

**Proposal for a *Cy Pres* Allocation for
Homosexual Victims of the Nazis**
(Corrected Version)

Case No. CV 96-4849 (ERK) (MDG)
(Consolidated with CV 96-5161 and CV 97-461)

Respectfully Submitted to
Special Master Judah Gribetz, Esq.
August 2, 2001
Corrected Version submitted on November 7, 2001

by the
PINK TRIANGLE COALITION

MEMBER ORGANIZATIONS OF THE PINK TRIANGLE COALITION:

Agudah (Association of Gay Men, Lesbians, and Bisexuals in Israel)
European Region of the International Lesbian and Gay Association
Homosexuelle Initiative Vienna
International Association of Lesbian and Gay Children of Holocaust Survivors
International Gay and Lesbian Human Rights Commission
Lesben- und Schwulenverband Deutschland
Magnus Hirschfeld Gesellschaft
Mémorial de la Déportation Homosexuelle
Pink Cross, Switzerland
World Congress of Gay, Lesbian, Bisexual, Transgender Jews

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NOTE: This proposal is a corrected version of the document submitted on August 2, 2001, to Judah Gribetz, Esq., the special master appointed by the United States District Court for the Eastern District of New York to recommend a plan of allocation for funds provided in settlement of the Holocaust Victim Assets Litigation (Swiss Banks).

Holocaust Victim Assets Litigation (Swiss Banks Litigation)

PROPOSAL FOR A *CY PRES* ALLOCATION FOR THE SUPPORT AND COMMEMORATION OF
HOMOSEXUAL VICTIMS OF NAZI PERSECUTION, EDUCATION AND RESEARCH ON THE
FATE OF HOMOSEXUALS IN NAZI GERMANY, AND THE PREVENTION OF HUMAN RIGHTS
VIOLATIONS ON THE BASIS OF SEXUAL ORIENTATION

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* Included only in the original submitted to Special Master Judah Gribetz, Esq.

Summary of Proposal

Historians face formidable obstacles in their efforts to trace funds held in Swiss banking institutions back to their origins in the proceeds of slave labor that homosexuals performed for the Nazi state or in assets that the Nazis seized from homosexual individuals and groups. Among these obstacles are the significant gaps in historical records maintained by the banking institutions, the Nazi regime's own destruction of the evidence of its activities, and the Nazis' use of front operations to launder looted assets. In addition, the affected class of victims itself was forced to remain silent even after the defeat of the regime: Unlike virtually all other groups targeted by the Nazis, homosexual men remained the objects of systematic, state-sponsored persecution after the end of World War II. This circumstance further stifled both historical research and efforts to locate survivors.

The plundering of the assets of homosexual individuals and groups by the Nazis like the plight of homosexuals in Nazi Germany in general has yet to be sufficiently researched. However, studies sponsored by the governments of the United States, Great Britain, and Switzerland, as well as research by historians and testimony by survivors of Nazi persecution, have confirmed that the Nazi state funneled to Switzerland an enormous volume of assets, including gold and revenues garnered through slave labor. Although research into the Nazi persecution of homosexuals has made significant progress over the past decade, it is not yet possible to reconstruct the entire history of assets that the Nazi regime looted from homosexuals and of the Nazis' enslavement of homosexuals for profiteering.

Nevertheless, these facts remain undisputed: At minimum, thousands of homosexuals performed slave labor for corporations and entities owned or controlled by the Nazi regime. Approximately 50,000 homosexual men were convicted, imprisoned, and persecuted by the Nazis under §175 of the Reich Penal Code. And homosexual individuals and organizations, much like other groups targeted by the Nazis, had their assets looted after being arrested, enslaved, tortured, or murdered. The Nazis both stole funds and generated funds through slave labor, then laundered substantial amounts of the resulting monies through Swiss banks. In addition, we can reasonably surmise that an unknown number of homosexuals, like members of other groups targeted for persecution by the Nazis, transferred funds to Swiss banks as a means of protecting their assets, but did not survive to claim them after the war.

Unlike virtually all the other groups targeted by the Nazis, the persecution of homosexuals did not end in 1945. After the war, governments in Europe and the United States did not acknowledge homosexuals as victims of Nazi terror; in fact, homosexual men continued to be hunted down, imprisoned, and persecuted in West Germany up until 1969 under the very statute used by the Nazis although concentration camps, torture and murder were no longer employed as means of punishment. For nearly a quarter of a century after the end of World War II, homosexual victims were still largely erased from history, many living in a climate of legally enforced silence and stifling private shame. It was not until 1984 that the very first public monument for homosexual victims in the Mauthausen concentration camp was even built. And until the year 2000, the government of Germany had not yet formally recognized homosexuals as a persecuted class.

Because of the immense post-war pressure to remain silent, most of the homosexual victims of the Nazi regime died before any compensation could be awarded, and few, if any, have heirs who can act on their behalf. The Pink Triangle Coalition believes that only a small proportion of the overall settlement amount is likely to be taken up by individual claims by

homosexual men. Therefore, we are proposing a *cy pres* allocation of one percent (1%) of the total settlement as an appropriate means of publicly acknowledging the suffering of homosexuals as a class under the Nazis and as an instrument to advance the prevention of human rights abuses based on sexual orientation from happening again.

The Pink Triangle Coalition, an international consortium of ten gay and lesbian advocacy organizations in association with the Astraea Lesbian Action Foundation, a U.S.-based charitable foundation that works to support homosexual advocacy groups around the world proposes the creation of a fund with four goals:

1. Providing material assistance to needy homosexual survivors of Nazi persecution, including those who may not have come forward in time for compensation under the current suit.
2. Supporting scholarly research aimed at more fully documenting the anti-homosexual crimes committed by the Nazi regime and at locating additional survivors of anti-homosexual persecution by the Nazis.
3. Promoting the education of students and the general public about the Nazi persecution of homosexuals. Such efforts might include, but are not limited to, curriculum development projects; websites; historical exhibits; public monuments; and the identification, preservation, and interpretation of historic sites.
4. Advancing efforts to prevent anti-homosexual persecution throughout the world today by supporting a diversity of educational, outreach, and awareness programs.

I. The Pink Triangle Coalition and the Astraea Lesbian Action Foundation

The Pink Triangle Coalition, formalized in February 1998 in Berlin, is an international coalition for coordinating affairs relating to the Nazi persecution of homosexuals. The Pink Triangle Coalition remains the sole international advocacy group for homosexual victims of the Nazis. The mandate of the coalition is two-fold:

- ¥ To ensure representation of the homosexual victims of the Nazis in the various international funds that are being or have been created (such as the Swiss Humanitarian Fund and the Nazi Persecutee Relief Fund) with a view to maximizing resources for educational projects and ensuring fair distribution of any such resources.
- ¥ To collect and disseminate information about the Nazi persecution of homosexuals with a view to involving other non-governmental organizations (NGOs) in the efforts at documenting the crimes and memorializing the victims.

Membership in the coalition is limited to international gay and lesbian NGOs and national organizations with particular experience in working on compensation issues or with relationships to the currently existing funds. The following organizations are members of the Pink Triangle Coalition (for more information, see Appendix 1):

- ¥ Agudah (Association of Gay Men, Lesbians, and Bisexuals in Israel), Tel Aviv
- ¥ European Region of the International Lesbian and Gay Association (ILGA-Europe)
- ¥ Homosexuelle Initiative (HOSI), Vienna
- ¥ International Association of Gay and Lesbian Children of Holocaust Survivors, USA
- ¥ International Gay and Lesbian Human Rights Commission (IGLHRC), San Francisco
- ¥ Lesben- und Schwulenverband Deutschland (LSVD), Berlin
- ¥ Magnus Hirschfeld Gesellschaft, Berlin
- ¥ Memorial de la Deportation Homosexuelle, Paris
- ¥ Pink Cross, Switzerland
- ¥ World Congress of Gay, Lesbian, Bisexual, and Transgender Jews (WCGLBTJ)

Representatives of the Pink Triangle Coalition were officially in attendance at the London Conference on Nazi Gold (1997), and a paper authored by the coalition was published in the official proceedings of the conference. The coalition also sent an official observer to the International Conference on Holocaust Era Assets, held in Washington, D.C. (2000). The coalition has secured allotments from various funds, including U.S. \$72,000 in 1999 and U.S. \$528,000 in 2000 from the International Nazi Persecutee Relief Fund administered by the United States Department of State.

Pink Cross, a Pink Triangle Coalition member, also was instrumental in securing the equivalent of U.S. \$1,300 from the Swiss Humanitarian Fund for each of seven survivors. Altogether, the member organizations of the Pink Triangle Coalition have secured more than U.S. \$9,000 for each of the known surviving homosexual victims, as well as *cy pres* allocations for education and historical research in excess of U.S. \$620,000. As with all the victim groups, these amounts represent only a small fraction of the revenues or proceeds transacted through Swiss banks from homosexual slave labor and only a small fraction of the funds likely looted by the Nazis from homosexuals and laundered through Swiss banks.

In February 1998, the Pink Triangle Coalition, together with the Heinrich B ll Foundation, Berlin, convened the Pink Triangle Colloquium, a historic two-day conference in Berlin. The colloquium brought together scholars, homosexual survivors of Nazi persecution, human rights activists, and policy makers to raise awareness and present new documentation about the persecution of homosexual men and women in Nazi Germany. The event drew more than 200 people from Europe and North America.

Established in 1977, the Astraea Lesbian Action Foundation is a U.S.—based public charity with a mandate to advance the economic, political, educational and cultural well-being of lesbians, their families, and their allies working for social justice. Astraea works to educate individuals about money, power, and giving; to expand the community of donors supporting lesbian and gay issues; and to raise funds and distribute them to appropriate organizations, individuals, and projects. Astraea s programs benefit lesbians, gay men, and all women and girls, both in the United States and internationally, by working to eliminate homophobia, racism, ageism, sexism, heterosexism, economic exploitation, and anti-Semitism.

Astraea s International Fund for Sexual Minorities was established through a donor-directed grant from the Heinrich B ll Foundation in Germany and through the initial efforts of the International Gay and Lesbian Human Rights Commission. The creation of this fund acknowledges the growing global movement for the human rights of homosexuals and the well-documented need to fight oppression based on sexual orientation and sexual identity. Over the past two-and-a-half decades, the Astraea Foundation has emerged as one of the most recognized foundations in the United States with a substantial international presence working on behalf of sexual minorities.

In 2000, the Astraea Foundation partnered with the Pink Triangle Coalition by serving as the coalition s fiscal sponsor and distributor of the U.S. \$528,000 awarded to the coalition by the United States Department of State from the International Nazi Persecutee Relief Fund. The Astraea Foundation has distributed the following funds consistent with the Pink Triangle Coalition s proposal to the Department of State:

- ¥ U.S. \$212,000 to the Magnus Hirschfeld Society (Berlin) to create a memorial on CD-ROM, on the Web, and in printed book form to document the Nazi destruction of the Berlin-based Institute for Sexual Sciences a world-renowned center for the study of sexuality and a key resource in efforts for homosexual legal and social reform in Germany from 1919 to 1933 as well as the effects of that destruction on the homosexual community.
- ¥ U.S. \$238,000 to Reflective Image (San Francisco) to distribute *Paragraph 175*, an award-winning documentary which premiered on the U.S. national cable channel HBO

in July 2000. The documentary features interviews with several gay men and one lesbian who survived Nazi persecution [see Appendix 2].

- ¥ U.S. \$30,000 to the Schwules Museum (Berlin) to underwrite an exhibition on underground gay life in Berlin during the twelve years of the Nazi regime.
- ¥ U.S. \$14,000 to seven needy homosexual survivors of Nazi persecution, through the efforts of the Pink Cross, Switzerland.

With regard to the present suit, the proposal hereby submitted for a *cy pres* allocation supercedes the proposal submitted on February 29, 2000, by ILGA-Europe on behalf of the Pink Triangle Coalition. The coalition withdraws its previous proposal to establish an autonomous foundation. Instead, the coalition now proposes to continue its relationship with the Astraea Foundation, which will serve as the coalition's fiscal sponsor. Together, the Pink Triangle Coalition and the Astraea Foundation will establish and administer a fund to execute the goals outlined in this document.

II. The Nazi Persecution of Homosexuals

The nature of the Nazi persecution of homosexuals, the Nazi regime's destruction of its records, and the continued state-sponsored persecution of homosexuals after World War II necessarily make incomplete any account of assets looted from homosexual individuals and groups by the Nazis and of funds generated by homosexual slave laborers under the Nazi regime. Because of these powerful extenuating circumstances, the majority of homosexuals who were persecuted by the Nazis have not been located and will probably never be found or accounted for. For this reason, based on the available documents and historical research, the Pink Triangle Coalition believes that a *cy pres* allocation in the amount of one percent of the common funds is warranted.

Although historians have not yet determined the exact scope of each of the anti-homosexual measures implemented by the Nazi state, it is nonetheless clear that homosexuals as a class suffered severe and extensive harm during the period 1933-1945 as a result of the policies and practices of the regime. As an overarching goal, the Nazis specifically sought to suppress all private homosexual conduct and all public expression of homosexual culture and community in Germany and the annexed territories.

Because the Nazi persecution of homosexuals was distinct in its methods, range and severity, the harm suffered by homosexuals under the Nazi regime differed markedly from that caused by the oppression of homosexuals in Germany in the pre- and post-Nazi periods and from that in other Western countries during the Nazi period.¹ This harm resulted not only in the loss of intangible assets such as liberty and peace of mind, but also in losses of financial assets and of real and personal property held by persecuted homosexual individuals and groups. The harm suffered by homosexuals as a class as a result of the anti-homosexual policies and practices of the Nazis can be identified at several specific levels, each of them involving economic harm, as well:

‡ **Cultural Harm:** Destruction of community institutions, loss of cultural assets, suppression of communications media.

‡ **Social Harm:** Denial of rights of association, exclusion from public territories and public life.

‡ **Individual Harm:** Interference with rights to self-expression, loss of personal assets, loss of work, loss of personal security, bodily harm, loss of life.

The harm suffered by homosexuals as individuals and as a class affected not only the immediate victims, but also their families, friends, and other loved ones, as well as their legal heirs. In addition, this harm severely affected subsequent generations of homosexuals by depriving them of cultural assets and community, by erasing public memory, and by interrupting the heritage of social change that had developed in the pre-Nazi era.

¹ For a comparative discussion of anti-homosexual measures in Germany, England, and France in the interwar years, as well as a discussion of the changes in the scope and methods of persecution in Germany between the Weimar Republic (1919—1933) and the Nazi era, see Florence Tamagne, *Histoire de l'homosexualité en Europe: Berlin, Londres, Paris (1919—1939)*, chs. 7-8.

From their early public statements about homosexuality in the late 1920s, through their assumption of power in 1933, and until their defeat in 1945, the Nazis attempted to systematically eradicate homosexuality from the German nation by outlawing, stigmatizing, and persecuting expressions of homosexuality.² The Nazi regime's campaign to eradicate homosexuality began with the destruction of research centers, cultural resources, business establishments, communications media, and community organizations throughout Germany. It led to the arrest and imprisonment of approximately 50,000 homosexual men, the deportation of 5,000 to 15,000 homosexual men to slave labor and concentration camps, the subjection of an undetermined number of homosexual male internees to heinous medical experiments, and finally the outright murder of an estimated 3,000 to 9,000 homosexual men identified and interned as such.

During its twelve years in power, the Nazi regime implemented and pursued a staggering array of increasingly repressive anti-homosexual measures. The following are but a few examples:

- The suppression of all homosexual rights organizations throughout Germany. (1933—1945)
- The closing of the Institute for Sexual Science in Berlin and the near total destruction of its library and archives. (1933)
- The raiding and closure of virtually all homosexual business establishments. (1933—1945)
- The deportation to concentration camps of homosexual men identified as such. (1933—1945)
- The tracking of known and suspected homosexuals by the police throughout Germany. (1934—1945)
- The strengthening and widening of the scope of §175 of the Reich Penal Code, rendering any putative sex offence between men grounds for arrest. All consensual sex acts in private, hugging, and even looking at another man became illegal.³ Homosexual men began to be sentenced to up to ten years of penal servitude and no less than three months in prison. (1935—1945)
- The establishment of the Federal Office for the Combating of Homosexuality and Abortion, an extensive administrative body under the direction of Heinrich Himmler, head of the Gestapo and the SS, and ultimately of all German police forces. (1936)

² The quote gives the exact words of Heinrich Himmler, second in command to Adolf Hitler and leader of the SS and German Police. Both Himmler and Hitler consistently articulated the need to purge Germany of homosexuals. Quoted in Ginter Grau, *Hidden Holocaust? Gay and Lesbian Persecution in Germany, 1933—45*, p. 198.

³ The Nazis never explicitly outlawed female homosexual acts; the extension of §175 was used by the SS and the German police to arrest homosexual men. However, lesbians were hardly free of Nazi terror: Lesbian organizations, businesses, and publications were outlawed, and at least some lesbian women were nonetheless arrested and sent to concentration camps because of their sexual orientation. In Austria, lesbians were explicitly targeted under §129 of the Austrian Penal Code, which made female homosexuality grounds for arrest and imprisonment. The Austrian law continued to be applied after the annexation of Austria in 1938 until 1971. See Claudia Schoppmann, *Days of Masquerade: Life Stories of Lesbians During the Third Reich*; also see Claudia Schoppmann, *Verbotene Verhältnisse: Frauenliebe, 1938—1945*.

- The declaration by Hitler that homosexuality is a crime against the German nation, punishable by death. (1941)
- The deportation of approximately 5,000 to 15,000 homosexual men to Auschwitz, Bergen-Belsen, Buchenwald, Dachau, Demblin, Dora, Flossenbürg, Gross Rosen, Mauthausen, Natzweiler, Neuengamme, Nieborowitz, Sachsenhausen, Stuhm, and other concentration camps. (1933—1945)
- The subjection of an unknown number of homosexual men to forcible castration and medical experiments, such as those involving artificial-hormone implants purported to cure homosexuality.
- The killing of approximately 3,000 to 9,000 homosexual men interned as such in the concentration camps.

Legal Background and Consequences

The legal justification for the Nazi persecution of homosexuals came from a nationalist law called §175 of the Penal Code, which was first enacted in 1871, the year of German unification and the foundation of the Second Reich. The law, amended and expanded in scope by the Nazis in 1935, considered male homosexual acts and sex acts between humans and animals as equivalent crimes:

An unnatural sex act committed between persons of the male sex or by humans with animals is punishable by imprisonment; the loss of civil rights may also be imposed.⁴

Although numerous attempts were made to decriminalize private, consenting male homosexual acts in Germany before the Nazi rise to power, the law was not successfully repealed until 1969.⁵ Since 1896, for example, Magnus Hirschfeld the Jewish cofounder of the Scientific Humanitarian Committee, the first homosexual rights organization in the world had been publishing books and pamphlets that sought to explain homosexuality as a harmless, inborn variation of human biology and had been lobbying on that basis for the repeal of §175.⁶ In 1898, the Scientific Humanitarian Committee petitioned the Reichstag to strike §175 from the German Penal Code.

In October 1929, largely due to the lobbying efforts of Hirschfeld and his organization, the Criminal Code Committee of the Reichstag recommended to the full body that §175 be repealed and that consenting adults be granted exemption from legal restriction and punishment

⁴ Quoted in Grau, p. 65.

⁵ Prior to German unification, a number of German states had liberalized their laws concerning sex, including homosexual acts between consenting adult males. However, this was not the case under the Prussian Penal Code, from where the 1871 law was adopted. See James D. Steakley, *The Homosexual Emancipation Movement in Germany*.

⁶ See Richard Plant, *The Pink Triangle: The Nazi War Against Homosexuals*, p. 43.

regarding homosexual relations. The Nazi Party, however, issued a vitriolic counter-argument in their official party publication, the *Volkischer Beobachter*. Combining anti-Semitism with homophobia, they directed their response at Hirschfeld:

We congratulate you, Mr. Hirschfeld, on the victory in committee. But don't think that we Germans will allow these [new] laws to stand for a single day after we come to power. ... Among the many evil instincts that characterize the Jewish race, one that is especially pernicious has to do with sexual relationships. The Jews are forever trying to propagandize sexual relations between siblings, men and animals, and men and men. We National Socialists will soon unmask and condemn them by law. These efforts are nothing but vulgar, perverted crimes and we will punish them by banishment or hanging.⁷

Less than two years after taking power in 1933, the Nazis significantly expanded the scope of §175 to include virtually any putative sex act between men, including touching and looking, as well as emotional or expressive acts such as hugging. These acts now were punishable by penal servitude of up to ten years and/or imprisonment.

⁷ *Volkischer Beobachter* (August 2, 1930); quoted in Plant, p. 49.

According to a Nazi government report, Survey by the Reich Statistical Bureau of Sentences for Unnatural Sex Acts in Violation of /175, 175a, 175b, nearly 50,000 convictions were handed down under the provisions of /175 during the Nazi regime.⁸ The following chart represents a year-by-year breakdown:⁹

Year	Convictions
1933	853
1934	948
1935	2,106
1936	5,320
1937	8,271
1938	8,562
1939	7,614
1940	3,773
1941	3,739
1942	2,678
1943	2,218
1944	2,000
Total:	48,082

Because documentation is only partial for 1943 and is unavailable for 1944 and 1945, these figures represent the minimum number of convictions under /175.¹⁰ Given the incomplete documentation and the probability of persecution outside of such legal proceedings, historians have estimated that, in fact, as many as 100,000 homosexuals may have been arrested or tracked through 1945 on the basis of /175 of the German Penal Code and /129 of the Austrian Penal Code.¹¹ (In Austria, although the exact numbers are not known, it can be re-

⁸ As a comparison, during the Weimar Republic (1919—1933) about 9,000 homosexuals were convicted under /175. The Nazi persecution of homosexuals thus represents a more than five-fold increase in convictions for a slightly shorter period. Furthermore, during the Weimar Republic, homosexuals never were sent to concentration camps, never had their assets looted by the state, and never were subjected to slave labor or murdered by the state because of their sexual orientation. In terms of both scope and depth, the Nazi persecution of homosexuals thus represents an original and uniquely severe phenomenon. For the Weimar statistics, see Hans-Georg St mke and Rudi Finkler, *Rosa Winkel, Rosa Listen: Homosexuelle und Gesundes Volkempfinden von Auschwitz bis Heute*, pp. 502-503.

⁹ Adapted from Grau, p. 154.

¹⁰ The estimate of 2,218 and 2,000 convictions under /175 for 1943 and 1944, respectively, is given by St mke and Finkler, p. 262.

¹¹ Between 1937 and 1939, for example, 94,738 homosexuals were investigated by the Gestapo; of these, about 25,000 were formally convicted under /175. However, the number of convictions is in all likelihood much less than the total number of homosexuals actually interned. Statistics cited from St mke and Finkler, pp. 262-263.

sonably surmised that several thousand men and women were convicted under /129 between 1933 and 1945.¹²)

There is no way of knowing precisely the total number of homosexuals targeted by the Nazis, and, hence, the per-case dollar amounts of assets taken from persecutees that passed through Swiss banks or other entities cannot be determined with precision. This adds further merit to the Pink Triangle Coalition's *cy pres* proposal of a one percent allocation of the funds under consideration.

There can be no doubt that all of those convicted under /175 and /129 and indeed all homosexuals who lived under the threat of Nazi persecution were potentially subject to blackmail by Nazi officials, looting of personal and corporate property, and enslavement for the purposes of profiteering by the Nazi state or Nazi controlled entities. We can surmise that assets looted from homosexual victims and funds generated through the slave labor of homosexuals were laundered by the Nazis through the Swiss banks in a way consistent with the regime's laundering of assets seized from other persecuted individuals and groups.

Nazi Population Politics and Racist Rationales

When questioned regarding its position on /175 by the Scientific Humanitarian Committee in May 1928, the Nazi Party articulated a very clear platform on homosexuality:

[The] German nation can only fight if it maintains its masculinity.... Anyone who even thinks of homosexual love is our enemy. We reject anything which emasculates our people and makes them a plaything for our enemies.... We therefore reject any form of unnatural sexuality, above all homosexuality, because it robs us of our last chance to liberate our people from the chains of slavery under which they now suffer.¹³

As with the vitriol hurled against Hirschfeld, the Nazi rhetoric against homosexuals often overlapped with its rhetoric against Jews: According to Nazi propaganda, both homosexuals and Jews destroyed the so-called masculinity and purity of the German nation; both homosexuals and Jews are characterized by perverse and degenerate sexualities.¹⁴ In 1934, the Reich Ministry of Justice emphasized that it is precisely Jewish and Marxist circles which

¹² Between 1933 and 1936 (the years for which statistics for all of Austria are available), 1,937 men and 46 women were convicted under /129. The law remained enforced in Austria for the duration of the Nazi regime. See Hans-Peter Weingand, *Streiflichter: Homosexualität und Strafrecht in Österreich*, *LAMBDA-Nachrichten* (April 1995), p. 38.

¹³ Quoted in Plant, p. 50 (translation revised).

¹⁴ See George Mosse, *Nationalism and Sexuality*. The German term *entartet* (degenerate) was consistently and interchangeably used to describe both Jews and homosexuals, especially in the pseudo-scientific eugenic literature produced by the Nazis and in public displays of the Nazi family and its corruption, such as the 1937 Degenerate Art exhibit in Munich. Also see Warren J. Blumenfeld, *History/Hysteria: Parallel Representations of Jews and Gays, Lesbians and Bisexuals*, in Brett Beemyn and Mickey Eliason (eds.), *Queer Studies: A Lesbian, Gay, Bisexual and Transgender Anthology*, pp. 146-162.

have always worked with special vehemence for the abolition of /175. ¹⁵ In effect, Jews and homosexuals were portrayed as collaborators in the corruption of the German nation.

After the expansion of penalties under /175 in 1935, Himmler spoke triumphantly about the purity of the German nation:

Just as we today have gone back to the ancient Germanic view on the question of marriage mixing different races, so too in our judgment of homosexuality a symptom of degeneracy which could destroy our race we must return to the guiding Nordic principle: extermination of degenerates. Germany stands and falls with the purity of the race.¹⁶

This position is particularly evident in the Nazi propaganda of the purity of the family, the Aryan race, and reproductive politics. In a widely-circulated propaganda poster created by the Reich Committee for the Health of the Nation, the heterosexual family is shown to mirror the health of the German nation (see reproduction below).¹⁷



The right choice of mate is the precondition for a worthy and happy relationship. In your choice lies the fate of your race and the fate of the nation.

¹⁵ Quoted in Grau, p. 19.

¹⁶ Harry Schulze-Wilde, *Das Schicksal der Verfeimten: Die Verfolgung der Homosexuellen im Dritten Reich und ihre Stellung in der heutigen Gesellschaft*, p. 62. Also quoted in an English translation in Steakley, *The Homosexual Emancipation Movement*, p. 112.

¹⁷ Reproduced from Grau, p. 77.

The Destruction of the Homosexual Community

In considering the Pink Triangle Coalition's request for a *cy pres* allocation of one percent of the common funds, it is essential to take into account the context of Nazi persecution of homosexual men and women in Germany and the annexed territories. An understanding of the scope of individual and communal assets that homosexuals had created prior to 1933 provides a basis for estimating the magnitude of the holdings seized by the Nazi state and laundered in whole or part through Swiss bank accounts.

Starting in the second half of the nineteenth century, homosexuals in Germany had created an increasingly distinct subculture. For example, by the 1880s, in Berlin and a few other large German cities, scattered cafés were catering to a clientele of homosexual men. After the turn of the twentieth century, territories for homosexual men and women in Berlin expanded to include business establishments such as restaurants and bookstores owned and managed by homosexuals; social organizations such as sports and hobby clubs with an exclusively homosexual membership; and residential enclaves such as small hotels, apartment buildings and sections of neighborhoods inhabited largely by homosexuals. By the early 1920s, similar developments on a smaller scale had appeared in other German cities.¹⁸

These businesses, organizations and territories made it possible for homosexuals to socialize in an environment free of prejudice, to form bonds of love and friendship, to create supportive social structures, and to build a common culture. From the foundation of these assets, an incredibly rich homosexual cultural and political life flowered in Germany in the first decades of the twentieth century. By the 1920s, dozens of books and periodicals targeting the homosexual market were appearing each year, with some publishing houses specializing in such material; a homosexual theater troupe was staging shows in Berlin; and openly homosexual men and women were leading successful careers as cabaret performers, writers and visual artists, their work often dealing with homosexual themes.¹⁹

A political movement promoting legal and social reform on behalf of homosexuals also emerged in Germany during this period. The first homosexual political organization in the world, the Scientific-Humanitarian Committee (*Wissenschaftlich-humanitäre Komitee*), was established in Berlin in 1897. By 1914, the group had more than 1,000 members; it remained active until it was disbanded by the Nazi regime.²⁰ The model of homosexuals organizing themselves to work for change and to provide for their own communal needs gradually spread after the turn of the twentieth century: By the early 1920s, some 25 political, cultural, and social organizations were operating in cities throughout the country. Undoubtedly the most successful of these was the League for Human Rights (*Bund für Menschenrechte*), a co-gender

¹⁸ On all these developments, see Magnus Hirschfeld, *Berlins drittes Geschlecht*; Steakley, *The Homosexual Emancipation Movement*; Sixty Places to Talk, Dance, and Play, *Connexions* (Winter 1982), pp. 16-18; Wolfgang Theis and Andreas Sternweiler, *Alltag in Kaiserreich und in der Weimarer Republik*, in Berlin Museum, *El Dorado: Homosexuellen Frauen und Männer in Berlin 1850-1950 Geschichte, Alltag, und Kultur*, pp. 56-73; and Schoppmann, *Days of Masquerade*, pp. 2-4.

¹⁹ See Steakley, *The Homosexual Emancipation Movement*, pp. 78-81; Schoppmann, *Days of Masquerade*, p. 4, 57ff; and Andreas Sternweiler, *Kunst und schwuler Alltag*, in Berlin Museum, pp. 74-92.

²⁰ On the Scientific-Humanitarian Committee, see Steakley, *The Homosexual Emancipation Movement*, pp. 23, 33ff; Manfred Baumgart, *Die Homosexuellen-Bewegung bis zum Ende der Ersten Weltkriegs*, in Berlin Museum, pp. 17-23; and Manfred Herzer, *Das Wissenschaftlich-humanitäre Komitee*, in Schwules Museum and Akademie der Künste, *Goodbye to Berlin: 100 Jahre Homosexuellebewegung*, pp. 37-47.

group active from 1923 to 1933; at its peak, the league boasted approximately 48,000 paid members.²¹

However, the atmosphere for homosexuals in Germany was never entirely welcoming. With the tumultuous political, social and economic climate in Weimar Germany, precursors of the anti-homosexual policies of the Nazi regime began to appear in the late 1920s. In 1926, for example, the so-called Protection of Youth from Obscene Publications Act was passed, significantly dismantling freedom of the press for homosexuals. The law was used to actively restrict the public sale of lesbian and gay periodicals, regardless of cultural, political, or scientific value. *Die Freundin*, a lesbian magazine, was banned entirely in 1928, and other cultural publications such as *Gar onne* were barely available to the public.

On January 30, 1933, Hitler was named Chancellor of Germany, and in less than a month, all homosexual organizations and remaining pro-homosexual periodicals were outlawed. This attack on the public culture of homosexual men and women had devastating effects. It marked the defeat of homosexual political reform in Germany, as well as the complete suppression of venues for political dissent and cultural diversity. By outlawing the Scientific Humanitarian Committee and the League for Human Rights, the Nazi government effectively crushed all emancipatory discourses in matters of sexuality. Raids and public denunciations forced many outspoken homosexual activists into silence.²² Others prudently fled into exile, among them Magnus Hirschfeld, who settled in France.²³

The director of the Scientific-Humanitarian Committee, Kurt Hiller, was arrested on March 23, 1933, then transported to the Oranienburg concentration camp (a temporary facility that preceded construction of the nearby Sachsenhausen camp). After nine months of brutal mistreatment, he was inexplicably released; he, too, fled the country, going first to Prague, then to London.²⁴ In May of 1933, the Nazis publicly purged un-German books in massive public conflagrations. One of the first targets was Hirschfeld's Institute for Sexual Science: On May 10, 1933, some 12,000 of the 20,000 books from the Institute's priceless library were destroyed, and a unique collection of over 35,000 pictures was burned. The Institute's buildings and equipment were confiscated, and the staff were arrested or forced to flee.²⁵

Soon after, Hitler himself ordered the arrest of homosexual men within the ranks of the Nazi Party, referring to them as pigs.²⁶ Hitler clearly demonstrated his will to systematize the state-sanctioned persecution of homosexuals in a memorandum directed to the SA:

I expect all SA leaders to help to preserve and strengthen the SA in its capacity as a pure and cleanly institution. In particular, I should like every mother

²¹ See Steakley, *The Homosexual Emancipation Movement*, p. 82; also see Plant, p. 41, and Schoppmann, *Days of Masquerade*, p. 4.

²² For an overview of the Nazis' anti-homosexual activities in 1933, see Plant, pp. 50-51, 209-211.

²³ See Charlotte Wolff, *Magnus Hirschfeld: Portrait of a Pioneer in Sexology*, chs. 16-17.

²⁴ See Steakley, *The Homosexual Emancipation Movement*, p. 103.

²⁵ See James Steakley, Anniversary of a Book Burning, *The Advocate* (June 9, 1983), pp. 18-19, 57.

²⁶ Quoted in Plant, p. 56.

to be able to allow her son to join the SA, [the Nazi] Party, and Hitler Youth without fear that he may become morally corrupted in their ranks. I therefore require all SA commanders to take the utmost pains to ensure that offenses under /175 are met by immediate expulsion of the culprit from the SA and the Party. I want to see men as SA commanders, not ludicrous monkeys.²⁷

Although not subject to prosecution under /175, lesbians were nevertheless targeted for other forms of persecution by the Nazi authorities and suffered tremendously as individuals and as a class after the Nazi rise to power. Many were forced into heterosexual relationships; lesbian businesses, publications, and organizations were entirely destroyed; women's same-sex relationships were openly stigmatized in Nazi propaganda advocating the pure-bred Aryan family; and an unknown number of lesbians had personal property confiscated by the Nazi officials.²⁸ In Austria, lesbians also were targeted for arrest and imprisonment under /129 of the Austrian Penal Code. This section of Austrian law continued to be enforced during the period when the country was annexed by Nazi Germany. Between 1938 and 1943, in the city of Vienna alone, 1,162 men and 66 women were convicted and imprisoned under /129.²⁹

In addition to the Nazis' widespread campaign to suppress the public culture of lesbians, historians have recently discovered archival sources that attest to the fact that in at least a few cases, lesbians were deported to concentration camps specifically because of their sexuality. In documenting the internment of lesbians, Claudia Schoppmann, the leading scholar in this field, also has shown the difficulty of research into this part of history, since lesbian prisoners did not fit under the Nazi category of homosexual, which was reserved exclusively for men. Schoppmann writes:

On November 10, 1940, Elli Smula and Margarete Rosenberg were brought to Ravensbrück Women's Concentration Camp north of Berlin. Smula had just turned twenty-six, Rosenberg thirty. Camp records list the reason for their arrests as lesbian. As in all concentration camps, as well as in Ravensbrück, the SS assigned different colored triangles to prisoners; it was a way of playing one against the other and made it easier to prevent resistance. Elli Smula and Margarete Rosenberg received red triangles, that is, they were categorized as political prisoners. The pink triangle designating those arrested because of their alleged or actual homosexuality was reserved for men, so lesbians did not make up a separate category of prisoners. No one knows what Elli Smula's and Margarete Rosenberg's lives were like before they were arrested, nor how and if they survived the camp.³⁰

In the concentration camps, lesbians interned as such were sometimes marked with a black triangle, designating asocial people, or a green triangle, designating common criminals. A

²⁷ Quoted in Hans Peter Bleuel, *Sex and Society in Nazi Germany*, p. 219.

²⁸ For example, Anita Augsborg and her partner, Lida Gustava Heymann, both of them leading figures in the first German women's movement, did not return to Germany after a vacation abroad in 1933; the Nazi authorities confiscated all of their property, including their household effects and their personal library. See Christiane Henke, *Anita Augsborg*, pp. 123ff.

²⁹ Weingand, p. 38.

³⁰ Schoppmann, *Days of Masquerade*, p. 1.

number of reports also exist that show that the SS forced lesbians into prostitution in certain concentration camp brothels.³¹ Schoppmann writes:

In one such case, a lesbian named Else (b. 1917), who worked in Potsdam as a waitress and lived there with her woman-friend, was apparently detained because of her homosexuality and then sent to Ravensbrück. From there, under circumstances that remain unclear, she went to Flossenbürg camp, which from 1938 was mainly used for the internment of men classified as anti-social or criminal. The camp brothel in Flossenbürg became Else's place of suffering. Presumably she had been forced into prostitution at Ravensbrück, where women were lured with the false promise that they would be released after a period of service in the brothel.³²

The Deportation of Homosexuals to Concentration Camps

Historians generally agree that between 1933 and 1945 at least 50,000 homosexual men were convicted and imprisoned under §175. Of these, 5,000 to 15,000 were deported to concentration camps. Approximately 60 percent of those deported were killed and most, if not all, were forced to perform slave labor in the camps where they were interned or in affiliated enterprises. As with the other groups who were persecuted by the Nazis, homosexuals who were imprisoned and interned were blackmailed by Nazi officials, had their assets looted by the Nazis, and were subjected to slave labor for profiteering. Following the historical trends of other persecuted groups, the assets taken from homosexuals and the monies gleaned through homosexual slave labor were undoubtedly funneled in part to Switzerland and diverted into Swiss banks.

Only in the last decade have the details about homosexuals in the Nazi concentration camps begun to surface. The research is particularly difficult because many files were destroyed by Nazi officials during the last weeks of the World War II; most of the extant archives were sealed until recently;³³ and the continued persecution of homosexuals in post-war Germany and Austria forced most survivors into silence. Although ample documentation exists to confirm that homosexuals were enslaved and murdered in the concentration camps, much research remains to be done to establish precise histories and statistical accounts for each of the camps. Thus, the data presented below are accurate but incomplete. The true number of homosexual victims is, in all likelihood, significantly higher.

Another fact that should be taken into account when considering the Pink Triangle Coalition's proposal for a one percent *cy pres* allocation of the common funds is the Nazis' establishment of the Federal Office for the Combating of Homosexuality and Abortion in October

³¹ See Claudia Schoppmann, *The Position of Lesbian Women in the Nazi Period*, in Grau, pp. 8-15, especially pp. 14-15.

³² Schoppmann, *Days of Masquerade*, p. 14 (translation slightly revised).

³³ The archives in the former East Bloc, for example, remained sealed until the past decade and have not been thoroughly examined. Moreover, in the spring of 2001, 12,000 Gestapo files were discovered in the huge archives of the City of Vienna. Historians expect that many more cases of homosexual persecution will be uncovered.

1936, which required that homosexuals be tracked and registered. Homosexuals were considered enemies of the state and should be treated as such, according to Heinrich Himmler.³⁴ For this reason, as corroborated by the historical evidence, the Pink Triangle Coalition believes that a significant percentage of the 50,000 homosexuals hunted down by the Nazis may have had assets taken from them that passed through Swiss banks or other entities in Switzerland.

Already by the end of 1935, thousands of homosexual men had been rounded up and sent to detention centers and prison camps throughout Germany. Reports of sadistic torture of homosexuals were widespread at the Lichtenberg concentration camp and the Kolumbia-Haus prison beginning in June 1935.³⁵ The Dachau concentration camp received its first homosexual male internees no later than 1934, and Sachsenhausen and Buchenwald began receiving homosexual men as early as 1936. In 1939, large numbers of homosexual men were deported to the concentration and forced-labor camp of Mauthausen in Austria.

Slave Labor and Mass Murder of Homosexuals

The Pink Triangle Coalition estimates that as many as 15,000 homosexuals qualify under Slave Labor Class I because they were forced to perform work, for little or no payment, for entities under the auspices of the Nazi regime. As was the case with the other victim classes, revenues generated by the Nazis through slave labor were transacted through Switzerland and secured in Swiss banks.

Homosexuals interned as such are known to have been deported, forced into slave labor, and murdered at all of the following concentration camps: Auschwitz, Bergen-Belsen, Buchenwald, Dachau, Demblin, Dora, Emsland, Flossenbrg, Gross Rosen, Mauthausen, Natzweiler, Nieborowitz, Neuengamme, Ravensbrck, Sachsenhausen, and Stuhm, as well as scores of ancillary camps. The following testimonies and statistics give representative accounts of the treatment of male homosexual internees in some of the major concentration camps:

Buchenwald. After October 1938, homosexual prisoners were sent to do quarry work in the punishment battalion. In the summer of 1942, homosexual prisoners worked with other prisoners in the war industry. In 1944, homosexuals worked in centers producing V-2 weapons in the Dora out-camp near Nordhausen. For the years that statistics are available, 1938 through February 1945, about a thousand homosexuals were interned at Buchenwald. Many also were deported from Buchenwald to other concentration camps, including Bergen-Belsen, Dachau, Dora, Gross Rosen, Lublin, Mauthausen, Natzweiler, Neuengamme, Ravensbrck, and Sachsenhausen. Finally, an unknown number died after being castrated and/or subjected to other medical experiments intended to cure their homosexuality.³⁶

³⁴ See Grau, p. 96.

³⁵ See Grau, pp. 55-61.

³⁶ Statistics culled from Grau, pp. 264-292, and Wolfgang R Il, *Homosexuelle Hftlinge im Konzentrationslager Buchenwald*.

The following report from spring 1945 tells of the situation of homosexuals at Buchenwald. It indicates that homosexuals both labored for the war industry and were targeted for mass murder:

Precisely during the hardest years, they [homosexuals] were the lowest caste in the camp. In proportion to their number, they made up the highest percentage on transports to special extermination camps such as Mauthausen, Natzweiler, Gross Rosen, because the camp always had the understandable tendency to ship off less important and valuable members, or those regarded as less valuable. In fact, the wider deployment of labor in the war industry brought some relief to this type of prisoner too for the labor shortage made it necessary to draw skills from the ranks of such people, although in January of 1944 the homosexuals, with very few exceptions, were still going to the Dora murder camp, where many of them met their death.³⁷

Jaroslav Bartl, a survivor from Buchenwald, testified in 1962 about the conditions of slave labor for homosexuals in Buchenwald:

We worked under impossible conditions in the quarry, constantly under the rifles on the SS watchmen and the yelling and beatings of the foremen. Every day there were many accidents, mutilations, and deadly injuries, and scarcely a day went by without one or more prisoners being shot.... I began work in the quarry operating the transport car. It was an iron tipping wagon, which had to be fully loaded with rocks; it took sixteen prisoners to pull the wagon up the steep mountain.³⁸

Sachsenhausen, Flossenbürg, Neuengamme, and Gross Rosen. Several thousand homosexuals are known to have been interned at these camps, and according to reports by prisoners and the SS, hundreds were killed every year. Although documentation is incomplete, about 600 homosexuals were killed in Sachsenhausen alone between 1940 and the middle of 1943. Hundreds more died in the camp before 1940 and after 1943; many more were killed on a death march ordered by the SS when the camp was evacuated in 1945. Of all the homosexual male internees killed at Sachsenhausen, the names of just 300 are now known.³⁹

Josef Kohout, a survivor who recounted his story in the first book-length testimony of a homosexual in the Nazi concentration camps, published in 1972, describes the slave labor at the Klinkerwerk, a clay quarry and brick-works affiliated with the Sachsenhausen concentration camp in early 1940:

This clay-pit, known among us prisoners as the death-pit, was both famed and feared by all prisoners in all other concentration camps, as a factory of hu-

³⁷ The Situation of Homosexuals at Buchenwald Concentration Camp, (camp report, spring 1945); quoted in Grau, p. 266.

³⁸ Document 17 (Buchenwald archive 31/27); reprinted in R II, p. 24.

³⁹ See Joachim Müller and Andreas Sternweiler, *Homosexuelle Männer im KZ Sachsenhausen*, and Rainer Hoff-schildt, *Die Verfolgung der Homosexuellen in der NS-Zeit*.

man destruction, and up until 1942 was the Auschwitz for homosexuals. Only we were commandeered for work in the clay-pit, to be hounded to death by the most terrible working conditions, as well as by actual torture. Thousands upon thousands of homosexuals must have lost their tormented lives there, victims of a deliberate operation of destruction by the Hitler regime. And yet till this very day no one has come forward to describe this and honor its victims.⁴⁰

Kohout was transferred to Flossenbürg on May 15, 1940. He tells of the work that homosexuals were assigned at that concentration camp:

We gays were assembled into work detachments of 12 to 15 men, led by an SS work leader, a capo and a foreman, to work in the granite quarry. This is where the stones were dug and prepared for Hitler's great building projects, for motorway bridges and the like. Great halls were dug into the quarry, where the cutting and finishing of the stones was carried out, and the granite blocks received their final form and possible polishing. The work of quarrying, dynamiting, hewing and dressing was extremely arduous, and only Jews and homosexuals were assigned to it. The quarry claimed very many victims, with the SS and capos often deliberately contributing to the large number of accidents.⁴¹

Emsland. At least 2,000 homosexual men are believed to have been interned at this forced labor camp; about two-thirds left the camp by discharge, transfer, or death. More than half of the homosexual internees came from major cities like Berlin and Hamburg. In the camp, prisoners worked as slave laborers for major Nazi building projects, including the construction of systems of drainage and sewage. Historical testimonies place the percentage of homosexuals at forced labor camps like Emsland between 20 percent and 50 percent.⁴²



Häftlinge bei der Arbeit im Moor: Anlage von Entwässerungsgräben.

Photograph of prisoners working in the Emsland concentration camp.⁴³

⁴⁰ Heinz Heger (pseudonym of Hans Neumann), *The Men with the Pink Triangle*, p. 38.

⁴¹ Heger, p. 50.

⁴² See Hoffschildt, pp. 28-41; also see Stämke and Finkler.

⁴³ Reproduced from Hoffschildt, p. 28

Schirmeck-Vorbr ch. Pierre Seel, a French homosexual survivor who remained silent about his experiences for forty years, tells of the work schedule at the concentration camp of Schirmeck-Vorbr ch in the French province of Alsace which was annexed by the Nazis:

Torn from sleep at six A.M., we wolfed down an indefinable tea and a quarter loaf of stale or moldy *Kommissbrot*, a kind of military sourdough bread. After roll call, most of us headed toward the valley to smash rocks in the surrounding quarries and load the fragments into tiptrucks. The SS brought in German shepherd dogs to dissuade us from fleeing through the dense forest. Other inmates spent eleven hours a day laboring at the Marchal de Wacembah factory. Around noon, we were served a clear soup with a slice of sausage. Then work continued until six p.m. Back in the camp, we were systematically searched before reentering our barracks. Two ladlefuls of rutabaga soup ended our day. After a final roll call, our barracks were doubly padlocked, and the night rounds began while the sun had yet to go down behind the mountains.⁴⁴

⁴⁴ Pierre Seel, *I, Pierre Seel, Deported Homosexual: A Memoir of Nazi Terror*, p. 32.

III. Post-War Silence and the Continued Persecution of Homosexuals

In a recent interview with historian Klaus Mller of the United States Holocaust Memorial Museum, a survivor who protects his privacy by using the pseudonym Heinz F. makes clear the intense personal pain that invisibility and social stigma imposed on homosexual men who managed to survive deportation to the Nazi concentration camps:

- K.M.: How long were you in concentration camps?
- H.F.: All together? I added it up once. I think eight-and-a-quarter years.
- K.M.: What did you do when you got back?
- H.F.: When I came home? I worked in the family store that my brother was running. My father had already died.
- K.M.: Did you tell your brother or mother what happened in the camps?
- H.F.: I never spoke with my mother about it. I could have talked to my father, but....
- K.M.: Why not?
- H.F.: Shame. My mother never said anything. It s all about patiently carrying one s burden.
- K.M.: Shame about what?
- H.F.: You mean my mother? Maybe it was from compassion, so she wouldn t offend me, or make it even harder on me. Not even one word from her.
- K.M.: Today, it is hard to imagine that you survived these horrible years and came back and....
- H.F.: Couldn t talk to anybody about it? Yes, I never spoke to anyone about it.
- K.M.: Would you have liked to talk to someone?
- H.F.: Maybe. Maybe with my father.
- K.M.: And later, could you speak with others?
- H.F.: Never. Nobody wanted to hear about it. If you would just mention one of those words... Leave me alone with this stuff. It s over now and done with. Now for me, too... it s all over. In September, I ll be 93. Thick skin, no?⁴⁵

The Pink Triangle Coalition s request for a *cy pres* allocation finds further justification in light of the continuing persecution of homosexuals after World War II in Germany and Austria. The ongoing legal and social persecution of homosexuals after the defeat of the Nazis made it particularly difficult for survivors of Nazi persecution to come forward. In an article published in a privately distributed newsletter in 1958 under the pseudonym Bert Micha, a homosexual man who survived seven years in the Nazi concentration camps, summarized the post-war situation in the following words:

⁴⁵ Quoted from the documentary film *Paragraph 175* (San Francisco: Telling Pictures, 2000).

There is one group among all the victims that has never appeared in the light of publicity, hasn't complained about the damage it sustained, and hasn't encountered any understanding from the newspapers, from government agencies, or from organizations that defend the interests of former internees: that group is the homophiles.⁴⁶ Because Paragraph 175 of the German Penal Code—the very Paragraph 175 that has been a subject of debate for decades—makes homophiles into criminals, they encounter no pity from the public, and of course can make no claim for damages. To this day, no one has sought to learn how many homophiles were hunted down by the Nazis, nor to learn what the survivors retrieved of their lives and their belongings.⁴⁷

Nearly two decades after the end of World War II, Hans-Joachim Schoeps critically wrote, "For homosexuals, the Third Reich has not yet ended."⁴⁸ A Jew who fled Nazi Germany in 1939, Schoeps penned these words in 1962 in an article advocating for West Germany (the Federal Republic of Germany) to finally repeal §175. The Nazi version of §175 remained on the books and was enforced throughout West Germany until 1969. In East Germany (the German Democratic Republic), the Nazi version of §175 was suspended in 1950 and replaced by the original 1871 law.⁴⁹ In both West and East Germany, homosexuals were hunted-down, imprisoned, fined, and sentenced to penal sanctions solely because of their homosexual conduct. Between 1950 and 1969, nearly 50,000 homosexuals were convicted under §175 in West Germany alone, as the statistics on the following page indicate.⁵⁰

⁴⁶ The term *homophile* was a neologism used by a number of homosexual organizations in the 1950s.

⁴⁷ B. M. [Bert Micha], Les homophiles dans les camps de concentration de Hitler, *Arcadie*, no. 82 (October 1960); translated from the French by Gerard Koskovich. The original German version first appeared in the fall 1958 issue of the mimeographed private newsletter of Die Runde, an informal homosexual group in Reutlingen, a town near Stuttgart.

⁴⁸ Hans-Joachim Schoeps, Soll Homosexualität strafbar bleiben? *Der Monat*, vol. 15 (1962).

⁴⁹ In Austria, §129 remained in effect until 1971.

⁵⁰ Statistisches Jahrbuch der Bundesrepublik Deutschland, cited in Christian Schulz and Michael Sartorius, *Paragraph 175 (abgewickelt): Homosexualität und Strafrecht im Nachkriegsdeutschland Rechtsprechung, juristische Diskussionen und Reformen seit 1945*, p. 18. From the capitulation of Nazi Germany on May 8, 1945, until the foundation of the Federal Republic of Germany on May 23, 1949, federal laws were not enforced since there was, strictly speaking, no Germany.

Year	Convictions
1950	1,920
1951	2,167
1952	2,476
1953	2,388
1954	2,564
1955	2,612
1956	2,774
1957	3,124
1958	3,182
1959	3,530
1960	3,134
1961	3,005
1962	3,098
1963	2,803
1964	2,907
1965	2,538
1966	2,261
1967	1,783
1968	1,727
1969	894
Total:	47,357

Nearly the same number of homosexuals in West Germany were convicted under /175 after the end of the Third Reich as in all of Germany during the Third Reich.⁵¹ Although concentration camps, medical experiments, slave labor, and the state-sanctioned murder of homosexual men ceased after 1945, homosexual men were still discriminated against, imprisoned, and fined in numbers comparable to those under the Nazis. Moreover, discrimination in the workplace and housing was widespread, and in East Germany virtually all homosexual periodicals remained banned throughout the 1950s and 1960s. Although exaggerated, Schoeps' words were not far from the truth.

Because of this enforced social, religious, political, and legal stigmatization of homosexuals in Germany and Austria after 1945, homosexual survivors of the Nazi concentration camps were excluded from all funds for social support and compensation. When the first national law, the Federal Law for the Compensation of Victims of National Socialist Persecution, was passed in 1953, homosexual victims were not eligible and thus could not seek compensation, pensions, or the payment of medical treatment, as stipulated for other victim groups.⁵² Only 22 homosexual survivors are known to have received any compensation at all from the Ger-

⁵¹ The statistics for East Germany are unavailable, although the number of convictions under /175 is known to be significantly lower than in West Germany.

⁵² See Michael Sartorius, *Wider Gutmachung: Die vers umte Entsch digung der schwulen Opfer des Nationalsozialismus*, in Schulz and Sartorius, pp. 88-128; also see Gerald Pilz, *History of Gay Reparations in Germany*.

man government.⁵³ In Austria, only two homosexual men have received compensation from the National Fund of the Republic of Austria for Victims of National Socialism established in 1995. Two reasons can account for these facts:

- ¥ In both West and East Germany as well as in Austria, homosexuals, including those who survived victimization under the Nazis, continued to be convicted and imprisoned under anti-homosexual laws after 1945 in numbers as great as before 1945. This practice went unabated for nearly a quarter of a century. As a consequence, homosexual victims could not simply speak up or come forth without potentially exposing themselves to criminal sanctions.
- ¥ Under the laws enacted by the post-war German and Austrian governments to compensate other victim groups, homosexuals were not considered victims of Nazi persecution and were systematically excluded from reparations.

The First Public Acknowledgements of Homosexuals Victims

It was not until 1985 that the first German politician Federal Republic President Richard von Weizsäcker publicly acknowledged that homosexuals were victims of the Nazis and should be remembered as such. In a speech given on the fortieth anniversary of Nazi Germany's capitulation, he said: We remember the murdered Sinti and Roma, the killed homosexuals.⁵⁴ Amazingly, this sentence was edited out of the version of the speech broadcast on the evening television news program *Tagesschau*.⁵⁵ In Austria, the first official mention of homosexual victims by a politician did not come until July 1991, in a speech to Parliament given by Federal Chancellor Franz Vranitzky.

The first public memorial to homosexual victims was not erected until 1984, when a pink stone plaque was placed at the Mauthausen concentration camp. Installed in response to the lobbying efforts of HOSI (Vienna), a member organization of the Pink Triangle Coalition, this modest memorial bears the following inscription in German: Beaten to Death, Silenced to Death. To the Homosexual Victims of National Socialism. To date, memorial plaques and monuments to homosexual victims have also been installed, mostly in the last decade, in the concentration camps of Neuengamme, Dachau, Sachsenhausen, and Buchenwald, as well as in the cities of Amsterdam, Berlin, Frankfurt, The Hague, Bologna, and Cologne.⁵⁶ In addition, a small memorial garden known as Pink Triangle Park is currently under construction in the city of San Francisco.

⁵³ See Pilz.

⁵⁴ Richard von Weizsäcker, May 8, 1945 40 Years Later ; speech delivered on May 8, 1985.

⁵⁵ See Sartorius in Schulz and Sartorius, pp. 88-89.

⁵⁶ For a case study of the efforts by homosexuals to install such a monument, see Harold Marcuse, *Legacies of Dachau: The Uses and Abuses of a Concentration Camp, 1933-2000*, pp. 345-346. For two decades, authorities controlling the Dachau site summarily rejected requests for a monument to homosexual victims of the camp. A memorial was finally put in place in 1994.

In 1995, the Austrian Parliament rejected a proposal to extend homosexual victims the compensation rights extended to other victim classes.⁵⁷ And in 1998, when the German Bundestag passed the Law to Annul Unjust Sentences Imposed During the National Socialist Administration of Criminal Justice, once again, homosexual victims of the Nazis were excluded. As recently as June 6, 2001, the Austrian Parliament rejected an amendment to designate homosexuals as a group entitled to legal compensation.

⁵⁷ See Stenographisches Protokoll 40; Sitzung des Nationalrates der Republik Österreich (June 1-2, 1995).

IV. Rationale for a *Cy Pres* Allocation in Memory of Homosexual Victims

Although the exact numbers of homosexuals persecuted by the Nazis will never be determined, historians know that approximately 50,000 homosexual men were convicted under /175. As with other victim groups, it is reasonable to assume that many had assets that the Nazis looted, then laundered through Swiss banks or other entities in Switzerland. As many as 15,000 homosexuals worked in slave labor, detention, or concentration camps and, hence, performed work for entities owned or controlled by the state or Nazi authorities. Historians estimate that 60 percent of the homosexual men deported as such to concentration camps were killed by the Nazis. Again, this figure represents the minimum number given the available historical records.

After 1945, the circumstances encountered by homosexual survivors of Nazi persecution are unique because homosexual men continued to be singularly and intensively pursued, imprisoned, and persecuted in West Germany and Austria under the same legal codes used by the Nazis until as late as 1969 and 1971, respectively. Survivors were publicly stigmatized, harassed, silenced, and re-imprisoned; they were excluded from compensation and ignored by elected officials for more than forty years.

As a consequence, very few homosexual victims have come forth to seek compensation or claim assets. Moreover, due to the fear of being re-imprisoned, many of the victims did not disclose their homosexuality to their families or the state. Given the post-1945 climate for homosexual victims, it is more than reasonable to presume that many did not inform their families about their sexual orientation and many more did not or were not able to have families of their own. Similar to many of the victims with disabilities, the majority of homosexual survivors in all likelihood did not have heirs, successors, administrators, executors, or other affiliates who could act on their behalf.

The first political acknowledgement of the injustice of Nazi atrocities perpetrated against homosexuals did not come until nearly half a century after the crimes occurred. Homosexual victims were not even mentioned in memorials and museum exhibits at the concentration camps until the mid-1980s.⁵⁸ Finally, homosexual victims had no extended familial, social and organizational networks outside of Germany such as those relied on by victims from religious or ethnic groups which could advocate on their behalf and contribute to the formation of a collective memory of the state-sponsored crimes of which they had been victims.

The Pink Triangle Coalition was founded in 1998 to give voice to the silenced and forgotten homosexual victims of the Nazi regime. Precisely because of the uniquely extenuating conditions for homosexual victims in the post-war period, it is not surprising that the Pink Triangle Coalition knows of very few individual claims by survivors and heirs with respect to the Holocaust Victim Assets Litigation. On behalf of the thousands of homosexual survivors who have been frightened into silence and on behalf of the thousands of murdered homosexual victims, the Pink Triangle Coalition asks that a *cy pres* allocation in the amount of one per-

⁵⁸ Historians have identified only one earlier case of homosexual victims being mentioned in educational activities at a concentration camp site: In 1962, a Polish guide giving a visiting French psychologist a tour of Auschwitz pointed out barracks that had been reserved for homosexual men and mentioned the insignia that the Nazis had used to distinguish homosexual men from other internees. See Dr. Georges Valensin, preface to Edouard Roditi, *De l'homosexualit*, p. 11.

cent of the total settlement be allocated to acknowledge the losses and honor the memory of these individuals who cannot themselves come forward.

In determining the figure of one percent of the total settlement, we have taken into account both the similarities and the differences between persecution of homosexuals and that of other groups targeted by the Nazis:

- ¥ Homosexuals victims, the vast majority of whom are now deceased and heirless, were systematically excluded from all forms of post-war compensation and restitution to date. Among the victim groups, this is why it is especially important that homosexuals be given a *cy pres* remedy that symbolically recognizes their suffering both under the Nazi regime.
- ¥ Of the approximately 50,000 homosexuals convicted by the Nazis under /175, it is likely that a significant number had assets that were taken by the Nazis and passed through Swiss banks or other entities. Although the exact numbers and dollar amounts will never be determined, it is highly likely that, following the trends of others who were persecuted by the Nazis, many more thousands of homosexuals deposited assets into Swiss accounts given the climate of terror and persecution in Nazi Germany.
- ¥ As many as 15,000 homosexual men performed slave labor in the concentration camps in which they were interned, thus making them eligible for compensation under Slave Labor Class I. But given the situation of continued post-war persecution of homosexual survivors in Germany and Austria, these victims or their heirs could not and possibly still cannot come forward to submit claims.
- ¥ Several cases of homosexual men who sought but were denied asylum in Switzerland to escape the Nazi regime are known. Since persecution based on sexual orientation was not recognized by the Swiss government as a reason for granting refugee status, it is reasonable to assume that homosexuals who sought this status were turned away from the Swiss border or expelled from Switzerland.

The Pink Triangle Coalition holds that the figure of one percent as a *cy pres* allocation represents a fair and reasonable settlement given the historical events that contributed to the destruction of homosexual communal life in Nazi Germany, the enslavement and murder of thousands of homosexuals, and the compulsory silencing and continued persecution of homosexuals in Germany and Austria after 1945. Because the overwhelming majority of the individual victims will never be able to come forward and claim their due compensation under the Swiss banks settlement, a *cy pres* allocation in their memory represents the best available remedy.

V. A Proposal for a *Cy Pres* Allocation

Should our request for a one percent *cy pres* allocation of the funds be granted, the Pink Triangle Coalition will use the money to establish a fund within the Astraea Foundation that:

- 1) Continues to support needy homosexual survivors of Nazi persecution in the last phase of their lives, including those who may still come forward.
- 2) Funds scholarly research aimed at more fully documenting the Nazi persecution of homosexual men and women and at locating additional survivors.
- 3) Promotes public education (including curriculum development, memorials, and educational materials) and projects that memorialize the homosexual victims of the Nazis.
- 4) Advances the efforts of organizations that work to end discrimination and persecution targeting homosexual men and women throughout the world. The goal of this effort is to prevent the crimes of the Nazis from happening again. No part of this allocation will be used for lobbying.

The Pink Triangle Coalition is not alone in its assessment of the need for continuing efforts at education. The International Forum on the Holocaust held in Stockholm (2000), the International Pink Triangle Colloquium in Berlin (2000), and the Washington Conference on Holocaust Era Assets (1999) each highlighted the need for widespread international recognition of Nazi persecution of homosexuals in order to ensure that people around the world are aware of the history of the Nazi era and the critical lessons that era affords us today. The gravity of this history and the crucial role education plays in combating present discrimination and oppression were two of the most important reasons given.

We believe that some of the most salient educational opportunities connect classrooms across the world to the numerous existing sites and museums of former concentration camps. More and more historical information, for example, is becoming available online for educational uses. Moreover, the extant camps themselves offer a range of educational opportunities. Dachau and Bergen-Belsen average a million visitors annually, with a high proportion coming from outside of Germany. But to date, memorials for homosexual victims exist at only five of the concentration camps, and the camp museums have only recently begun to research and present to the public the complex history of homosexual persecution in their permanent and special exhibitions. The first special museum exhibit dedicated to homosexual persecution occurred last year at Sachsenhausen: Homosexual Men in the Sachsenhausen Concentration Camp. The Pink Triangle Coalition hopes to support many more.

There are numerous consequences to the continued persecution and stigmatization of homosexuals in post-war Germany and around the world. In addition to those previously cited in this document pertaining directly to the persecutees, the post-war stigmatization stifled research and educational efforts. The United States Holocaust Memorial Museum in Washington, D.C., for example, conducted a national survey of school boards in the U.S. and determined that no appropriate curriculum exists pertaining to the persecution of homosexual men and women in the Third Reich.⁵⁹ We believe that establishing a fund to address this un-

⁵⁹ The survey was conducted by Jack Gilbert of the World Congress of Gay and Lesbian Jewish Organizations.

der-representation not only serves the educational needs of today's youth, but also will help foster a broader climate of tolerance and respect for difference.

The fund also would help support scholarly research. Scholars at the International Pink Triangle Colloquium in Berlin in 2000 identified numerous gaps concerning research into homosexuals and homosexuality in the Third Reich. These gaps included the following:

- ¥ The general situation for homosexuals in particular camps and the fate of individual prisoners.
- ¥ The role of the churches in perpetuating the persecution of homosexuals.
- ¥ The treatment of homosexual prisoners in conventional prisons.
- ¥ The differences in treatments between SS-controlled conventional prisons and those controlled by regular authorities.
- ¥ The depth, range, and details of medical experimentation carried out on homosexuals.
- ¥ The policies and roles of the Allied, German, and Austrian authorities pertaining to the continued persecution of homosexuals in post-war Europe.
- ¥ The ideological nuances of the Nazi persecution of homosexuals.
- ¥ The role of local authorities in enforcing Paragraph 175.
- ¥ The degree and types of persecution faced by lesbians throughout Germany and the annexed and occupied territories.
- ¥ Statistical research into the numbers of people interned without trial under /175.

The need for scholarly research into these and other areas is directly reflected in the paucity of appropriate educational materials. Scholarly research always precedes sound public education. The Pink Triangle Coalition believes that a wide scope of educational materials are needed, including memorial sites, museums, and historical exhibitions, as well as age-appropriate educational curricula for elementary, intermediate, secondary, and college-level classes pertaining to the history of homosexuality before, during, and after the Nazi era.

History Repeats Itself: The Need for Technical Assistance for Basic Human Rights Education

If tolerance for difference is one of the lessons humanity is supposed to have learned from the Nazi era, the contemporary treatment of homosexuals around the world demonstrates that the lesson has not yet been learned. The need to defend and advance the human rights of homosexuals did not end with the defeat of the Nazi regime. Indeed, according to the International Gay and Lesbian Human Rights Commission, 87 countries currently maintain laws that prohibit or regulate sexual activity between consenting adults of the same sex.⁶⁰ These laws are extremely broad in their scope and lend themselves to ideological interpretations which often serve as a pretext for the persecution of homosexuals. Such laws might, for example, outlaw unnatural or indecent sexual acts so that under their aegis the police or others sanctioned by the state can actively persecute homosexuals or gender minorities.

Still other states maintain morality laws against so-called anti-social or immoral behavior, in which arrest is justified by extremely vague terms such as causing a public scandal or hooliganism. These laws are widely used by the police to arrest and harass homosexual men and women. Examples of such jurisdictions include Argentina, Brazil, Bulgaria, the Dominican Republic, the Philippines, and several states within the United States. The United Kingdom prohibits the promotion of homosexuality.⁶¹

A survey of international public policies alone, however, does not convey the urgency of human rights education for sexual and gender minorities. According to a recent report by Amnesty International, homosexuals in many parts of the world still are subjected to some of the same forms of torture, forced medical treatment, and arbitrary arrest that were perpetrated against homosexuals during the twelve years of the Nazi regime. In various countries around the world, homosexuals still are denied solely on the basis of their sexual orientation their basic rights to freedom of assembly, freedom of association, and freedom of speech. The horrifying reality is that Afghanistan, the Arab Republic of Yemen, and Iran each maintain that homosexual acts are a capital offense, and executions of people convicted of homosexuality have taken place in 1980, 1995, and 1992.⁶²

Clearly, in different places throughout our contemporary world, much of the same discrimination and even some of the same crimes that occurred during the Nazi regime are currently being perpetrated against homosexual people. The past is not past, and history is repeating itself virtually every day. This is because the lessons of the Nazi persecution of homosexuals have not yet been taught or learned. The Pink Triangle Coalition believes that one of the best ways to commemorate and historically legitimize those who were murdered by the Nazis is to prevent such atrocities from occurring again throughout the world. This is why our proposal for a *cy pres* allocation works both to educate future generations about the crimes perpetrated against homosexuals under the Nazi regime and to prevent crimes of the same sort from happening again.

⁶⁰ International Gay and Lesbian Human Rights Commission, *Sodomy Fact Sheet: A Global Overview: Criminalization and Decriminalization of Homosexual Acts*.

⁶¹ *Ibid.*

⁶² Amnesty International, *Breaking the Silence: Human Rights Violations Based on Sexual Orientation*.

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