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Banking Secrecy Lifted: The Swiss Act to Counter Attacks Launched as a Result of Their Bank's Actions During World War II and Thereafter

I. Introduction

When Edgar Bronfman, head of the World Jewish Congress,¹ went with Israel Singer² to a meeting in Bern, Switzerland in September 1995 to ask the Swiss Bankers Association (SBA)³ to investigate dormant accounts of Holocaust victims, the bankers proposed a settlement immediately.⁴ The bankers wanted to turn

1. The World Jewish Congress was set up in Geneva before World War II (WWII) and is now based in New York. The organization has been “lobbying for banks in many countries to search for funds of Holocaust victims, and to identify and return assets looted by the Nazis from Jewish citizens.” Stephanie Cook, *Digging Up the Past*, EUROMONEY, Aug. 1996, at 48.

2. Israel Singer became interested in investigating Swiss behavior during WWII after reading the novel *The Swiss Account* by Paul Erdman. Johanna McGeary, *Echoes of the Holocaust*, TIME, Feb. 24, 1997, at 37, 38. Paul Erdman was arrested and imprisoned for nine months for bank fraud in Switzerland over twenty years ago. His novel sheds new light on Switzerland's role as financier for Germany during the war, and describes secret deals among senior Swiss, German and American officials. James R. Krauss, *Banker-Turned-Writer Spins a Tale of Intrigue*, AM. BANKER, Oct. 20, 1992, at 2. Singer sought out the approval of Edgar Bronfman, his boss, to begin an investigation. McGeary, *supra*.

3. The Swiss Bankers Association (SBA) is a voluntary association of Switzerland's banks. The association has 405 bank members. Krauss, *supra* note 2, at 2.

The SBA plays two significant roles for Swiss banks—that of a traditional trade association and that of a self-regulatory organization. In its capacity as a trade association, the SBA advises its members on significant legal and regulatory developments in Switzerland and abroad, administers testing programs, and functions as the domestic and international spokesperson for its members. In its capacity as a self-regulatory organization, the SBA cooperates closely with the Swiss Federal Banking Commission and The Swiss National Bank in implementing specific policies and procedures for its members to follow.

U.S. Senate Committee on Housing and Urban Affairs Hearings (transcribed in FED. NEWS SERV., Apr. 23, 1996) [hereinafter *Hearings*] (prepared testimony of Hans J. Baer, Member of the Executive Board of the SBA).

4. McGeary, *supra* note 2, at 38. Neither Bronfman nor Singer was offered a place to sit during the meeting. There were literally no chairs for the two men.

over \$32 million discovered in 774 Jewish accounts since World War II (WWII).⁵

Increasing pressure has been placed on the Swiss over the past few decades concerning their Bank Secrecy Laws and the effects of those laws internationally.⁶ According to Georg Krayer, a former SBA president and author of *Swiss Banking Secrecy*, Swiss banking secrecy has been reduced tremendously in recent years in an effort to help fight international crime.⁷ The most recent attack against the secrecy laws concerns the role of Swiss banks during WWII. Swiss neutrality during WWII is now in question. Speculation and concern about Swiss aid to the Nazis during WWII is increasing, particularly with respect to alleged profits made by Swiss banks. Such profits stem not only from German Jews who attempted to safeguard their money in Switzerland, but also from money and war spoils the Nazis confiscated from the central banks of other countries.⁸

The secrecy of Swiss banks⁹ has been challenged in the past by countries attempting to stop money laundering, to stop the ability to hide funds obtained criminally, and to stop tax evasion.¹⁰ Many of the attempts to chisel away at the Swiss secrecy laws have been successful to a certain degree, and have produced treaties or similar documents.¹¹ None of the attacks thus far, however, has

Id.

5. This meeting and lack of civility during the meeting on the part of the Swiss made Bronfman more interested in investigating the matter rather than settling it. *Id.*

6. Cook, *supra* note 1, at 48.

7. Carolyn Henson, *Swiss Banks Unable to Shake Reputation Of Shady Dealings*, CHATTANOOGA FREE PRESS, May 5, 1996, available in LEXIS, Allnews Library.

8. Tom Bower, *Tom Bower on a Shameful Conspiracy with Evil that Robbed the Dead*, DAILY MAIL, Sept. 11, 1996, at 20 [hereinafter *Shameful Conspiracy*].

9. See *infra* notes 19-80 and accompanying text.

10. *The Great Swiss Bank Robbery*, JERUSALEM POST, Apr. 11, 1996, at 6 [hereinafter *Bank Robbery*].

11. The issues of waning banking secrecy have been analyzed in various law review articles. See, e.g., Paul Robert Eckert, Note, *Utilizing the Doctrine of Adverse Inferences When Foreign Illegality Prohibits Discovery: A Proposed Alternative*, 37 WM. & MARY L. REV. 749 (1996) (obtaining evidence that is located in a foreign jurisdiction where the law prohibits disclosure of such information); John V. Ivsan, Comment, *Informational Liability and International Law: A Post-Ratzlaf Comparative Analysis of the Effect of Treasury Reporting Requirements on International Funds Transfers*, 21 OHIO N.U. L. REV. 263 (1994) (evaluating money-laundering opportunities in bank secrecy countries and efforts by the U.S. to curb such activity by enacting regulations); Gregory R. Raifman, Note, *The Effect of the U.S.-Swiss Agreement on Swiss Banking Secrecy and Insider Trading*, 15 LAW & POL'Y INT'L BUS. 565 (1983) (evaluating a Memorandum of

been as politically and emotionally charged as the recovery of bank accounts by survivors of the holocaust and by heirs of holocaust victims. The Swiss have been forced to examine their past and to take radical steps in order to vindicate themselves.

In Part II this Comment discusses the history and evolution of bank secrecy laws in Switzerland,¹² examines the Swiss laws that protect the integrity of the financial institutions,¹³ and recognizes the trend in Switzerland toward decreasing secrecy.¹⁴ Part III examines the bill passed in Switzerland and discusses the logistics of its implementation as outlined by the Commission.¹⁵ Part IV surveys the international influence on the actions of the Swiss.¹⁶ Finally, the possible problems with lifting the secrecy laws and with returning money to individual claimants or Jewish organizations are addressed throughout this Comment.¹⁷ The objective of this analysis is to demonstrate that lifting secrecy laws may lead to unanticipated problems, quite possibly curtailing the ability of Swiss banks to compete in the banking industry.¹⁸ Furthermore, the results people are looking for may be impossible to achieve. Even though lifting the secrecy laws and investigating the accounts may be the only practical alternative to solving the mystery of what occurred and to satisfy the public in general, it still may not be effective.

II. History and Development of Banking Secrecy in Switzerland

The traditionally informal practice of banking secrecy in Switzerland was codified in The Swiss Banking Law of 1934¹⁹ (Swiss Bank Law). Prior to 1934, banks were expected to operate within the legal framework designed to regulate various commercial

Understanding between the governments of the United States and Switzerland designed to discourage the ability to utilize Swiss banking laws to perform insider trading); 1977 Treaty between the United States and the Swiss Confederation on Mutual Assistance in Criminal Matters, 27 U.S.T. 2019, T.I.A.S. No. 8302 (1977) (the countries agreed to cooperate to legally enforce activities deemed criminal in both the U.S. and Switzerland).

12. See *infra* notes 19-49 and accompanying text.
13. See *infra* notes 30-49 and accompanying text.
14. See *supra* note 11.
15. See *infra* notes 85-126 and accompanying text.
16. See *infra* notes 127-65 and accompanying text.
17. See *infra* notes 115-126, 163-65 and accompanying text.
18. Peter Gumbel, *Secret Legacies: Heirs of Nazis' Victims Challenge Swiss Banks on Wartime Deposits*, WALL ST. J. EUR., June 22, 1995.
19. See *infra* note 30 and accompanying text.

and industrial activities, but no specific legislation was devoted to banks.²⁰

A. Possible Reasons for Codification of the Secrecy Practice

The motive for enacting banking secrecy laws is in dispute. One theory that has been widely accepted is that the laws were promulgated to protect German Jews who sought to hide their assets prior to the Nazi invasion.²¹ A second theory contended that it is simply a myth that the system of numbered bank accounts emerged as a result of Nazi influence and the Swiss movement to assist Jewish people.²²

The Banking Law is believed to have been enacted by the Swiss legislature to insulate the banking system and its customers from attacks by Hitler.²³ The Nazis published regulations requiring all Germans to register their assets held outside of Germany, and outlawed any transfer of funds outside of Germany from that point forward.²⁴ The humanitarian theory is doubted because Swiss aid in the form of banking services to the Axis powers during WWII was extensive, and went beyond the obligations under which a neutral country must continue to trade with a belligerent nation or force.²⁵ Furthermore, the Swiss made a pact with Germany to

20. NICHOLAS FAITH, *SAFETY IN NUMBERS* 40 (1982). The first draft of the Banking Act was dated February 17, 1933, only 18 days after Hitler came into power. *Id.* at 56. The first proposals to provide a framework for banking control date back to 1916. *Id.* Absolute secrecy does not exist because banks are obligated to furnish information when the higher interest of the public or the state is involved, and usually under circumstances when the case involves a crime as defined under Swiss law. C. Todd Jones, Comment, *Compulsion Over Comity: The United States' Assault on Foreign Bank Secrecy*, 12 *NW. J. INT'L L. & BUS.* 454 (1992).

21. FAITH, *supra* note 20, at 35.

22. *Id.*

23. E. CHAMBOST, *BANK ACCOUNTS* 5 (1983).

24. *Id.*

25. FAITH, *supra* note 20, at 101. Switzerland was clearly driven by the profit motive, rather than a motive to help German Jews. In early 1945, German investments and accounts in Switzerland amounted to \$600 million, real estate holdings were \$62 million, and insurance and annuities valued at \$50 million. *Id.* These investments did not include additional privately owned German accounts that exceeded 500 million Swiss francs. *Id.* German gold exports to Switzerland were the lifeline of Germany's war effort abroad, and Switzerland furnished about 90% of Germany's foreign exchange requirements. *Id.* at 109-10. Furthermore, Germans sold 1.6 billion Swiss francs worth of gold through Switzerland during the war, which was ten times the official German pre-war gold reserves. *Id.* at 110.

turn back Jews at their border.²⁶ One assessment of the secrecy laws, as reported in a book review of *Safety in Numbers* by Nicholas Faith, a British Journalist, is that the "Swiss later reconstructed events to justify banking secrecy on humanitarian grounds [which] is a testament to public relations skills that have helped preserve secrecy against formidable investigative odds to this day."²⁷

Regardless of the reason for implementing the secrecy laws, it is ironic that the very laws that attracted German Jews to utilize the system have worked against them and their heirs.²⁸ Jews were given assurances regarding the safety of their deposits, but when heirs have attempted to claim funds, the banks have been unwilling to assist them.²⁹

B. *The Swiss Banking Law of 1934*³⁰

Article 47 of the Swiss Bank Law³¹ sets forth the duty of secrecy owed by a bank to its customers. The obligation is similar that underlying the American attorney-client relationship.³² Any

26. Tom Bower, *The Official Proof that Swiss Banks Did Steal from the Jews*, DAILY MAIL, Dec. 19, 1996, at 32 [hereinafter *Official Proof*].

27. Robert J. Dowling, *A Peek into the Vault of Swiss Banking Secrecy; Safety in Numbers by Nicholas Faith*, BUS. WK., Dec. 27, 1982, at 12.

28. *Bank Robbery*, *supra* note 10, at 6.

29. *Id.*

30. Article 47 of the Banking Law of 1934 states:

1. Whosoever divulges a secret entrusted to him in his capacity as officer, employee, authorized agent, liquidator or commissioner of a bank, as representative of the Banking Commission, officer or employee of a recognized auditing company, or who has become aware of such a secret in this capacity, and whoever tries to induce others to violate professional secrecy, shall be punished by a prison term not to exceed six months or by a fine not exceeding 50,000 Swiss francs [approximately U.S. \$35,000].

2. If the act has been committed by negligence, the penalty shall be a fine not exceeding 30,000 Swiss francs [approximately U.S. \$21,000].

3. The violation of professional secrecy remains punishable even after termination of the official employment relationship or the exercise of the profession.

C. Todd Jones, *supra* note 20, at 461 n.37 (citing Bundesgesetz uber die Banken und Sparkassen of Nov. 8, 1934 (Banking Law of 1934), implemented in Verordnung of May 17, 1972 (Ordinance), and Vollziehungsverordnung of Aug. 30, 1961 (Implementing Ordinance), reprinted in R. KINSMAN, YOUR NEW SWISS BANK BOOK 10 n.2 (revised ed. 1979)).

31. See Jones, *supra* note 20, at 461 n.37.

32. Ivsan, *supra* note 11, at 286.

disclosure in violation of the secrecy law was deemed criminal.³³ The Act allowed depositors to remain anonymous, and disclosure of account information was prohibited.³⁴

As a consequence of the Act, banks began to open accounts identified only by numbers, often retaining no record of the owner.³⁵ According to some reports, banks were also permitted to destroy account information, however limited, after twenty years.³⁶ Unfortunately, conflicting information exists regarding this policy. One explanation for the policy is that after an account remained dormant for ten years banks were required to post a notice in the branch where the account was handled before destroying the information.³⁷ Then ten years after the notice was posted, the bank was allowed to take possession of the unclaimed funds.³⁸ This same process is apparently still in effect today.³⁹

Interpretation of the law in terms of keeping records is disputed. A recent report stated that it was illegal under Swiss law to shred documents on an account even if the owner has not been heard from in decades.⁴⁰ This report comports with that of one Swiss government official who stated that contracts exist between banks and their customers that are typically of unlimited duration.⁴¹ According to the official, the contractual status changes only if another agreement exists or if the contract has been canceled.⁴² So, under standard procedures, banks are obligated to hold the deposited assets "in readiness to repay the customers or their heirs."⁴³

Therefore, even after a substantial amount of time has passed, rightful owners may attempt to claim the funds if they possess satisfactory proof of their claim.⁴⁴ However, the requisite proof

33. Jones, *supra* note 20, at 462.

34. *Bank Robbery*, *supra* note 10, at 6.

35. Neal Sandler, *Switzerland's Moral Dilemma*, BUS. WEEK, May 29, 1995, at 80.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* In addition, if an account was legally closed by its owner, the bank may wipe out deposit records only after waiting a period of ten years. Marcus Kabel, *Swiss Banks Reject Claims They Dumped War Files*, REUTERS N. AM. WIRE, Feb. 29, 1996 [hereinafter *Dumped Files*].

40. *Dumped Files*, *supra* note 39.

41. Gumbel, *supra* note 18.

42. *Id.*

43. *Id.*

44. Sandler, *supra* note 35, at 80.

is reportedly a difficult level to achieve.⁴⁵ Banks have demanded death certificates and other documents that either never existed, or were destroyed or lost because of the war.⁴⁶ In many cases, the account information was lost when the account holder perished in a concentration camp.⁴⁷ Other circumstances exist in which a substantial amount of information is in fact known, but the Swiss banks have been uncooperative nonetheless.⁴⁸ Moreover, the cost of requesting a search is also prohibitive in some cases.⁴⁹

45. *Id.*

46. Rupert Cornwell, *Swiss Banks Let Search Begin for Lost Jewish Cash*, *INDEPENDENT*, May 3, 1996, at 10.

47. *Id.*

48. *Official Proof*, *supra* note 26, at 32. The case of Ernestine Steinhard epitomizes the reasons for distrust of the Swiss bankers. Steinhard was believed to have been murdered during the Holocaust and her relatives, who escaped to Israel, knew she had deposited money at the Swiss Bank Corporation (SBC) in Zurich. *Id.* The lawyer for the family, Hernusch Weigl, wrote to SBC asking for information relating to the account. *Id.* The bank did not provide any help or information, so the lawyer assumed the account had not been found. *Id.* The bankers asserted later, after Weigl pursued the matter, that Weigl had been unable to satisfactorily prove that his clients were legally entitled to inherit Steinhard's money. *Id.* Weigl filed a claim in accordance with the 1962 legislation passed to investigate claims, but Hans Weber, who was in charge of the claims, was unhelpful. *Id.* Weigl asked for assistance from Golda Meir, Israel's foreign secretary at the time. *Id.* Steinhard's account did not fall within the terms of the 1962 legislation which dealt with dormant accounts; the account was not dormant due to the letter of inquiry by Weigl. *Id.*

49. One paper reports that a 160 pounds fee has been routinely charged by banks for account searches. Cornwell, *supra* note 46, at 10. Many applicants have paid a search fee of approximately \$70, only to receive a response that the bank had checked back 10 years for which it was required to keep records, and found no movement under the name. *Id.* If the account holder died in the holocaust, it would make sense that there likely would have been no activity for much more than 10 years. *Id.*

C. *Agreements and Legislation Used to Recover War Treasures and Lost Bank Accounts*

The Americans and the British began "Operation Safehaven"⁵⁰ in an attempt to hinder Germany's financial transactions by tracking down and freezing German assets worldwide.⁵¹ The Operation was a result of The Bretton Woods Agreement which was passed at the International Money Conference in August 1944.⁵² The Swiss, however, refused to sign the agreement since the language offended their position of neutrality.⁵³ Instead of formally adopting the agreement, the Swiss did promise to cooperate in facilitating the return of looted property to its rightful owners.⁵⁴ While Operation Safehaven was under way, a settlement was reached in which the U.S. and Britain took \$60 million and the Swiss kept the rest of the estimated \$400 million held in Swiss banks.⁵⁵ Other German assets held in Switzerland were divided evenly between the Allies and the Swiss government.⁵⁶

The promise of cooperation was recently reaffirmed by new Swiss legislation that lifted banking secrecy laws in order to allow a thorough investigation.⁵⁷ Lifting banking secrecy laws for this investigative purpose was suggested immediately after the war, but was vehemently rejected by Max Oetterli, secretary of the SBA at that time.⁵⁸

50. The Operation brought together three American departments, only one of which, the Foreign Economic Administration, thought of it was a central part of its *raison d'être* . . . Safehaven developed from the talks held early in 1944 between the American Treasury and the Swiss Bankers' Association. The Americans "initially emphasized objectives connected directly with the prosecution of the war," but as they progressed, "tended to shift their direction and to concentrate on preventing the Nazis from caching their spoils for post-war use."

FAITH, *supra* note 20, at 126.

51. The American and British governments warned neutral governments about buying gold from the Germans and refused to recognize any such transactions at the end of the war. Dr. L. von Castelmur, *The Washington Agreement of 1946 and Relations Between Switzerland and the Allies After the Second World War* (visited Mar. 5, 1997) <<http://www.swissembassy.org.uk/news/castelmr.htm>>.

52. FAITH, *supra* note 20, at 125.

53. *Id.* at 129.

54. *Id.*

55. Daniel Jeffreys, *Nazi Gold Trail Turns Fiction into Fact*, INDEPENDENT, Sept. 8, 1996, at 13. The amount was estimated by the Allies. *Id.*

56. *Id.*

57. *See infra* note 74.

58. Gumbel, *supra* note 18. The Swiss Banker's Association adopted their position during the war "which became standard over the next decades: that

In accordance with the promise to cooperate, under the Washington Agreement of 1946,⁵⁹ Switzerland paid the Allies 250 million Swiss francs in gold.⁶⁰ The Swiss estimated that they held 250 million Swiss francs at the end of the war that was unaccounted for as a result of the war. Two hundred fifty million Swiss francs was also the amount the Swiss claimed for compensation for the assets that their citizens lost to Germany.⁶¹ The terms of the Washington Agreement were not completed until 1953 when the Allies received 121.5 million Swiss francs and renounced their rights to German assets in Switzerland.⁶²

The Tripartite Commission was set up to disburse the gold received by the Allies from these settlements.⁶³ The money remaining in the fund was supposed to be distributed early in 1997, and the commission was scheduled to cease to operate.⁶⁴ The \$68 million in the fund was recently frozen in place.⁶⁵ The money may be used to start the fund to compensate Holocaust victims.⁶⁶

Even after the settlement in 1953, questions still remained with regard to lost accounts. As a result of political pressure, the Swiss passed legislation in 1962 to establish a registration office inside the Justice Ministry, giving people ten years to make claims.⁶⁷ Almost all of the 7,000 claims made were rejected.⁶⁸ The process the legislation prescribed was faulty.⁶⁹ One reason many claims were

abolition of secrecy would lead to a wholesale withdrawal of funds by foreigners and that any such withdrawal would prevent the banks' supporting the many bond issues required to cover the government's unprecedented wartime deficits." FAITH, *supra* note 20, at 137.

59. Signed in May 1946 following a year and a half of negotiations. FAITH, *supra* note 20, at 131.

60. Article II.2 of the Washington Agreement stated, [t]he Allied Governments declare on their part that, in accepting this amount, they waive in their name and in the name of their banks of issue all claims against the Government of Switzerland and the Swiss National Bank in connection with gold acquired during the war from Germany by Switzerland. All questions relative to such gold will thus be regulated.

Dr. L. von Castelmur, *supra* note 51.

61. FAITH, *supra* note 20, at 140.

62. Dr. L. von Castelmur, *supra* note 51.

63. David Sanger, *Looted Gold Might Go to Holocaust Reparations; U.S., France and U.K. Freeze \$68 Million from Wartime Fund*, INT'L HERALD TRIB., Feb. 5, 1997, at 1 [hereinafter *Reparations*].

64. *Id.*

65. *Id.* It is believed to be money stolen from national reserves in central banks, but its source is actually impossible to determine. *Id.*

66. *Id.*

67. Gumbel, *supra* note 18.

68. *Id.*

69. *Id.*

rejected was that the legislation excluded all individuals living in then-communist Eastern Europe, regardless of the fact that these individuals may have had valid claims.⁷⁰ Furthermore, there was no final report generated by the registration office, and there was no type of regulation to ensure that banks reported all the possible accounts involved.⁷¹ The difficulty with the investigation was summed up by Rolf Block, president of Swiss Bank Corp., when he said, “[y]ou’ll never be able to prove 100% that there’s nothing left. It’s like the Loch Ness Monster. You don’t really know if it exists, and if so how big it is—but it keeps appearing.”⁷²

In spite of Block’s analogy, the Swiss have again yielded to political pressures by altering their banking secrecy laws. A Federal Decree of December 16, 1996, “Concerning the Historical and Legal Investigation of the Fate of Assets Which Reached Switzerland as a Result of Nationalist Socialist Rule,” (“Decree” or “Federal Decree”) was passed by the Federal Council⁷³ and the Federal Assembly⁷⁴ in Switzerland. The Decree lifted the banking secrecy laws for purposes of investigating those assets which were transferred to “banks, insurance companies, attorneys, notaries, fiduciaries, asset managers or other physical or legal persons or groups of persons . . . or were received by the Swiss National Bank.”⁷⁵ The Decree also established a commission of experts⁷⁶

70. *Id.*

71. *Id.*

72. Gumbel, *supra* note 18.

73. The Federal Decree was passed December 13, 1996. *Federal Decree of December 13, 1996 Concerning the Historical and Legal Investigation of the Fate of Assets which Reached Switzerland as a Result of National Socialist Rule* (visited 3/5/97) <<http://www.swissembassy.org.uk/news/decree.htm>> [hereinafter *Federal Decree*]. Federal Council is the upper house of parliament. *Swiss Government Backs Bill to Lift Nazi Assets Secrecy*, AGENCE FRANCE PRESSE, Sept. 16, 1996 [hereinafter *Government Backs Bill*].

74. The Federal Assembly is the lower house of parliament. The bill was passed unanimously by the Assembly in September 1996. *Government Backs Bill*, *supra* note 73.

75. *Federal Decree*, *supra* note 73, at Art. 1.1.

76. Article 2 of the Decree states:

Article 2 Execution of the Investigation

1. The Federal Council will appoint an independent commission of experts charged with conducting the historical and legal investigation of the extent and fate of assets under Article 1. Experts from various field will form the commission.

2. The commission of experts will regularly inform the Federal Council on the progress of their work, especially if, during the course of the investigation, specific indications relating to claims covered by Article 1 emerge.

Id. at Art. 2.

to investigate claims. In order to expedite the investigation, the commission was granted access to all records pertaining to the dormant accounts.⁷⁷

Article 5 distinguishes this legislative initiative from those taken in the past to deal with this issue; this crucial element may make feasible the task of determining how much money has been held illegitimately by Swiss banks. The article, entitled "Obligation to Grant Access to Records," reads as follows:

1. The persons and institutions mentioned in Article 1, their legal successors as well as authorities and government offices are obligated to grant access to all records pertaining to the investigation to the members of the commission of experts appointed by the Federal Council and researchers appointed by them.
2. The obligation to grant access to the records takes precedence over any legal or contractual secrecy obligation.⁷⁸

What records actually still exist, and whether banks will be forthcoming with their compliance are both issues that remain unanswered. Article 4 of the Decree proscribed the destruction of existing records that could be useful during the investigation,⁷⁹ and Article 9 set forth the punishments for violation of the Decree.⁸⁰

There has been one widely publicized report regarding the destruction of documents in violation of the recent Federal Decree.⁸¹ A guard at Switzerland's biggest bank, Union Bank of Switzerland (UBS), gave to Swiss Jews documents that were going to be shredded which he thought could help the investigation of

77. *Id.* at Art. 5.

78. *Id.* at Arts. 5.1 and 5.2.

79. Art. 4, entitled "Obligation to Preserve Records" reads: "Actions by which existing records that could be useful to the investigation covered by Article 1 are destroyed, transferred abroad or otherwise made less accessible are prohibited." *Id.* at Art. 4.

80. Article 9, entitled "Criminal Provisions" states,

1. Whoever deliberately contravenes Article 4 or a decision made under Article 5, Paragraph 1, will be punished by imprisonment or a fine of up to 50,000 Swiss francs. If the contravention is negligent, the punishment will be a fine of up to 10,000 Swiss francs.

2. The punishability for violations of official secrecy under Article 320 of the Criminal Code is reserved.

3. For infringements in business enterprises, Articles 6 and 7 of the Federal Law on Administrative Criminal Matters are applicable.

4. Prosecution is the responsibility of the Cantons.

Federal Decree, supra note 73, at Art. 9.

81. Greg Calhoun, *Suspicious Swiss Guard Gives Jews Bank Documents*, REUTER EUR. BUS. REP., Jan. 14, 1997, at 12.

lost Holocaust accounts.⁸² Officials of UBS acknowledged that the plan to shred wartime-era documents was "a clear violation of the government's ban on destroying material that could be important in the search for dormant Jewish accounts."⁸³ The bank has also stated, however, that no client documents were included so the documents were not relevant to the search for lost Jewish money.⁸⁴

The law prohibiting the destruction of banking documents, however, does not limit the prohibition to client documents.⁸⁵ The employee of UBS who ordered the shredding of bank documents from the pre-WWII era is under investigation for an alleged violation of the Final Decree of December 13, 1996, which prohibited such destruction.⁸⁶ Mr. Christopher Meili, the guard who thwarted the attempt to shred the pre-WWII documents, is under investigation for violating Swiss bank laws which prohibit the disclosure of records.⁸⁷

III. Recent Efforts Made to Uncover Jewish Assets

In addition to the legislation recently passed to lift banking secrecy, the SBA started its own initiative in September 1995 by opening a central contact office for those seeking to recover funds that they believe were confiscated during the war.⁸⁸ One commission was created by parliament to conduct investigations, and an outside, independent commission has also been granted access to files to research and conduct audits.

82. *Id.*

83. *Id.*

84. *Swiss Bank's Document Shredding Likely to Roil Issue of Jewish Assets*, CHIC. TRIB., Jan. 15, 1997, at 11.

85. *See supra* notes 79-80, and accompanying text.

86. *Swiss Banks and Nazis: Hearing of the Banking and Financial Services Committee* (transcribed in FED. NEWS SERV., June 25, 1997) (prepared testimony of Ambassador Borer).

87. *Id.* (prepared testimony of Mr. Christopher Meili). Mr. Meili was employed as a guard during a rebuilding project at the UBS. *Id.* While on his round at the bank, he noticed twelve push-carts full of very old documents in the shredding room. *Id.* After a cursory review of the documents, Mr. Meili concluded that the documents originated in the time period from which no documents were to be destroyed according to Swiss law. *Id.* He took the documents from the bank and turned them over to the Zurich Jewish Community. *Id.*

88. Cook, *supra* note 1, at 49.

A. Claims Process

The Federal Banking Commission agreed to a new claims process in June 1997 which effectively superseded the process implemented in January 1996 involving the Central Contact Office.⁸⁹ The reports from continuous investigations have made the complexity of the task clear. The original plan of a Central Office will not be sufficient. Rather, a four-step process is now in progress which replaced the first method for uncovering owners of assets.

The Central Contact Office, which opened on January 1, 1996, is run by the banking ombudsman in Zurich, Hanspeter Haeni.⁹⁰ The banking ombudsman is an official elected by parliament.⁹¹ An ombudsman investigates reported complaints (as from students or consumers), reports findings, and helps to achieve equitable settlements.⁹²

The office was established in response to pressure from Jewish groups to facilitate the investigation concerning specific claims of Holocaust victims.⁹³ Haeni received 1,650 inquiries in the last year.⁹⁴ In the process of conducting searches, however, money has been traced to people who were neither Holocaust victims nor related to people persecuted by the Nazis.⁹⁵ Haeni also noted that although there a search service fee is charged by the office, it has been waived in more than 100 cases for potential claimants who could not afford it.⁹⁶

The new process, on the other hand, is much more accessible to claimants.⁹⁷ Names have been published of all dormant

89. *Hearing of the Banking and Financial Services Committee, supra* note 86 (testimony of Paul Volcker).

90. Cooke, *supra* note 1, at 51.

91. WEBSTER'S NEW COLLEGIATE DICTIONARY 794 (1979) [hereinafter WEBSTER'S].

92. *Id.*

93. *Swiss Banks Receive 1,650 Inquiries Over Jewish Assets*, AGENCE FRANCE PRESSE, Feb. 24, 1997.

94. *Id.*

95. *Id.* "Haeni said in November that while 900 claims had been made and assets worth a total of 1.6 million Swiss francs (1.25 million dollars) traced in 11 cases, only 10,000 dollars of the money turned out to belong to Holocaust victims."
Id.

96. *Id.*

97. Simple claim forms are readily available, and contact points by means of 800 numbers and in many countries and cities, including, but not limited to, Israel, New York and Switzerland, have been established. *Hearing of the Banking and Financial Services Committee, supra* note 86 (testimony of Paul Volcker).

accounts in Swiss banks originating before 1945.⁹⁸ Names will be added to the list pursuant to the Volcker committee search.⁹⁹ Claims through the ombudsman will be added to the data base, and claims will be officially processed and sent to the appropriate bank.¹⁰⁰

B. *Commission Elected by Parliament*

The expert commission was created by the Federal Decree, and has been elected by the government.¹⁰¹ Its scope is the widest of those groups investigating the role of Switzerland and accounts lost during WWII.¹⁰² The elected commission has been coined the name, "the truth commission."¹⁰³ This commission was created to study not only the role of Swiss during WWII, but also its relations with other countries with respect to its banking system and policies.¹⁰⁴

C. *The Volcker Commission*

An agreement on May 2, 1996, between the World Jewish Restitution Organization¹⁰⁵ and the SBA declared that an independent auditor should be allowed "unfettered access to all relevant files in banking institutions regarding dormant accounts and other assets and financial instruments deposited before, during and immediately after the Second World War."¹⁰⁶ The seven-member commission was officially named the "Independent Committee of Eminent Persons," but has been referred to more often as the "Volcker Commission."¹⁰⁷ Their tasks have included

98. See <http://www.dormantaccounts.ch>

99. *Hearing of the Banking and Financial Services Committee*, *supra* note 86 (testimony of Paul Volcker).

100. *Id.* The claims to named accounts will be turned over to the new "claims reconciliation process." *Id.* An independent and objective international claims resolution panel will decide, under liberal rules of evidence, if a claim is valid. *Id.* The Swiss Banking Commission and the Volcker committee will both maintain supervision over the entire process.

101. *Federal Decree*, *supra* note 73, at Art. 2.1.

102. *C-Span: House Banking Committee Hearing*, December 14, 1996 [hereinafter *C-Span*] (testimony of Thomas Borer, Ambassador).

103. *Id.*

104. *Id.*

105. The World Jewish Restitution Organization was set up by the World Jewish Congress "to identify Jewish assets, confiscated by communist governments after World War II, and either return them to their rightful owners or donate them to Jewish charities." Cook, *supra* note 1, at 48.

106. *Id.* at 49.

107. *C-Span*, *supra* note 94 (testimony of Volcker).

retaining accounting firms, selecting a methodology for searching, and seeing to it that banks cooperate by implementing the process.¹⁰⁸

The investigation of the Volcker Commission is limited to dormant accounts.¹⁰⁹ The commission will not concentrate on any specific claims, as inquiries in the past have been conducted.¹¹⁰ The first meeting was held on August 14, 1996,¹¹¹ and the second meeting was held on October 18, 1996.¹¹² The commission has planned a two-phase process, intended to be complete by June 1998.¹¹³

During the first phase of the process, which the commission hopes to accomplish by the middle of 1997, historical data will be gathered and analyzed, Swiss banking practice of the war era and the present will be examined, and employee interviews will be conducted with both present and retired employees who may be in a position to have information regarding the treatment of dormant accounts.¹¹⁴ In addition, the commission will review past efforts used to uncover dormant accounts, and contract for pilot audits of four or five banks or banking offices representative of those which may have received money of persecuted persons.¹¹⁵ The Swiss affiliates of Arthur Andersen, KPMG Peat Marwick, and Price Waterhouse have been contracted to perform the audits.¹¹⁶ One private bank, one cantonal¹¹⁷ bank, one regional bank, and two offices of the three largest commercial banks will likely be audited.¹¹⁸

The second phase of the investigation entails an audit of all 450 Swiss banks.¹¹⁹ To determine the firms that would audit the banks, the committee considered the factors of expertise and international experience in forensic accounting as well as familiarity

108. *Hearings, supra* note 3 (prepared testimony of Hans J. Baer).

109. Marilyn Henry, *US Senator Blasts Swiss for Delaying WWII Investigation*, JERUSALEM POST, Oct. 17, 1996.

110. *C-Span, supra* note 102 (testimony of Volcker).

111. *Id.*

112. Henry, *supra* note 109.

113. *C-Span, supra* note 94 (testimony of Volcker).

114. *Id.*

115. *Id.*

116. Tani Freedman, *Netanyahu Agrees to Work with Swiss Over Looted Jewish Assets*, AGENCE FRANCE PRESSE, Jan. 31, 1997, available on LEXIS, Allnews Library, at *3.

117. A canton is a state of the Swiss confederation. WEBSTER'S, *supra* note 91, at 161.

118. *C-Span, supra* note 102 (testimony of Volcker).

119. *Id.*

with Swiss banking law and practice.¹²⁰ Three firms have been selected and employed not only because of the extent of the work involved, but also because of the need to avoid conflicts of interest.¹²¹ The committee plans to avoid any accounting firms investigating any institutions with whom they have an ongoing business relationship.¹²²

D. Difficulties with the Search

The auditing process will be difficult for a number of reasons. Over fifty years have passed since the time the accounts originated. Banking was different then, and over time individual banks have merged, some banks have gone out of business, and accounting systems have changed significantly.¹²³ Volcker suggested that detailed information has been lost due to the shift to automation in banking.¹²⁴

In addition to the problems presented by elapsed time, the veil of secrecy the accounts were established behind is a hindrance. Many deposits were made by a third person, an agent, who may have been a friend, lawyer, Swiss or non-Swiss.¹²⁵ The real beneficiary was even hidden from the bank.¹²⁶ A further complication arises from the fact that as the war became imminent, people may have given their money to alleged agents who did not even deposit the funds.¹²⁷ Even legitimate agents may not have kept adequate records, or they may have diverted funds illegally because they knew the beneficiaries were either untraceable or deceased.¹²⁸

In terms of tracing money, the role of other countries who aided the Swiss indicate the extent of the complications involved with tracing funds. Documents recently declassified and released show that Switzerland further facilitated the Nazi wartime economy by providing the means for Nazis to transfer money abroad.¹²⁹

120. *Id.*

121. *Id.*

122. *Id.*

123. *C-Span, supra* note 102 (testimony of Volcker).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *C-Span, supra* note 102 (testimony of Volcker).

129. *Swiss Not Acting in Good Faith: New York Senator*, AGENCE FRANCE PRESSE, Jan. 14, 1997 [hereinafter *Good Faith*]. Sen. D'Amato's office publicized the documents. *Id.*

Trade records for Portugal, for example, show that in 1940 less than 2% of its exports went to Germany, but within two years the figure reached 24.4%.¹³⁰ In addition, the Swiss National Bank of Bern sent 280 trucks to the Iberian Peninsula with tons of gold deposited by the Nazis in Switzerland.¹³¹ Switzerland served as the middleman after the Allies warned that transactions involving the shipment of gold to Spain and Portugal would not be tolerated.¹³² The amount of gold involved in trades and the origin of the gold may be revealed via the lifting of the Swiss banking secrecy laws. Even though banks in Portugal have agreed to study the matter, the archives of the banks in Portugal are protected by strict secrecy laws.¹³³ Although a bank official in Portugal has stated that all the gold may be attributed to legitimate trade,¹³⁴ determining whether it in fact is, or is not, will be difficult.

IV. International Influence Forces Swiss to Act

The Swiss government undoubtedly lifted banking secrecy laws as a result of international pressure. The countries that have been involved in the investigations have been both interested in and, for the most part, outraged by the information that has been gathered. The reputation of Switzerland has indeed been damaged. Switzerland faces a long road ahead as it tries to untangle this complex issue which has important legal and economic ramifications.

A. Senator D'Amato Leads the Crusade in the United States

Senator Alfonse D'Amato (R-NY), Chair of the U.S. Senate Banking Committee, held hearings in April and October of 1996 in which testimony of the witnesses revealed the Swiss service to the Reich.¹³⁵ D'Amato has certainly been on the offense with respect

130. Marlise Simons, *The Ghost of Nazi Gold Returns to Haunt Lisbon*, INT'L HERALD TRIB., Jan. 11, 1997, at 1.

131. *Good Faith*, *supra* note 129.

132. *Swiss Defend Wartime Gold Shipments to Iberia*, REUTERS N. AM. WIRE, Jan. 13, 1997, at 10.

133. Simons, *supra* note 130, at 1.

134. *Id.*

135. McGeary, *supra* note 2, at 40. The witnesses included: Representative Benjamin A. Gilman (R-NY), Chairman, House International Relations Committee; Stuart Eizenstadt, Undersecretary of Commerce for International Trade; Edgar Bronfman, President, World Jewish Congress, and Chairman, World Jewish Restitution Organization; Avraham Burg, Chairman, Jewish Agency for Israel; Greta Beer, Claimant to Funds; and Hans Baer, Chairman, Julius Baer Bank and Baer Holding, Ltd., and Member, Swiss Bankers Association Executive Board. *Hearings*, *supra* note 3.

to investigating the issue of lost bank accounts. He has been especially critical of the fact that the Volcker commission¹³⁶ may take up to five years to publish a report.¹³⁷ The Federal Decree has been enacted for a period of five years in order to allow enough time for the investigations.¹³⁸ Government officials stated that they expect the report to be out within about three years.¹³⁹ In addition, in defense to the attack regarding the amount of time the investigation may take, Thomas Borer, ambassador, stated, “[the] Swiss behave like watch-makers. If we have a problem, we think about it, we try to do serious and thorough work. We will make a wonderful watch to show the world in two to three years. But people want it in two to three months.”¹⁴⁰ The pressure is mounting from within Switzerland as well as from abroad.¹⁴¹ As a result of the tension, Paul Jolles, a retired diplomat who served on the delegation to negotiate the 1946 Washington Accord¹⁴² voiced concern over a possible breakdown between U.S. and Swiss relations.¹⁴³

There are good reasons to be concerned about relations between the U.S. and Switzerland. The Swiss have been forced to act by Americans, but even when the Swiss government cooperates, they continue to be berated as a result of recently declassified information about their past. Stuart Eizenstadt, Chairman of the Clinton Administration Probe into Nazi Assets, pointed out that it is not appropriate to judge the Swiss today based on the activities of their predecessors.¹⁴⁴ On the other hand, he added that it is reasonable to hold the Swiss accountable for how they handle the issues as information is revealed.¹⁴⁵

The threat by Americans to boycott Swiss banks certainly strained relations. The boycott would have affected 196 foreign

136. See *supra* note 97-114 and accompanying text.

137. *CNN Early Edition* (CNN television broadcast, Jan. 29, 1997) (interview with Sen. D’Amato (R-NY))[hereinafter *D’Amato Interview*].

138. See *Federal Decree*, *supra* note 73.

139. *C-Span*, *supra* note 102.

140. Roy Gutman, *Swiss Accounts Unraveling the Secrets*, *NEWSDAY*, Feb. 25, 1997, at A08.

141. *Id.*

142. See *supra* note 59-60 and accompanying text.

143. Gutman, *supra* note 140, at A08.

144. Thomas Friedman, *Swiss Must Face Up to What They Did During the War*, *TIMES-PICAYUNE*, Feb. 7, 1997, at B07.

145. *Id.*

banks, eight of which are Swiss.¹⁴⁶ Two proposed laws dealt with the possible boycott.¹⁴⁷ One law suggested withdrawing New York City funds from Swiss banks until the compensation fund was formed.¹⁴⁸ The second proposed law would force Switzerland and other non-American New York City banks to “quit the city” if they refuse to comply with requests of auditors and if they are suspected of holding assets of Holocaust victims.¹⁴⁹ Although the Swiss originally rejected the idea of setting up an interim fund to help Holocaust survivors, in the face of threats such as the boycott, they have acquiesced to such demands.¹⁵⁰ The banks agreed to set up a fund of \$70 million.¹⁵¹

The threats have clearly produced results. The future productivity of the antagonistic relationship will be a concern. Eizenstadt noted that a boycott of Swiss banking would be counter-productive because damage to the Swiss banking system would be detrimental to the world economy.¹⁵² Perhaps an actual boycott would hurt the U.S. economy, but the mere threat may have been productive, since the Swiss responded. International relations, however, will certainly be strained.

Other action in New York with respect to the Swiss banks has included a class action lawsuit which was filed in October 1996 to seek recovery of lost account funds.¹⁵³ The suit seeks up to \$7 billion.¹⁵⁴ This suit will likely be adjudicated after the investigations and audits are complete. It would not be surprising, however, if agreements between the countries would bargain away the right to such claims.

146. *Switzerland Tries to Cool Tempers Over Holocaust Gold*, DEUTSCHE PRESSE-AGENTUR, Jan. 31, 1997.

147. *Id.*

148. *Id.* This proposal would affect \$225 million deposited with a subsidiary of the Credit Suisse Group, C.S. First Boston, Inc. *Id.*

149. *Id.*

150. Gutman, *supra* note 140, at A08.

151. *Id.*

152. Marcus Kabel, *Swiss Banks Say They are Rushing on Holocaust Fund*, REUTERS AM. WIRE, Jan. 30, 1997 [hereinafter *Fund*].

153. James Gillaspy, *Five Decades after the Holocaust, Survivors and Victims' Families are Fighting to Regain the Wealth Taken by Nazis and Secured in Secretive Swiss Banks. In an Effort to Settle Accounts, They're Battling to Reclaim their . . . STOLEN FORTUNES*, INDIANAPOLIS STAR, Feb. 23, 1997, at A01.

154. *Id.*

B. Secret Agreements

According to a 1950 statement from the then-foreign minister of Switzerland, the country struck a post-war deal with Poland,¹⁵⁵ in that "heirless property of Polish citizens in Switzerland was to be deposited in a Swiss bank account for the Polish National Bank and that the Polish government had agreed to take over the obligations it owed Swiss citizens, banks and life insurance companies."¹⁵⁶ The agreement broke the laws of Poland, and Poland has been trying to analyze the situation to come up with a way to resolve the problem.¹⁵⁷

According to reports out of Poland, the agreement between Poland and Switzerland was legally flawed. The agreement was not ratified by the Polish parliament, and the way the money was accepted was unlawful because inheritance proceedings were not conducted.¹⁵⁸ The money was used to compensate "Swiss nationals whose assets had been seized in communist Poland."¹⁵⁹

Revealing the names of the account holders affected by the Polish agreement falls within the exception to the banking secrecy laws in the Federal Decree. Both countries admit that the secret deal was wrong, but who should compensate whom and how much poses an interesting dilemma. Swiss citizens who received money as a result of the deal have a bona fide claim to the funds they received. It would, of course, be close to impossible to trace the money and even if it could be done, the people who received the money did so in good faith from their government. Whether Switzerland should pay those citizens what it would have owed presents a problematic legal issue. They struck a deal with Poland, and probably benefitted from it, so it may be proper to demand that the Swiss pay each claimant. On the other hand, the deal was more complicated and involved more than just lost accounts. Poland made the deal because they had seized Swiss assets. It is possible that one side benefitted more than the other; however, if one assumes an arm's length transaction, it would seem that each

155. Arthur Spiegelman, *Jewish Group Demands Restitution from Swiss*, REUTER EUR. BUS. REP., Oct. 18, 1996.

156. *Id.*

157. *Switzerland to Reveal Names of Deceased Account Holders*, POLISH NEWS BULL., Jan. 16, 1997.

158. *Poland to Try to Put Right 1949 Swiss Bank Deal*, REUTERS N. AM. WIRE, Jan. 7, 1997.

159. *Id.*

side received something of comparable value. In that case, Poland may have the duty to "reimburse" the heirs of its citizens whose property rights the Polish government bargained away. It would seem logical to hold Switzerland accountable for the difference between the amount of money the Polish citizens lost, and the amount it still owes them. It may also make sense to hold Poland accountable for the balance due to its own citizens based on its participation in the deal. Further investigations may make this particular matter more clear.

C. *Reasons for Swiss Action are Important*

The fact that Switzerland has taken action (e.g., by enacting the Federal Decree and setting up the interim fund), only in response to international pressure has not helped the country's reputation. One might argue that as long as action has been taken and progress is made, the motive behind the action is irrelevant. On the other hand, the motive behind the action may be important in terms of trustworthiness. True cooperation and a forthright attitude have been displayed on one front,¹⁶⁰ but at the same time, a number of incidents have exposed another attitude among the Swiss.

Conflicting messages have been reported not only from among Swiss government officials, but also from some officials who have contradicted themselves. Carlo Jagmetti, former Ambassador for Switzerland to the United States, made a statement that Switzerland was considering setting up a compensation fund¹⁶¹ (before Switzerland announced that it had decided to set up such a fund). Jagmetti also wrote in a confidential memo that was revealed by an unknown source, that the Swiss government should "wage war" against "charges that Swiss banks failed to account for missing funds of World War II Holocaust victims."¹⁶² Jagmetti resigned as ambassador following the publication of the memo.¹⁶³ In an interview on January 31, 1997, Jagmetti spoke in support of a legal approach to the issues which would include a series of formal

160. *C-Span*, *supra* note 102.

161. David Sanger, *Swiss Role as the Nazis' Banker Jolts an Embassy to Life*, INT'L HERALD TRIB., Jan. 21, 1997, at 5.

162. *National Press Club Morning Newsmaker* (transcribed in FED. NEWS SERV., Jan. 31, 1997) [hereinafter *Jagmetti Interview*] (interview with Carlo Jagmetti following his resignation).

163. *Id.*

agreements.¹⁶⁴ The first report by the Volcker commission,¹⁶⁵ then subsequent conferences in 1998 (the International Conference) and the conference planned in Geneva would all serve as a basis to establish the facts.¹⁶⁶ An international law approach will be essential due to the fact that many governments were and have been involved.¹⁶⁷

The Economics Minister Jean-Pascal Delamuraz¹⁶⁸ was asked to resign by the socialist party because of his assessment of requests to set up the interim recovery fund.¹⁶⁹ He was quoted as saying that the demands amounted to "blackmail," and furthermore that setting up the fund would be an admission of guilt.¹⁷⁰

The incident involving the shredding of documents in violation of the Federal Decree combined with the resignation of two Swiss officials have provided reasons to doubt the extent to which the Swiss are really willing to cooperate. They took a big step when they lifted the secrecy laws, but it seems dubious that the Decree will be enough; it merely provides the legal means to allow investigations. Cooperation by the Swiss will be essential for the process to be successful.

D. Was Lifting the Secrecy Laws an Appropriate Measure?

Since only 26 of 500 banks responded to the government-mandated sweep of accounts in 1962,¹⁷¹ and recently released documents have further implicated the Swiss in improper behavior, lifting secrecy laws seems appropriate. The outside research and audits will add an element of legitimacy to the process that was missing in the past.

To protect clients of Swiss banks, the accounting firms are required to adhere to "banking secrecy laws on the diffusion of information concerning the identity of clients."¹⁷² Clients may

164. *Id.*

165. *See supra* notes 118-128.

166. *Jagmetti Interview, supra* note 162.

167. *Id.*

168. There are seven ministers in the Swiss federal government: five from the political right and two socialists. They have a rotating presidency held by one minister, and Delamuraz held it until the end of 1996. Serge Romensky, *Political Crisis Looms Over Swiss Involvement in Nazi gold*, AGENCE FRANCE PRESSE, Jan. 26, 1997.

169. *Id.*

170. *Id.*

171. Peter Nielsen, *Swiss Banks May have More Holocaust Money*, REUTERS N. AM. WIRE, Jan. 31, 1997. *See also, supra* notes 67-71 and accompanying text.

172. Freedman, *supra* note 116.

have reason to be concerned about the adherence to the secrecy laws, again based upon recent events including the violation of the Federal Decree with the incident of destruction of wartime documents, and the publication of the confidential memo, which also carries with it legal penalties.¹⁷³

V. Conclusion

The Swiss now face a moral dilemma. They cannot move toward a solution without criticism from the outside. There is every indication that it will be impossible to trace specific accounts to heirs in order to return money to individuals. That does not mean that the best effort should not be made. Indeed, the Swiss have done so by lifting their banking secrecy laws for that purpose.¹⁷⁴ When money is unaccounted for, and the claimants cannot be identified, two possibilities exist—either the money could have belonged to a Holocaust victim or not. Therefore,, whether the money should be transferred to a relief fund set up to benefit Holocaust survivors will come into question.

As a matter of moral obligation, the Swiss should make every attempt to mitigate the impact they had on the hardship of Holocaust victims. Since the Swiss have taken action to investigate, and to facilitate the investigations by outsiders, it seems unfair to ask for additional sacrifice. It does not seem reasonable to expect answers or results immediately, regardless of the unfortunate circumstances of particularly aged victims. It is easy to sympathize with the victims and lay the responsibility on the Swiss government, but this is a complicated matter. It cannot be, and should not be expected to be, solved in a short period of time.

Outside forces ought to be pleased that the Swiss have finally lifted their banking secrecy laws. Furthermore, the Swiss government should be given credit for passing the Decree through parliament within six months from the time it was proposed. Swiss behavior during WWII may remain under fire, but the action taken seems appropriate under the circumstances. The emotional outrage among people is certainly understandable, but substantial progress is at long last being made toward a resolution.

Kathryn H. Lamont

173. *Jagmetti Interview, supra* note 162.

174. *See Federal Decree, supra* note 73.

