

HITLER'S SEED MONEY AND THE LEGAL STRUGGLE TO GET IT BACK

A

PANEL

DISCUSSION

Paul Kerson, Sebastian Schuetz,
and Marc Leavitt (standing)
Joseph Yamaner and
Ronnie Mandowsky (seated)



Hergenhan Auditorium
Newhouse III

Friday, Nov. 5, 2010
4 - 6 p.m.

A reception will follow in the lobby.

UNPRECEDENTED LEGAL QUEST

The seizure of Ignatz Nacher's corporate empire in 1934 was perhaps the largest theft of Jewish property in history. The book *Die Dresdner Bank und der Reichsführer* documents the bank's role as Nazi agent taking over Jewish businesses in the early 1930s. A picture (p. 3) shows a dapper Herr-Director Nacher in front of one of his brauhauses. Having invented pasteurization of beer, Nacher owned a majority interest in Engelhardt Breweries, the second largest German conglomerate of factories and beer gardens. The 1934 theft at gunpoint by agents of Dresdner Bank in a police dungeon, where Nacher was fraudulently imprisoned, is documented in Nuremberg trial transcripts. He signed over his interest for a pittance, and died in Switzerland in 1939. Hitler used this booty to finance World War II.

In 1994, a long legal struggle for justice began in Queens, NY, when the partners of a small law firm met with Ferdinand Nacher, then 93, the nephew, protégé, heir, and executor of Ignatz. The legal saga involved six countries, the former US ambassador to Germany, Sebastian Schuetz - son of the former German ambassador to Israel, titans of German industry, President Clinton and his chief negotiator for Holocaust reparations Stuart Eisenstat, former ACLU Director Burt Neuborne, Michael Berebaum of the US Holocaust Museum, the \$5 billion "Slave Labor" settlement, Senator Alphonse D'Amato, Congressman Jerrold Nadler, Kenneth Feinberg, former Attorney General Nicholas Katzenbach and others.

After 14 years, this unprecedented legal quest was victorious in Germany! Every living Holocaust survivor received a payment of reparations, and 22 descendants of Ignatz Nacher continue to receive payments. On Friday Nov. 5, at 4 p.m., in the Hergenhan Auditorium in Newhouse III, the lawyers representing the Nacher estate, including Sebastian Schuetz, and the executor, will review this story, hear reactions from leading Syracuse faculty, and consult with the audience.

HITLER'S SEED MONEY AND THE LEGAL STRUGGLE TO GET IT BACK

Nacher v. Dresdner Bank (In Re Nazi Era Cases) (Mandowsky/Nacher v. Dresdner Bank)

This story is so fantastic, so unbelievable, so outside the realm of experience that we would not believe it ourselves had we not lived through 14 years of the *Nacher v. Dresdner Bank* and related litigation, from 1994 through 2008. NY Supreme Court, Queens County, Index #10193/94; 198 F.R.D. 429 (D.N.J. 2000); 213 F. Supp. 2d 439 (D.N.J. 2002); 236 F.R.D. 231 (D.N.J. 2006); 240 Fed. Appx. 980 (3d Cir. 2007); cert. den. 552 U.S. 1098 (2008).

It all started when Rabbi Meyer Perlmutter of the Reform Synagogue of Forest Hills, NY, asked a congregant, our law partner Marc Leavitt, to help a 93 year old man bearing a personal tragedy of life-time proportions. Ferdinand Nacher's uncle Ignatz Nacher (credited with inventing pasteurization of beer) had been the majority owner of Englehardt Breweries, Inc., one of Germany's largest brewery, hotel and restaurant companies. In 1934, this industrial empire had been stolen at gunpoint by agents of the Dresdner Bank as agent for the Nazis. The proceeds of perhaps the largest theft of Jewish property in history were used to finance the Reign of Terror against the globe we have come to know as World War II.

Ferdinand was the Executor of his Uncle Ignatz's Estate. He meticulously saved all the documents of unlawful seizure. When we met him, this frail but determined man was living on his Social Security payments and modest investments in his small rent-controlled Forest Hills apartment. His family had once been among the wealthiest in Europe. Ferdinand (and Ignatz) had been forcibly ejected from Germany in 1934, and he never got over this experience. For 60 years, he tried to get his family's property back by writing letters to various American and German Government authorities and pursuing unsuccessful lawsuits. A modest settlement for the West German properties had been received in 1956, but no recovery whatsoever for the East German properties had been paid as of 1994.

The Dresdner Bank maintained a branch in New York City. This is the story of how Paul Kerson crafted an ingenious strategy to pursue the Nacher claims in New York Supreme Court while avoiding defenses including statute of limitations and the anticipated objection of the U.S. government.

It is the story of how we obtained German co-counsel via the German consulate in New York – Sebastian Schuetz, a Hebrew-speaking Berlin lawyer who grew up in Israel, the son of the German Ambassador and later Mayor of Berlin. It is the story of parallel proceedings with post-reunification agencies of

the German Government including meetings with officials who were sincerely sorrowful for what the Nazis did, and trips throughout the former East Germany to inspect and catalogue countless for Engelhardt properties.

It is the story of how, after Ferdinand's death, Joseph Yamaner with assistance of Tali Sehati successfully located Nacher heirs worldwide and convinced them to produce critical documentation necessary to continue the domestic lawsuit as well as the proceedings in Germany that that continue to provide the Nacher family with restitution.

Our law firm was the first to start litigation anything even remotely like this. This is the story of how we (years before the Swiss Bank revelations) inspired 56 other cases around the United States primarily involving so-called "slave labor" (often based on little or no hard evidence), of how the U.S. government took over all 57 and tried to settle all the Holocaust claims in the entire world with a \$5 billion fund assembled from dozens of German corporations and the German Government. And how Ronnie Mandowsky, Ferdinand's grandnephew, understanding the "monkey wrench" he held that could bring the juggernaut to a halt, reluctantly agreed to withdraw the lawsuit and submit the family claims to the German Foundation for Remembrance, Responsibility and the Future.

Ironically, while the German government acknowledged and compensated those deprived of East German real estate by the Nazis, the joint corporate/government entity specifically created to achieve "legal peace" for the crimes of the century shockingly denied the Nacher claims entirely. And we fought all the way to the Supreme Court to try to restore them.

This is a story of hope, of faith, of courage, of teamwork, of law, of politics, of history, of government, of international finance, of ethics, of war and of imagination. It defies specialization of any type. It involves most of the subjects of a standard American law school curriculum – trusts and estates, criminal law, civil procedure, Constitutional Law, international law, torts, contracts, property, administrative law, evidence, corporations and commercial law.

While we have told the story of *Nacher v. Dresdner Bank* at several universities as guest lecturers, this is the first time we will be telling our Queens Bar Association colleagues exactly how we did what we did. There can be no doubt that this will be the most gripping and fascinating CLE that can be imagined. It is also a stark reminder that all the subjects of law are completely interrelated.

I. Citations for the legal theory behind the original Queens County Supreme Court Summons and Complaint, Index No. 10193/94.

-New York State Penal Law Section 165.54 (criminal possession of stolen property in first degree, a B felony.)

-New York State Penal Law Section 190.65 (scheme to defraud in the first degree, an E felony).

-New York State Banking Law Sections 200 and 201 (foreign banking corporations).

-New York State Banking Law Section 200-b(1) (actions maintained against foreign banking corporations).

-New York Civil Practice Law and Rules (CPLR) Sections 213(2) and 213(8) (Statute of Limitations).

-22 U.S.C. Sections 1644-1644m (claims against German Democratic Republic) (commonly known as the former East Germany)

II. Cases, Statutes, Court Rules and Treatises cited in the U.S. District Court in New Jersey and the U.S. Court of Appeals, Third Circuit.

Cases:

-*Alperin v. Vatican Bank*, 410 F. 3d 532 (9th Cir. 2005)

-*Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691 (1962)

-*Banco Ambrosiano SBA v. Artoc Bank & Trust Ltd.*,
62 N.Y. 2d 65, 476 N.Y.S. 2d 64 (1984)

-*Banco Nacional De Cuba v. Sabbatino*,
376 U.S. 398, 84 S. Ct. 923 (1964)

-*Bros. Inc. v. W.E. Grace Manufacturing Co.*, 320 F. 2d 594 (5th Cir. 1963)

-*Gross v. German Foundation Industrial Initiative*,
456 F. 3d 363 (3d Cir. 2006)

-*Indosuez International Finance BV v. National Bank Reserve*,
98 N.Y. 2d 238, 746 N.Y.S. 2d (2002)

-*Japan Whaling Association v. American Cetacean Society*,
478 U.S. 221, 106 S. Ct. 2860 (1986)

-*J. Zeevi and Sons Ltd. v. Grindlays Bank (Uganda) Ltd.*
37 N.Y. 2d 220, 371 N.Y.S. 2d 892 (1975)

-*Katic v. Karadz*, 70 F. 3d 232 (2d Cir. 1995)

- Klapprott v. United States*, 335 U.S. 601, 69 S. Ct. 384 (1949)
- Lambert Run Coal Co. v. Baltimore and Ohio Railroad*,
258 U.S. 377, 42 S. Ct. 349 (1922)
- In Re: Nazi Era Cases*, 198 F.R.D. 429 (D.N.J. 2000)
- In Re: Nazi Era Cases, (Mandowsky/Nacher v. Dresdner Bank)*
236 F.R.D. 231 (D.N.J. 2006)
- Matter of Emergency Beacon Corp.*, 666 F. 2d 754 (2nd Cir. 1981)
- Republic of the Philippines v. Marcos*, 806 F. 2d 334 (2d Cir. 1986)
- Texas Industries, Inc. v. Radcliff Materials, Inc.*,
451 U.S. 630, 101 S. Ct. 2061 (1981)
- Trade Arbed, Inc. v. African Express MV*,
941 F. Supp. 68 (E.D. La. 1996)
- U.S. v. McDonald*, 86 F.R.D. 204 (N.D. Ill. 1980)

Federal and State Statutes and Court Rules:

- Federal Rules of Civil Procedure, Rule 60(b)
- New York State Civil Practice Law and Rules (CPLR), Section 213
- New York State Banking Law, Section 200-b(1)
- New York State Penal Law, Section 165.54
- New York State Penal Law, Section 190.65
- New York Surrogate's Court Procedure Act (SCPA), Section 2203
- 28 U.S.C. Section 1441

Treatises:

- Alexander Hamilton, James Madison and John Jay,
The Federalist Papers, -No. 82, New American Library Edition,
edited by Prof. Clinton Rossiter, -New York, 1961, Page 493

III. Cases, Statutes and Treatises cited in the U.S. Supreme Court Certiorari

Petition

Cases:

- Auer v. Robbins*, 519 U.S. 452, 461-463, 117 S. Ct. 905, 137 L.Ed. 2d 79 (1997)
- Banco Ambrosino SBA v. Artoc Bank & Trust Ltd.*, 62 N.Y. 2d 65 (1984)
- Blatchford v. Native Village of Noatak*, 501 U.S. 775, 779 (1991)
- Chevron U.S.A. Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 842-845, 104 S. Ct. 2778, 81 L.Ed. 2d 694 (1984)
- Federal Maritime Commission v. South Carolina State Ports Authority*, 535 U.S. 743 (2002)
- Gonzales v. State of Oregon*, 546 U.S. 243 (2006)
- Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991)
- Indosuez International Finance BV v. National Reserve Bank*, 98 N.Y. 2d 238 (2002)
- In Re: Nazi Era Cases*, 198 F.R.D. 429 (D.N.J. 2000); 236 F.R.D. 231 (D.N.J. 2006); 2007 WL 2080439 (3d Cir. 2007)
- J. Zeevi and Sons Ltds. v. Grindlays Bank (Uganda) Ltd.*, 37 N.Y. 2d 220 (1975)
- Skidmore v. Swift & Co.*, 323 U.S. 134, 14, 65 S. Ct. 161, 89 L.Ed. 124 (1944)
- United States v. Mead Corp.*, 533 U.S. 218, 226-227, 121 S. Ct. 2164, 150 L.Ed. 2d 292 (2001)

Constitution, Statutes and Rules

- 21 U.S.C. Section 801
- 28 U.S.C. Section 1254(1)
- 28 U.S.C. Section 1331
- 28 U.S.C. Section 1407

- F.R.C.P. Rule 60(b)
- New York Civil Practice Law and Rules (CPLR), Section 209
- New York Civil Practice Law and Rules (CPLR), Section 213(2) and (8)
- New York Penal Law Sections 165.54 and 190.65
- New York Banking Law Section 200-b(1)
- Oregon Revised Statutes, Section 127.800 et seq.
- United States Constitution, Tenth Amendment

Treatises:

- Ron Chernow, Alexander Hamilton, The Penguin Press, New York, 2004, Pages 266-277
- Alexander Hamilton, James Madison and John Jay, The Federalist Papers, 1787-1788, Number 82 New American Library Edition, Edited by Prof. Clinton Rossiter, New York, 1961, Page 493
- Raul Hilberg, Professor of Political Science at the University of Vermont, The Destruction of the European Jews, revised and definitive edition, 1985, Holmes & Meier Publishers, Inc., New York, Pages 100-101, 104-122, 475, 572-574, 575, 577, 245 and 956

IV. Opposition Arguments advanced by the Dresdner Bank and the U.S. Justice Department

(a) Political Question Doctrine

- Baker v. Carr*, 369 U.S. 186 (1962)
- In Re Nazi Era Cases (Rozenkier)*, 334 F. Supp. 2d 690 (D.N.J. 2004)
- Hwang Geum Joo v. Japan*, 413 F. 3d 45 (D.C. Cir. 2005)
- In Re Nazi Era Cases (Gross)*, 320 F. Supp. 2d 235 (D.N.J. 2004), Revd 456 F. 3d 363 (3d Cir. 2006)

(b) The Foreign Policy Interests of the United States Government