdings in the former Soviet bloc.¹²²

In the case of Roma victims, a further problem is posed by the lack of documentation. Most Roma losses were in the nature of personal property, especially gold, and records would thus have been unlikely to exist even at the time of confiscation, much less sixty years after the fact:

¹²⁰ See USHMM online: The Netherlands. According to the Junz Report, “[f]ive separate [Dutch] Commissions, dealing with different aspects of looting, have been mandated to uncover what yet can be found and to determine the dimensions of what, in fact, no longer can be known.” Junz Report, at A-153.

¹²¹ Junz Report, at A-188.

¹²² Hayes, at 197.

Because most Roma carried their wealth on their person - in the form of gold teeth, necklaces, rings, bracelets, coins serving as buttons on clothing, earrings, and so on - rather than protecting it in safety-deposit vaults or converting it to paper assets, little documentation exists for property stolen by the Nazis from the Romani people. Carrying coins and other small items of value is an established Romani practice However, it was illegal in Nazi Germany for private citizens to own gold, and this was a premise for its confiscation by the police. Receipts were generally not provided, and the documentation available to us today is scant for the precious metals, gems, jewelry, furniture, conveyances, farm animals and implements, and musical instruments that were taken from them. Thus the greater part of the assets confiscated from Roma were not in the form of appropriated bank accounts, but rather were personal valuables only later converted into bankable property by the Nazis, and categorized as “non-monetary gold.”¹²³

Thus, reliance upon archives to reconstruct or verify a given victim’s losses would be exhaustive, expensive, and perhaps ultimately futile, frustrated by an overabundance of far-flung materials, on the one hand, and the absence or destruction of crucial data, on the other.

B. Limitations in Tracing of Loot and Profits to Profiteers

Even if it were possible to obtain access to all archives, to review every existing document, and to recreate those papers no longer in existence, the ultimate difficulty lies in the almost incomprehensible magnitude of the Nazi plunder. The looting was so complete, and the victims so utterly devastated, that it is virtually impossible to reconstruct precisely which person lost and which person gained which asset.

1. Wartime Period

Although meticulous records may in some cases still exist - such as the “eight page questionnaire[s],” demanded of Austrian Jews,¹²⁴ “in which all assets and property had to

¹²³ Hancock, at 71.

¹²⁴ “About six weeks after the Germans marched into Austria, Jews with assets of at least RM 5000 were ordered to list all they owned as of April 27, 1938. They complied with astonishing
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be listed before deportation, down to the smallest item: from furniture, jewelry, and art objects, ordered according to the rooms they were located in, to books, cutlery, and single individual articles of clothing and underwear and bed linen”¹²⁵ - the most detailed of questionnaires reveal nothing about the ultimate destination of plundered assets, whether to Switzerland or elsewhere.

As the Bergier Commission has pointed out, even in the relatively limited area of gold transactions, “[u]ntil very recently research has generally centered on central banks’ gold policies, and there has been scant research on how gold from ghettos, concentration camps, and extermination camps was stolen and disposed of.”¹²⁶ Once stolen, gold alone could have taken any number of different paths across Europe:

To summarize, the disposal of looted gold had several routes: from the T4 [euthanasia] killing centers to Degussa; from the Soviet Union direct to the Reichsbank and to the [Municipal] Pawn Shop [in Berlin]; from military authorities in all the areas occupied by Germany, as booty, via the Reich Main Accounting Office to the Reichsbank; as refined precious metal from Lublin to the WVHA and on to the Reichsbank; as unrefined precious metal

meticulousness. Even those who had managed to escape abroad frequently registered through trustees in, as it would turn out, the vain hope of saving something The actual number of declarations filled in, ... appears to have been 66,605, according to the file numbers issued and the fact that registration forms with numbers in the 60,000 series can be found at the Austrian State Archives [M]ore than 52,000 completed forms [are] still lodged at the State Archives in Vienna.” Junz Report, at A-143.

Indeed, the Special Master is aware that in Austria, these archives have been consulted in recent years in continuing disputes regarding compensation of outstanding insurance claims. *See also, e.g., Nazi Gold from Belarus*, at 14 (“Standard statement blanks were elaborated in which the material damage inflicted on the citizens of the Republic was to be itemised. One of the items requested to specify the number of confiscated gold and silver articles. The statement blanks were circulated in all regions, districts, village Soviets and settlements. The entire population was questioned The collection of such documents is enormous”); Dean, Ostland, at 7 (“Efforts were made to register all Jewish property, which, in Latvia especially, has produced extensive documentary records”); Karen Matthews, *German Archives May Help Jews*, Associated Press, May 24, 2000 (describing Austrian, German and Italian archival documents possibly accessible by way of research services); *see also infra*, at Section III.

¹²⁵ Barkai, From Boycott to Annihilation, at 179.

¹²⁶ Bergier Gold Report, at 17-18.

from Auschwitz-Birkenau to the WVHA. It must be noted that we know very little about the security police [L]ooted gold could also bypass the Reichsbank. For a long time, the paths taken by victim gold, as well as the manner in which it was disposed, have only been very partially researched. Due to the absence of sources, the elucidation of these points is to a certain extent doomed to failure.¹²⁷

This difficulty in tracing the paths taken by victims' assets is not limited only to gold. Reconstructing the looting process for other assets, such as family heirlooms, art and household effects, is equally complex and probably doomed to failure.

One major difficulty is that much of the loot was dispersed among Third Reich enterprises, Nazi officials, and other private individuals, rather than channeled directly to Germany and perhaps onward to Switzerland. Even in the early years, when persecution took the form of Aryanization and taxation as opposed to extermination, it was “[n]ot until December 1938 - *i.e.*, shortly before the last Jewish enterprises were liquidated by forced ‘Aryanization’ - [that] Göring issued a directive stipulating that unjustified ‘Aryanization profits’ should be handed over to the Reich Treasury. He declared in a closed meeting on October 14, 1938 that the assets of Jews belonged to the Reich - and that they should not be ‘squandered as a source of funds for incompetent party members.’”¹²⁸ In fact, “many *Gauleiters* [district party leaders]

¹²⁷ *Id.* at 36. See also Hilberg, at 959; Bergier Gold Report, at 21 (“it is hard to paint a complete picture of all the Third Reich’s gold operations. Numerous Nazi organizations and individuals were involved in the acquisition and selling of victim gold, and these parties generally pursued different goals. The documents available at the moment do not allow us to identify all the players The question of how victim gold that found its way to Switzerland was used, also remains unresolved”); *Id.* at 30 and at n. 40 (“There has not yet been a comprehensive study of the Third Reich’s looting and its consequences on all segments of the population in German-occupied areas. Neither has the plundering of Jewish victims been sufficiently researched”; the “standard work by Hilberg is closest to fulfilling the requirements of a global presentation”).

¹²⁸ *Id.* at 135.

made use of the Aryanizations as a much-welcome local source of lucre. They regarded Jewish property as a personal reservoir they could dispose of in order to satisfy the needs of the party and its functionaries.”¹²⁹ One functionary in Hamburg “transferred over RM 237,000 for his personal use from a Gestapo account in which the proceeds from Jewish property sold at auction had been deposited.”¹³⁰

After German Jews were deported, the Reich Treasury confiscated securities and bank accounts. Bureaucrats also examined contents of abandoned apartments to

check what objects might be of use to the Reich finance administration officials. Office furnishings of interest include ... desks, bookcases, armchairs, carpets, pictures, etc.; as furnishings for vacation homes and schools of the finance administration: bedroom sets, beds, musical instruments and, in particular, sheets and pillow cases, table clothes, hand towels, etc.¹³¹

Thus, the German population - and ultimately, the local population in the incorporated or conquered countries across Europe - was “drawn into the circle of beneficiaries,” as exemplified by the February 1941 “systematic auctioning off of Jewish property” in Hamburg.¹³² The contents of approximately 3,000 to 4,000 containers held in storage at the Hamburg port were auctioned at the order of the Gestapo, with priority given to “those who had

¹²⁹ Bajohr, at 182.

¹³⁰ *Id.* at 185.

¹³¹ Barkai, From Boycott to Annihilation, at 176, 177. *See also* Hilberg, at 245, 478 -79, 480 (Nazi officials claimed Jewish household effects for themselves and their offices; “Jewish writings and other cultural and artistic creations of Jewish endeavor’ were to be handed over to ... the Einsatzstab Rosenberg, for scientific studies,” “[p]honographs and records were to be delivered to the Propaganda Ministry,” and “[s]ewing machines were to be sold to the Lodz ghetto administration, which needed them for the production of uniforms, while printing machinery was to be shipped to the president of the Reich Press Chamber”; eventually, the Gestapo and other agencies broke the “Finance Ministry’s monopoly,” confiscating, among other items, bicycles, cameras, binoculars and the like, so that “not much was left for that amorphous and all-encompassing beneficiary, the Reich”).

¹³² Bajohr, at 198.

lost their possessions in bombing raids, young married couples and Germans who had returned from abroad,” while “numerous agencies of the government and party [also] helped themselves to the so-called Jewish goods.”¹³³ For the next four years, “hardly a day went by in Hamburg without a public auction of Jewish property,” a process which expanded in variety and scope as plundered Jewish loot from across Western Europe was shipped to Hamburg.¹³⁴ As to the proceeds, these were “deposited in a Gestapo account with the Deutsche Bank and reached the sum of RM 7.2 million by early 1943.”¹³⁵

Once the victims reached the concentration camps, further looting - and continuing dispersal of property across a wide range of recipients - duly proceeded.

German currency was deposited in special bank accounts belonging to the D departments of the SS-WVHA (the controlling agencies of the camps). Foreign currency and valuables were sent to the Reichsbank via the SS-WVHA. Clothes and shoes were issued to released prisoners, remade into prison fatigues, or recycled in the textile industry.¹³⁶

A September 1942 allocation directive “turned the SS into a veritable Salvation Army,” so that cash, foreign currency, rare metals, jewelry, gold teeth, and similar items were required to be transmitted to the Reichsbank; watches, clocks, pens, razors, knives, scissors, wallets and purses were to be sent to WVHA repair shops and then made available for sale to

¹³³ *Id.* at 199.

¹³⁴ *Id.* at 199, 200. “Hamburg profited in a special way from ... the shipments of loot. In 1942 alone, the complete furnishings of several thousand apartments belonging to deported Dutch Jews were shipped by sea to Hamburg. In addition, the German Reichsbahn transported a total of 2,699 freight cars full of Jewish possessions to Hamburg through 1944.” *Id.* at 200.

¹³⁵ *Id.* See also Barkai, From Boycott to Annihilation, at 177 (Jewish household effects not “needed” by German departments and officials were to be sold to the National Socialist *Volkswohlfahrt* (Folk Welfare) “or to municipal authorities for ‘providing furniture and household goods to citizens who have suffered losses due to the air raids’”) (citation omitted).

¹³⁶ Strzelecki, at 247-48.

troops; pure silk clothing was to be sent to the Economy Ministry; eyeglasses were to be sent to the medical Referat; clothing, linens, bedding, baby carriages and other items were to be sent to the Volksdeutsche Mittelstelle (VOMI), the welfare organization for ethnic Germans; and human hair (discussed in an earlier August 1942 directive) was to be used to manufacture “felt footwear for U-boat personnel and Reichsbahn employees.”¹³⁷

Much the same pattern prevailed outside the extermination camps. Recipients of loot, primarily from Jewish victims, ranged from the first Nazis on the scene (those directly responsible for the shootings or deportations) to the civilian population. Thus, in the former Soviet Union, where *Eizensatzgruppen* massacred entire communities wholesale, “[t]he disposal of the Jewish property, like the requisition of Jewish labor, was ... handled on a first-come-first-

¹³⁷ Hilberg, at 953-954. Hilberg’s account is based in part upon the recollections of Rudolf Vrba, an Auschwitz escapee who subsequently prepared a first-hand report known as the “Vrba-Wetzler Report” or “Auschwitz Protocols.” Vrba had been forced to work for the *Aufräumungskommando*, whose job it was to “eliminate all traces of routinely organized murder and to confiscate Jewish possessions from the transports to Auschwitz.” Rudolf Vrba, *The Preparations for the Holocaust in Hungary: An Eyewitness Account*, in *The Nazis’ Last Victims: The Holocaust in Hungary* (Randolph L. Braham, et al., eds., Detroit: Wayne State University Press 1998) (hereinafter, “Vrba”), at 64.

In Vrba’s account:

When we prisoners were not working on the ramp we worked in the [so-called] Canada storage areas where, under close supervision of the SS, we broke the locks off of or ripped the luggage of all the new arrivals, regardless of their further fate, and sorted the contents Hundreds of thousands of first- to third-quality men’s suits and women’s clothes, blankets, underwear, furs, kitchenware, baby carriages, eyeglasses, medicaments, shoes, and other personal effects were carefully sorted, packed according to quality, and dispatched to Germany from the Canada storage areas in more or less irregular transports, as the goods accumulated. Fourth-quality clothing not deemed worth disinfecting was dispatched to a paper factory in Memel. Almost every day we would fill an entire separate suitcase with hard currency ..., as well as diamonds, gold, and jewelry that had been found more or less well hidden in the luggage or its contents These valuables were carried away daily by the SS, presumably for the *Reichsbank*.

Vrba, at 65-66.

grab basis.”¹³⁸ An early “collector[] of Jewish property was invariably a killing unit. As a rule, the mobile killing units generously handed out furniture and clothes to the native population, particularly to the ethnic Germans in the area.”¹³⁹ Those who served the Reich were not to be overlooked, either; from the Eastern killing centers, “10,000 pairs of children’s socks and 2,000 pairs of children’s gloves [were sent] to Himmler’s Personal Staff for distribution to SS families.”¹⁴⁰

An additional “claimant” was the “civilian population,” which “helped itself to the abandoned Jewish apartments, often taking possession of them.”¹⁴¹ Following the Riga massacre of late November and early December, 1941,

thousands of packed suitcases were left unguarded where they had been collected and stacked. Many were subsequently found to have been forced open, their contents removed. Other claimants were administrative officials of the military and the Kommissariate who needed offices, office furniture, and a variety of other things. In Riga such requests came from the German railways, from local branches of corporations, such as a truck repair facility of Daimler-Benz, which sought to establish its eligibility to receive ghetto property by asserting that its personnel were attendants of the Wehrmacht ... and from individuals, including a Latvian policeman ..., [and] an official interpreter who wanted a piano for his talented ten-year-old daughter.¹⁴²

In “larger towns, the authorities sometimes set up shops where property taken from the dead was sold In smaller villages a one-time public sale occurred. For example, in the village of Ostrovno, Vitebsk region, the Germans simply piled all the possessions of the

¹³⁸ Hilberg, at 362.

¹³⁹ *Id.* at 361.

¹⁴⁰ *Id.* at 361, n. 75.

¹⁴¹ *Id.* at 361.

¹⁴² *Id.* at 361-62. *See also* Romanovsky, at 247-48 (“As soon as Jews were led away to be shot, their neighbors would stream into their empty houses, searching for ‘Jewish things’”).

executed Jews in a public square and assigned a soldier to be an auctioneer. The soldier would pick a sheet or pillow out of the heap and call out, 'Who wants it?' The peasants would try to shout each other down, shouting, 'Me, sir, me, sir!'"¹⁴³

The pattern continued throughout occupied Europe, with the Reich, its officials, the government of the occupied territory, and the local population all sharing in the spoils:

- In **Austria**, the "first wave of dispossession was little more than a large-scale, outright looting of Jewish homes and businesses. Thousands of self-styled Kommissars possessed themselves of Jewish-owned businesses or their contents. The Nazi authorities estimated that in Vienna alone some 7,000 such businesses, out of a total of 33,000, were dissolved in this process. This went so far as to disquiet Berlin's representatives who saw large parts of the loot they had anticipated directing into the Reich's coffers disappear into the pockets of the Austrian population - Party members or not."¹⁴⁴
- In **Poland**, "some choice real estate" and outstanding debts owed to Jews were collected by Himmler, Generalgouverneur Frank "took over the depots in which the abandoned Jewish property was kept," the "police employed in the ghetto-clearing operations helped themselves," and the "empty ghettos were subjected to looting by the local population."¹⁴⁵
- In **the Netherlands**, Jewish investments "were turned into cash"; "[i]n the case of jewelry, the most valuable items were delivered to Göring (attention: Oberstleutnant Veltjens). Other valuable jewelry was offered to the highest bidders in the Reich. Cheap jewelry was to be handed over to Oberregierungsrat Dr. Heinemann for Göring's Christmas Aktion. Jewelry with metal value only was to be melted down. Similar directives were issued with respect to art objects," with priority offered, in descending order, to Staatssekretare Muhlmann and Posse, Himmler, the German art trade, and the Christmas Aktion, and "'degenerate art' ... to be sold ... in Switzerland."¹⁴⁶ As to furniture, other than that designated for the Einsatzstab Rosenberg, the "great bulk" was "made available to

¹⁴³ Romanovsky, at 249.

¹⁴⁴ Junz Report, at A-139.

¹⁴⁵ Hilberg, at 541-42; *see also* Michalewicz, at 181-82 (in Poland, following the execution of "'about 300 Gypsy families [who] were hiding in the suburbs and the woods,'" their "'belongings were taken by the gendarmes'").

¹⁴⁶ Hilberg, at 595.

bombed-out persons in the Reich on a 'permanent loan' basis," while many Jewish homes were "ripped apart and carried off piece by piece by a starving Dutch population during the winter of 1944-45."¹⁴⁷

- In **France**, as in the Netherlands, "some of the finest items" of art "were picked by Göring and Hitler for their personal collections. At the other end of the scale, unwanted items were to be disposed of by the Finance Ministry, which had 'experience' in such matters. The bulk of the loot was kept in storage, to be catalogued and studied by Rosenberg's experts."¹⁴⁸ Likewise, Jewish apartments were plundered (over 76,000, with 38,000 in Paris alone), their contents destined for shipment to Germany - some of which was plucked out of the shipment by the French personnel charged with crating the loot for transport.¹⁴⁹
- In **Greece**, following deportations of Jews, "[a]ll furnishings and food in the vacated apartments were handed over to Greek offices for distribution to the Greek population."¹⁵⁰
- In **Slovakia**, most Jewish firms were liquidated, which, as in Germany, was "the principal benefit accorded to the small Slovak entrepreneurs."¹⁵¹ "Aryanizations, on the other hand, served the Slovak banks and larger manufacturers Like the Germans, the Slovaks were also interested in valuables and other movables. In December 1941 the Bratislava police started to collect Jewish-owned typewriters and adding machines. Next, the Hlinka Guard undertook a 'fur-action' to relieve the suffering of Slovak troops fighting in the Russian winter."¹⁵²

¹⁴⁷ *Id.* at 596.

¹⁴⁸ *Id.* at 659.

¹⁴⁹ *Id.* See also Matteoli Report, April 17, 2000 Summary, at 29 ("The radical execution and savagery of the systematic pillaging of the apartments of Jews who had been deported or who had fled the German occupation is truly striking. Premises were entirely emptied. Looted furnishings, which were to have been used for the German colonialisation of the East, were soon rerouted to the victims of Allied bombings, which were often presented as 'Jewish bombings.' Unlike the aryanisation policy, which was based on a vast legal arsenal, the looting of furnishings flew in the face of any legality, including that arising from the armistice and the collaboration. Its sheer savagery is sufficient to explain the lack of archival records Approximately 80% of all the looted property was sent off to Germany").

¹⁵⁰ Hilberg, at 704.

¹⁵¹ *Id.* at 724.

¹⁵² *Id.*; see also Yeshayahu Jelinek and Robert Rozett, *Slovakia*, in Encyclopedia of the Holocaust, (hereinafter, "Jelinek and Rozett"), at 1367 (after deportations to extermination centers, "Jewish property was sold at low prices by the Slovak authorities or distributed free to non-Jewish Slovaks as
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- In **Romania**, “[a]s usual, the expropriations were conducted in two forms: the confiscation of property and the conscription of labor. In the fall a clothing drive was launched. It yielded 1,583,000 items, mainly for the use by the freezing Romanian army in the east. At the same time, the confiscation of Jewish community property was instituted, and a forced loan” was implemented.¹⁵³
- In **Hungary**, even prior to the 1944 Nazi invasion, although “Aryanizations were floundering in industry, they proceeded with a little more ease in agriculture. The Hungarians were more interested in land, and the Jews were less involved in it.”¹⁵⁴ Plans were made to distribute parcels up to five acres to “anyone,” up to 107 acres to “veterans,” and parcels over 107 acres to “big landowners. Evidently the Hungarian upper class, which looked down somewhat on matters of business, did not display an equal aversion to the acquisition of land.”¹⁵⁵
- In **Latvia**, “tens of thousands of *Reich Marks* arising from Jewish property were forwarded to the Reich Credit Office in May of 1942. A report from Daugavpils dated 6 May noted that moveable property had been registered on pre-printed forms and collected by the District Commissar. Foreign currency was exchanged at the Reich Credit Office and paid in to the District Commissar’s account. Stocks and bonds remained in safe-keeping. Watches were distributed to the *Wehrmacht*, police and railway employees. Real estate was administered by the local authorities and rented out. Only derelict houses were sold for demolition. Furniture and personal items were issued to the *Wehrmacht* and members of the local population on a temporary basis. Low value and damaged items as well as clothing were sold.”¹⁵⁶

2. Post-War Period

Efforts to trace Nazi loot in the post-War years met with only partial success.

Even for property that actually remained in identifiable form - such as the “spectacular and

an inexpensive way to buy the goodwill of the populace”).

¹⁵³ Hilberg, at 780.

¹⁵⁴ *Id.* at 806.

¹⁵⁵ *Id.* at 807.

¹⁵⁶ Dean, Ostland, at 8.

substantial” hoard of “gold and foreign exchange discovered in a salt mine at Merkers”¹⁵⁷ - the recovered plunder was far from complete. The find at Merkers was estimated to have “probably represented only about 20% of all gold held in Germany, and the American forces in particular went on to discover a number of gold hoards in their Zone,” with the assistance of “Reichsbank records also recovered at Merkers, and by information derived from the interrogation of Prisoners of War,” such as Albert Thoms, head of the Reichsbank Precious Metals Department.¹⁵⁸ Yet “the sums estimated ... for loot handled by the Reichsbank since 1942 appeared an understatement:

Certainly, they cannot begin to represent the total extent of the operations of the SS ‘economic department’ which for 12 years has disposed of the personal and household valuables of millions of racial and political victims of the calculated Nazi policy of extermination.”¹⁵⁹

Moreover, notwithstanding the elaborate precautions taken by the American military forces to safeguard the stores of wealth,¹⁶⁰ some American officers were not immune to the temptations presented by vast hoards of jewels, gold, art and other valuables entrusted to their safekeeping. The recent United States inquiry into the fate of the “Hungarian Gold Train”¹⁶¹ has revealed that certain United States “military personnel recognized from the

¹⁵⁷ British Archives Report, at 11.

¹⁵⁸ *Id.*

¹⁵⁹ See Foreign & Commonwealth Office, General Services Command, History Notes, “Nazi Gold: Information from the British Archives: Part II” (Historians, LRD, No. 12, May 1997) (hereinafter, “British Archives Report II”), at 31, quoting May 8, 1945 report of the Assistant Chief of the United States Finance Intelligence Branch.

¹⁶⁰ See Seymour J. Pomrenze, *Personal Reminiscences of the Offenbach Archival Depot, 1946-49: Fulfilling International and Moral Obligations*, Washington Conference on Assets, at 523-28.

¹⁶¹ See Presidential Advisory Commission on Holocaust Assets in the United States, “Progress Report on: The Mystery of the Hungarian ‘Gold Train’” (Washington D.C., October 14, 1999), available at <http://www.pcha.gov> (hereinafter, “Gold Train Report”).

beginning that the art and cultural property assets of the Gold Train were valuable and impressive” and so could be used in their residences; several high ranking officers requisitioned for themselves such valuables as china, silverware, linens and rugs.¹⁶²

Assets that were located and preserved by the Allied troops - particularly the looted Nazi gold - often could not be retraced to the original owners, even in the immediate post-War period. Rather, the looted gold was distributed to the formerly occupied countries and to the “non-repatriable” individual victims of the Nazis, in accordance with the provisions of the Final Act of the 1945 Paris Conference on Reparations.¹⁶³ Monetary gold - defined as “gold bars and coins” other than coins of “numismatic or historical value” looted from banks and governments, found in Germany by Allied Forces, was to be pooled via the Tripartite Gold Commission “for delivery as restitution to the formerly occupied countries, in proportion to their respective losses of gold through looting or wrongful removal to Germany.”¹⁶⁴ Non-monetary gold - “‘private gold’ in the form of dental gold, wedding rings etc. taken from concentration camp inmates” - was to be “made available to the Inter-Governmental Committee on Refugees ... for the rehabilitation of non-repatriable persons who had suffered at the hands of the Nazis.”¹⁶⁵ Ninety percent of the non-monetary or “victims” gold, along with 90% of a separate \$25 million fund to be created from proceeds of German assets in neutral countries, and 95% of “heirless funds” in Germany, Austria and the Nazi-occupied territories - in recognition that “these funds [were]

¹⁶² Gold Train Report, at 8.

¹⁶³ See British Archives Report II, at 5-6.

¹⁶⁴ *Id.* at 5.

¹⁶⁵ *Id.* at 5-6.

overwhelmingly Jewish in origin”¹⁶⁶ - was designated for the American Jewish Joint Distribution Committee (“JDC”) and the Jewish Agency for Palestine to fund direct assistance programs for Jewish Holocaust survivors. The remaining funds were designated for “appropriate public and private field organizations” to assist non-Jewish victims.¹⁶⁷

A final difficulty in attempting to recreate a complete and accurate accounting of Holocaust-era material losses is that certain of the individual losses have in fact been compensated, however incompletely and belatedly. Beginning in the immediate post-War period, the Allied forces, followed by Jewish “successor organizations,” made strenuous efforts to collect, identify and, where possible, restitute identifiable property located in the American, British and French Zones.¹⁶⁸

To take but one example, in the late 1940s, with looming filing deadlines, representatives of the Jewish Restitution Successor Organization (“JRSO”) waded through countless files to ensure that claims to looted property would not be waived and that the property

¹⁶⁶ See “Agreement on a plan for allocation of a reparation share to non-repatriable victims of German action,” 14 June 1946, Par. E (British Archives Report II, Annex III).

¹⁶⁷ British Archives Report II, at 5-6. As set forth in the analyses of Nazi gold prepared respectively on behalf of the British and United States governments, the distinction between “monetary” and “non-monetary” gold was somewhat artificial. “[T]he failure at Paris to agree on or even discuss the definitions of monetary and non-monetary gold meant that the whole issue remained bedevilled by misunderstanding and imprecision,” British Archives Report II, at 6, as “gold, apparently so tangible, was nebulous of definition” and “came from a variety of sources and in many shapes and forms.” *Id.* Because “the provenance of Nazi gold was often suspect” since the Nazis had “systematically melted down looted gold (bars, coins or objects) over a long period and resmelted it into bars under the Prussian Mint imprint,” *id.* at 9, “[i]t would be wrong to assert that there was no possibility that some gold bars deposited in the Pool, smelted by the Nazis, contained gold items which had belonged to concentration camp or other victims,” although “gold which was known without question to have been taken from concentration camp victims was kept separate and used for the purposes intended” as set forth in the agreement on non-repatriable victims of the Nazis. *Id.* at “Conclusion.” See also Eizenstat Report, at xxxii (“It is ... clear that victim gold entered the postwar Gold Pool organized by the Tripartite Gold Commission”).

¹⁶⁸ See Annex E (“Holocaust Compensation”).

would not revert to the German state. In many instances, the JRSO had sufficient data to permit the assertion of a property claim. “In the Third Reich, confiscated Jewish properties were registered in the records of various institutions with a precision and orderliness that bordered on the grotesque, and enabled the JRSO to trace individual as well as mass acts of confiscation that were perpetrated” under various Nazi decrees.¹⁶⁹

These efforts to trace identifiable property continued even after many of the items had been returned to owners or their heirs, or, where “heirless” or unclaimed, to Jewish communities and to needy survivors. Compensation was made, in many such instances, in the form of restitution payments undertaken by Germany pursuant to its commitment in the early 1950s to make recompense for material personal and property losses sustained by victims of the Nazi Regime.¹⁷⁰ Other countries throughout Western Europe, and, much more recently, in Central and Eastern Europe, likewise have adopted some compensation programs in an attempt to address certain of the property losses suffered by their own nationals.

¹⁶⁹ See Saul Kagan and Ernest H. Weisman, Report on the Operations of the Jewish Restitution Successor Organization, 1947-1972 (hereinafter, “JRSO Report”), at 12. Among the files consulted by the JRSO were those of the “*Oberfinanzpraesidenten* in the German provinces, the German Reichsbank and the Prussian State Bank, the lists of Jews subject to mass deportations,” as “deportees were required to furnish the *Oberfinanzpraesidenten* with a detailed list of their properties, including bank accounts, securities, household goods, and the like,” *id.* at 12, 13. The JRSO also examined the “balance sheet of the *Reichsvereinigung [der Juden]*,” to which deported Jews were “persuaded to transfer their securities, jewelry, mortgages and bank accounts” on the “pretext that they would be admitted to homes for the aged in Theresienstadt.” *Id.* at 14. In reality, the deportees were sent to the Theresienstadt concentration camp, *id.* and eventually, in many cases, on to Auschwitz. See Hilberg, at 438.

¹⁷⁰ See Annex E (“Holocaust Compensation”), describing Germany’s post-War property restitution payments pursuant to the “BRUEG” and other programs.

V. CONCLUSION:

With limited exceptions, the historical record simply does not permit the Special Master to reach precise determinations concerning the nature and value of material losses traceable to Switzerland. As has been discussed in detail, on the one hand, recent investigations on behalf of the governments of Switzerland, the United States and Great Britain confirm that a considerable amount of the loot, particularly gold, eventually found its way to Switzerland. On the other hand, there is insufficient information concerning the provenance of this loot. Gold bars sent to Switzerland bore few if any identifying features beyond the country of origin. Profits from sales of other looted items that were transferred through the coffers of the Reich, and, ultimately, on to neutral nations, cannot be itemized with specificity. And not all of the loot ended up in the Reich - some found its way into the offices, homes or pockets of the local population or Nazi administration, with or without permission of the Reich.

It is neither justifiable nor appropriate to select which looting victims may be entitled to recompense from this \$1.25 billion Settlement Fund based entirely upon the happenstance of where the Nazi Regime chose to direct which loot, which records of the plunder happen to survive, and which items one may hazard a guess may have found their way to or through Switzerland. Every "Victim or Target" was looted, and it is fair to say that every one of them potentially may have some link to a Releasee as set forth under Section 8.2(b) of the Settlement Agreement. Sixty years after the event, however, there is neither a practical nor an equitable way to recreate the chain of possession necessary to prove which victim's property is linked to a Releasee, if any.

Therefore, the Special Master has had to make a decision for the "Looted Assets Class" that recognizes the unprecedented scope of the Nazi theft, and the virtual impossibility of

recreating or even symbolically compensating the material losses suffered by the Jewish, Roma, Jehovah's Witness, homosexual and disabled communities plundered across wartime Europe. As more fully set forth in the Special Master's Proposal, it is recommended that the Court adopt a "cy pres" remedy to compensate this Class, the proposed parameters of which are described in the Proposal. Any other approach would deplete the Settlement Fund, would require literally years of complex proceedings to adjudicate a comparative handful of provable claims, and would still result in but nominal payments at best.