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# A Fuhrer of Industry: Krupp Before, During and After Nuremberg

STANLEY A. GOLDMAN\*

If there is no judge and no judgment, then everything is arbitrary and Hitler, may his name perish, was right: force is the only law. Then it's normal to play with the skulls of small children and to order a father to dig a grave for himself and his family.<sup>1</sup>

In the late nineteenth century, the long-established Krupp family of merchants and industrialists had already emerged as the primary arms provider to Bismarck's Second Reich, and would continue as the country's principal munitions supplier through the First World War. Not surprisingly, during the 1930s the head of the family, Gustav Krupp devoted a remarkable amount of time to strengthening his Nazi ties.<sup>2</sup> The Third Reich's leading capitalist and armaments producer, Gustav was named by Hitler as "Fuhrer of German Industry."<sup>3</sup>

It would be a profitable connection for Gustav. Even before War World II his family was to benefit "from the elimination of Jewish competition and the availability of valuable Jewish property at bargain prices."<sup>4</sup> As hostilities rapidly escalated, the company's significance as well as its bottom line grew to previously unheard-of levels.

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Portions of this article will be appearing in Prof. Goldman's upcoming book on the history of the Holocaust entitled: *LEFT TO THE MERCY OF A RUDE STREAM: SURVIVING THE HOLOCAUST* (forthcoming 2017).

1. ISAAC BASHEVIS SINGER, *SHADOWS ON THE HUDSON* 50 (1998).

2. *Id.* at 367–85.

3. WILLIAM MANCHESTER, *THE ARMS OF KRUPP* 367 (Little & Brown eds., 1968).

4. *Id.* at 390.

While no single weapon accounted for the stunning successes of the 1939 *blitzkrieg* invasion of Poland or the 1940 conquests of France and Belgium, Krupp factories had fashioned an arsenal of remarkably sophisticated instruments of war that could not be matched in either proficiency or numbers by any military force in Europe.<sup>5</sup> Their tanks were unparalleled for their size and mobility, as well as their sheer speed and striking power.<sup>6</sup> William L. Shirer wrote that as the German assault began “lurching into the Ardennes Forest,” their Krupp tanks “stretched in three columns back for 100 miles far beyond the Rhine.”<sup>7</sup>

The company had become much more than just one of Nazi Germany’s weapons suppliers. It was essential to the success of German aggression. As historian William Manchester noted in his classic work, *The Arms of Krupp*:

Krupp’s assembly lines in his hundred factories turned out guns of all calibers—antiaircraft guns, antitank guns, and heavy naval guns—in addition to tank, submarine, and other warship and aircraft parts, and the steel used by other munitions producers. . . . To an extent unprecedented in the history of industry, a corporation had become an integral part of a warlord’s apparatus.<sup>8</sup>

Even by the beginning of the war, however, Gustav was beginning to slip into a form of senility and in the spring of 1942 he suffered a stroke.<sup>9</sup> It would be physical problems and the advanced nature of his dementia that, a few years later, was to save the seemingly uncomprehending and all but voiceless Gustav from standing trial at Nuremberg. Allied prosecutors were to make a late decision to drop charges against him and attempt to substitute in his place the man who succeeded him as head of the family business: his eldest son Alfried Felix Alwyn Krupp von Bohlen und Halbach (known as Alfried Krupp).<sup>10</sup>

Alfried had been the perfect successor to lead the family business into the new German War. He had provided “faithful assistance to the embattled S.S. in 1931,” when at twenty-four he positioned himself “in the vanguard of the movement”<sup>11</sup> as a “sponsoring member.”<sup>12</sup> His Nazi contacts give them the opportunity to acquire slaves for his factories and

5. *Id.* at 411.

6. *Id.* at 410–11.

7. *Id.* at 416.

8. *Id.* at 411–12.

9. BENJAMIN B. FERENCZ, *LESS THAN SLAVES: JEWISH FORCED LABOR AND THE QUEST FOR COMPENSATION* 70 (Harvard Univ. Press 1979).

10. *Id.* at 71, *accord* MANCHESTER, *supra* note 3, at 631.

11. MANCHESTER, *supra* note 3, at 398.

12. *Id.* at 11, 597, 605, *accord* FERENCZ, *supra* note 9, at 70.

then to negotiate for government contracts that could only be accomplished by a company with such a limitless and cheap source of workers.

Though the judges of the International Military Tribunal (“IMT”) agreed to remove Gustav from a list which would eventually include the twenty-one most prominent living Nazis (including Hermann Goering and Albert Speer), they denied the prosecution’s late request to add Alfried to the catalog of defendants. Instead of being charged in the first and most famous of the Nuremberg trials, the younger Krupp would be tried two years later before one of the twelve subsequent Nuremberg Military Tribunals (“NMT”) where his guilt would be determined by three American judges.

Hitler had not asked Krupp to exploit the Jews of Auschwitz; it was Alfried who voluntarily set his sights on taking financial advantage of the death camp’s labor force.<sup>13</sup> William Manchester, the most widely known chronicler of the Krupp dynasty concludes that as a devoted National Socialist in good standing, Alfried had “considered it [his] duty to make . . . Jewish girls, some of them little more than children, work under the most brutal conditions in the heart of [his factory empire] in Essen.”<sup>14</sup>

It is not known who first uttered the phrase, *Vernichtung durch Arbeit* (“extermination through work”) but Alfried Krupp did propose the idea to his *Fuhrer*.<sup>15</sup> Manchester writes that Alfried told his *Fuhrer* that “he could see no reason why [Jews, foreign saboteurs, anti-Nazi Germans, Gypsies, criminals, and antisocial elements] shouldn’t contribute something to the Fatherland. . . . Properly driven, each could contribute a lifetime of work in the months before he was dispatched.”<sup>16</sup> It was an idea that Hitler readily accepted. Extermination through work and profit was a convenient partner for the Nazis.

Though many of his files were intentionally destroyed before they could fall into Allied hands, enough still existed to track Alfried’s use of

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13. *Id.* In June 1943 the first of the Jewish captives entered work sheds in Auschwitz constructed for Krupp’s use. He had overcome opposition to his plan to build a plant producing automatic weapons parts within the camp itself and staffed with Jewish slave laborers forced to produce weapons for their persecutors. *Id.* at 490. The Auschwitz factory workers who had managed to survive the war would later describe that from this Krupp plant they had been able to see the three big chimneys of the crematorium. *Id.* at 5. Though this particular project in eventually proved to be less financially successful for the Krupp Corporation than his already existing factories, “it was not for lack of trying” on Alfried’s part. FERENCZ, *supra* note 9, at 88, 90.

14. MANCHESTER, *supra* note 3, at 10.

15. *Id.* at 489, *accord* FERENCZ, *supra* note 9, at 103.

16. *Id.*

slaves.<sup>17</sup> The plan was to have two groups of forced laborers. One group typically included foreign civilians and prisoners of war who, though compelled to toil under harsh conditions, would be allowed to survive. The other group was even less fortunate. Comprised of prisoners taken from concentration and death camps, they existed under the threat of being murdered at any moment or literally worked to death. The dead were then to be replaced by others similarly procured and equally expendable.<sup>18</sup> One of Alfried Krupp's Nuremberg prosecutors, Benjamin B. Ferencz, described this second category of predominantly Jewish workers as "less than slaves."<sup>19</sup> Slaves would normally be considered property by their masters, and therefore valuable enough to be kept alive. That a few Jews, working in factories like those owned by the Krupp family, ultimately outlived the war was not merely unexpected; there is no reason to believe it was anything other than an unintended mistake.

As his family's factories grew dependent on forced workers, the number of those Krupp exploited grew geometric. It was Alfried who ran a corporation which used the inmates of 138 concentration camps in nearly one hundred factories across Germany, Poland, Austria, France, and Czechoslovakia in what was labeled *Arbeitseinsatz der Haftlinge* (Prisoner's contribution). Working for him in these factories, as well as in the actual concentration camps themselves, were about one hundred thousand slaves<sup>20</sup> made up of approximately seventy thousand foreign civilians, over twenty-three thousand prisoners of war and typically at any given moment about ten thousand Jewish workers.

A senior Krupp doctor, who had visited many of the fenced-in compounds run by his employer, described in a report the treatment of the slave laborers he had seen:

Conditions . . . were greatly overcrowded. . . . The diet was extremely inadequate. . . . Only bad meat, such as horse meat or meat that had been rejected by veterinarians as infected with tuberculosis germs, was passed out in these camps. Clothing, too, was altogether inadequate. Foreigners from the east worked and slept in the same clothing in which they arrived. Normally all of them had to use their blankets as coats in cold and wet weather. Many had to walk to work

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17. *Id.* at 450.

18. MICHAEL J. BAZYLER, *HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS* 60 (New York Univ. Press 2003).

19. FERENCZ, *supra* note 9, at xvii.

20. MANCHESTER, *supra* note 3, at 492-93.

barefoot, even in winter.<sup>21</sup>

He concluded that “[t]uberculosis was particularly prevalent” and estimated its rate to be “four times the normal rate.”<sup>22</sup> Though there is no way to determine during which of their various confinements the slave laborers contracted the disease. My mother, who spent most of the last nine months of the war as a forced laborer at a Krupp munitions factory in Berlin, was one of those who, at some point during the war, contracted the disease. Almost exactly half a century later, doctors at Cedars-Sinai Hospital in Los Angeles mistakenly diagnosed her as having lung cancer when a doctor misinterpreted the ancient tuberculosis scars left on her lungs.

Thanks in part to such cost-cutting strategies, the Krupp family amassed staggering wartime wealth. Manchester described the scope of this financial empire.

Hitler’s conquests made Krupp the greatest mogul in the chronicles of world trade before the Nazi tide. . . . [He] ruled an economic colossus sprawling across 12 nations, from the Ukraine to the Atlantic, from the North Sea to the Mediterranean and owned factories everywhere, a complex of shipyards in the Netherlands, and ore mines in Greece, Russia, France, the Sudeten lands, Norway, and Yugoslavia.<sup>23</sup>

Krupp was not alone amongst German industrialists claiming that they had little or no option but to accept the slave labor provided by the Nazis. The assertion was, however, an easily refuted lie. Documents submitted into evidence during the Nuremberg trials proved that German manufacturers clearly had a choice as to whether or not to exploit prisoners.<sup>24</sup> A few who chose not to use such workers continued to run their companies and even successfully compete for various government contracts (though perhaps not as profitably as they might have otherwise). The same evidence also revealed, as Peter Hayes concludes in his book *From Cooperation to Complicity in the Third Reich*, that the majority had shown “little hesitation about making use of the system”<sup>25</sup> and eagerly took full advantage of the grotesque opportunity by accepting cheap and plentiful forced workers of all ages.<sup>26</sup>

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21. *Id.* at 453.

22. *Id.*

23. *Id.* at 429.

24. *Id.* at 649–50.

25. PETER HAYES, *FROM COOPERATION TO COMPLICITY IN THE THIRD REICH: DEGUSSA IN THE THIRD REICH* 271 (Cambridge Univ. Press 2005); *see also* EHRlich HERBERT, *HITLER’S FOREIGN WORKERS* 154 (Cambridge Univ. Press 1997).

26. MANCHESTER, *supra* note 3, at 5.

Approximately four hundred German companies could be described as major users of slave labor gathered from concentration camps,<sup>27</sup> with a number of companies even insisting that the SS construct slave labor camps adjacent to their own factories.<sup>28</sup> Over fifty used prisoners from Auschwitz.<sup>29</sup> At least half of what are today's top twenty German companies made use of some of the estimated eight million to ten million Nazi era slave laborers.<sup>30</sup> "Jews who were selected for labor rather than immediate execution at . . . Auschwitz . . . were [usually] treated like doomed sub-humans" at their new worksites writes Richard Breitman in *The Architect of Genocide: Himmler and the Final Solution*.<sup>31</sup> Yet even in the contemptible company of these manufacturers, the Krupps' role stood out as beyond merely indefensible.

Living conditions for Jews in most Krupp factories were typically primitive at best. While in some locales these inmates did live in sturdy buildings, in others they had to survive in heatless huts, old ruins, or under tents and some were even forced to sleep unprotected on open ground. In these latter cases, it is difficult not to recognize the goal of extermination through work.<sup>32</sup>

Housing at the Neukolln factory proved far better than those normally provided. The Jewish prisoners lived in rooms that held between four and fourteen women who slept in double-decker bunks. Each of the three barracks was surrounded by barbed wire<sup>33</sup> as a precaution against escape which was soon made unnecessary by the terrifying intensity of Allied bombings against Berlin depressing any thoughts of flight.<sup>34</sup> There were working toilets and showers with the surprising luxury of hot water.<sup>35</sup> The women were each given a toothbrush and overalls affixed with yellow stars of David, along with wooden shoes with socks to be worn during their ten to twelve hour day or night work shift.<sup>36</sup> Though they received only one factory-cooked meal a day, it was ap-

27. BAZYLER, *supra* note 18, at 60.

28. GÖRAN ROSENBERG, A BRIEF STOP ON THE ROAD FROM AUSCHWITZ 104 (Other Press 2015).

29. BAZYLER, *supra* note 18, at 60.

30. *Id.* at 59.

31. RICHARD BREITMAN, THE ARCHITECT OF GENOCIDE: HIMMLER AND THE FINAL SOLUTION 234.

32. MANCHESTER, *supra* note 3, at 495.

33. *Id.* at 496.

34. JUDITH AGASSI, JEWISH WOMEN PRISONERS OF RAVENSBRÜCK: WHO WERE THEY? 160 (Oneworld 2007).

35. *Id.* at 159.

36. *Id.* at 159–160; *see also* testimony Bracha Fride and Malka Golir, YAD VASHEM 0.3–5279 (1996).

parently the same food served to the paid German employees as well as the non-Jewish conscripted workers made up of Italian, French, Polish and some Russian war prisoners.<sup>37</sup> Given the normal hierarchy of German forced labor, had it been specifically Jewish workers requested and expected by the factory, less resources and poorer living conditions might have been allocated.

Though the accommodations may have been better, the work required of some of the Jews in this Berlin plant could be arduous, painful and even dangerous. One of the women from Lodz, by way of Auschwitz, would years later recount that,

It was impossible to do all that was demanded of us. I worked in a galvanizing section, dripping hot irons into cold water. The sparks flew into my eyes and burned my hands. It was terrible. . . . I can hardly believe that I'm still alive today. . . . The German civilian foreman of the Krupp Company kept rushing us and we were all so terrified that if we stopped or slowed down we would be put in [a] crematorium that we worked to the last ounce of our strength. I endured this for nine months. . . . When I think of the time I had to work for Krupp it seems like another world.<sup>38</sup>

It is a testament to how nightmarish was the standard treatment of Jews that even these horrible conditions were better than those experienced in most SS-run work camps. In Neukolln, Jews were neither murdered nor beaten. Though once fall and winter came they possessed neither enough clothing nor food to properly cope with the elements or the work, none of the Jewish women perished from cold or starvation as in a number of other factories.<sup>39</sup> In fact, the women lucky enough to have been assigned to building mechanisms or creating molds, rather than the dangerous and exhausting work of galvanizing, understood how much worse their lives might have been.

At this stage of the war, given the absence of an adequate alternative source,<sup>40</sup> it was logical to prevent the loss of even Jewish workers or else risk being unable to satisfy quotas.<sup>41</sup> Many SS factory supervisors must have recognized the significance of a potential labor shortfall but their deeply rooted anti-Semitism, or the fear of upsetting their SS hierarchy, may have trumped production concerns and they continued to treat their Jewish workers as easily expendable. Harsh mistreatment of

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37. AGASSI, *supra* note 34, 159; *see also* testimony of Dvora Lezerkeritz, YAD VASHEM 0.3-6889 (1996).

38. FERENCZ, *supra* note 9, at 93-94.

39. AGASSI, *supra* note 34, at 160; *see also* FERENCZ, *supra* note 9, at 101.

40. *See id.* at 157-60, 217.

41. *See id.*



Jewish women at Krupp labor camps remained the norm and compassion the rare exception.<sup>42</sup>

It was typical for Krupp factories to ask the concentration camps to supply them with foreign women in lots of approximately five hundred and on the same day my mother's group was being transported to Neukolln in Berlin, another group of five hundred young Jewish women had been sent from Auschwitz to the Krupp plant at Essen in the Ruhr.<sup>43</sup> The masterful Krupp chronicler William Manchester describes that these

Jewesses . . . first marched past Humboldtstrasse's new watchtowers on August 25, 1944. . . . By all accounts [the Lagerfuhrer Oskar] Rieck seems to have stepped straight from a wartime B-movie. Short, scar-faced, and jackbooted, he always carried a rubber hose in one hand and a long leather whip in the other. If this description were based solely on the recollections of his victims, one might wonder, but it is supported in every detail by the commandant's staff [who confirmed the prisoner's characterization].<sup>44</sup>

Most of the Jewish women working for them were between fourteen and twenty-five, but there was one who was in her thirties. When she proved unable to keep up her younger coworkers Rieck whipped her to death.<sup>45</sup>

With the arrival of the five hundred Jewish women at the Berlin-Neukolln Krupp factory in late August 1944 came a warning from the guards who delivered them that their prisoners had better be watched carefully because they were criminals. As they marched onto the factory grounds, some German employees could be heard shouting "Murderers!" It was not long, however, before the supervisors began to doubt that there was anything dangerous about their new workers. The young women, almost all of whom were under twenty-five,<sup>46</sup> looked and acted like traumatized victims not evil perpetrators.<sup>47</sup>

THE FALL AND RISE AND FALL  
OF THE  
UNREPENTANT ALFRIED KRUPP

On April 11, 1945, as the advancing Allied Army captured the German town of Essen, "a squad of steel-helmeted American infantry-

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42. Compare AGASSI, *supra* note 34, at 160–164, with MANCHESTER, *supra* note 3, at 555.

43. See MANCHESTER, *supra* note 3, at 555; see also FERENCZ, *supra* note 9, at 94–95.

44. MANCHESTER, *supra* note 3, at 554.

45. *Id.*

46. See testimony of Bracha Fride and Malka Golir, YAD VASHEM 0.3–5279 (1996).

47. See AGASSI, *supra* note 34, at 161.

men” found Alfried Krupp in the office of his enormous mansion, still carrying on business as usual for the benefit of his Fuhrer and the Reich.<sup>48</sup> When placed under house arrest he blithely assumed it would be for no more than a few days.<sup>49</sup> His captors inquired why, though he must have received reports of the approaching Allied soldiers, he had not chosen to flee the Ruhr Valley? He simply responded, “I wanted to stay with my factory, where I belong.”<sup>50</sup>

At Nuremberg, Krupp’s attorneys argued (as did the lawyers for other manufacturers) that if their client had not accepted slave laborers or had he failed to meet the required quotas of munitions, he would have been punished.<sup>51</sup> To rebut such claims, the prosecution offered testimony from Karl Otto Saur, the former chief of Albert Speer’s ministry’s technical office.<sup>52</sup>

A prisoner of the Allies from 1945 to 1948, Saur had been granted immunity in exchange for his cooperation at Nuremberg.

[H]is appearance out of the past . . . stunned the thirty-three German lawyers sitting before Alfried like a protective black shield. They were helpless against Saur. He had been too close to the Fuhrer, he knew too much and he swore under oath that Alfried’s personal intervention with Hitler was directly responsible for Krupp’s use of Auschwitz Jews.<sup>53</sup>

Saur, who would be ostracized in post-war Germany for his candor which was considered by many Germans as tantamount to treason, testified that “[he had] not been able to find a single case, nor [had he] heard of a single one, in which someone was sent to a concentration camp because he failed to fulfill his production quota.”<sup>54</sup> In addition, he noted that “[t]he relationship between Krupp and ourselves was different from our relationship with other firms.”<sup>55</sup> If no one else had ever suffered physical punishment for not meeting expectations, the powerful Krupp, with his long and early ties as a member of the National Socialist hierarchy, would certainly not have been the first.

The Nuremberg court’s 1948, sixty thousand word written opinion found him guilty of, among other crimes, the use of slave laborers like

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48. FERENCZ, *supra* note 9, at 70; MANCHESTER, *supra* note 3, at 11, 597, 605.

49. MANCHESTER, *supra* note 3, at 608.

50. *Id.* at 606.

51. *Id.* at 486.

52. *Id.*

53. *Id.* at 649–650.

54. *Id.* at 486.

55. MANCHESTER, *supra* note 3, at 451.

my mother.<sup>56</sup> He continued to as show little emotion when he was sentenced to twelve years in prison as he had during the course of his lengthy trial. However, when the tribunal pronounced the unexpected order that his corporate assets, the significant bulk of his fortune, were to be forfeited—a sanction not even the prosecution had requested—“he went as white as a sheet [and] seemed to be on the point of collapse.”<sup>57</sup>

Like so many of those convicted at Nuremberg, however, Krupp would not serve anything approaching his pronounced sentence. A book, quickly authored by two of his attorneys along with the former National Socialist constitutional lawyer Ernest Rudolf Huber and entitled “*Why Was Krupp Condemned?*,” convinced German Chancellor Konrad Adenauer, as well as a large segment of the already sympathetic German public, that Alfried had been wrongfully convicted.<sup>58</sup>

Though only a handful of years had passed since the gas chambers had ceased and the killing camps closed, they were already being thought of as remnants of an aberrant time. Acting as if half a dozen years were an epoch, the unpleasant subject of the Shoah appeared less and less as a topic of public discussion in the United States as well as Germany.

This optimism and short-term memory was promoted by Western governments’ opportunistic efforts to align public opinion with what they saw as the new world order. A strong West German democracy was deemed vital to confront the Soviets. Obsessing about the Nazi atrocities of the last decade only succeeded in stirring up anti-German feeling at an awkward time when Germany was becoming an important new partner.<sup>59</sup>

Britain and the United States, in particular, wanted the industrial potency of the coal and factories of the Ruhr Valley to reinvigorate their new ally, and the heart of the Ruhr Valley’s industrial strength had long been the Krupp works at Essen. With its surviving population of skilled workmen, engineers and supervisors, Krupp’s company still possessed the potential of an enormous economic engine.<sup>60</sup>

Even some American newspapers, like the New York Herald Tribune, had questioned whether it was irresponsible to continue punishing

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56. *Id.* at 657; *see also United States v. Krupp*, IX TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNAL UNDER CONTROL COUNCIL LAW NO. 10, at 1327–1449 (U.S. Gov’t Printing Office Oct. 1946–Apr. 1949) (Judgement); FERENCZ, *supra* note 9, at 71.

57. *Id.*

58. HAROLD JAMES, *KRUPP: A HISTORY OF THE LEGENDARY GERMAN FIRM* 229 (Princeton Univ. Press 2012).

59. *Id.* at 84, 168, 85.

60. MANCHESTER, *supra* note 3, at 662.

a German industrialist like Alfried Krupp at a time when the United States should be rebuilding a democratic West Germany as a bulwark against Communist aggression.<sup>61</sup> Some in the United States government were actually eager to see various convicted Nazi war criminals completely pardoned, so that their prior crimes would no longer follow them. This would prove a bridge too far even for United States High Commissioner and former Assistant Secretary of War, John J. McCloy, who was, however, willing to go so far as to accelerate release if not exoneration. McCloy was a veteran of issues surrounding the Holocaust. When in the second half of 1944 the War Department was considering various proposals to either bomb Auschwitz or the railway lines leading to it, it was McCloy who, rightly or wrongly, had rejected all such ideas as either impractical or unlikely to succeed.<sup>62</sup>

On February 3, 1951, Alfried, along with all other imprisoned German industrialists, was officially pardoned and released by the American High Commissioner John McCloy. A former Wall Street attorney and named partner in the powerful firm of Milbank, Tweed, Hadley and McCoy, the he viewed the businessmen who had been the beneficiaries of Nazi slave labor as having been in a category quite separate from the others convicted at Nuremberg. Ignoring that those found guilty had requested concentration camp inmates as forced workers, McCloy's clemency board blithely and erroneously declared that the slaves had been assigned to the companies by the Nazi government and had remained under strict Gestapo control.<sup>63</sup> In addition, personally believing that "property forfeiture was somehow repugnant to American justice," McCloy ordered returned to Krupp the vast holdings that the Nuremberg tribunal had forced him to surrender.<sup>64</sup>

Such forgiveness and leniency was not universally cheered. William Manchester noted that "[n]o single act of the occupation created a greater emotional shock than did McCloy's rejection of the Krupp verdict."<sup>65</sup> The 1951 French and British press vilified the premature freeing from prison and repossession of the Krupp fortune.<sup>66</sup> New York liberal Republican Congressman Jacob Javits unsuccessfully protested to the new Secretary of State Dean Acheson. On the other hand, ultraconservative anti-Communist Republican Senator Joseph McCarthy called

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61. *Id.* at 642.

62. Geoffrey Ward, *Roosevelt in Auschwitz*, WALL STREET JOURNAL (September 18, 2015), <http://www.wsj.com/articles/roosevelt-and-auschwitz-1442609477>.

63. FERENCZ, *supra* note 9, at 74.

64. *Id.*; see also, MANCHESTER, *supra* note 3, at 680.

65. MANCHESTER, *supra* note 3, at 680; accord FERENCZ, *supra* note 9, at 75.

66. MANCHESTER, *supra* note 3, at 681.

it an “extremely wise” decision in the ongoing war against the expansionist Soviet Union.<sup>67</sup>

None of the prosecutors, who had tried him, or the judges who had found him guilty, or the slaves who had toiled in his factories was consulted before his release and the restoration of his financial empire. No alleged trial errors, which were claimed as the justification for the amnesty, were ever identified.<sup>68</sup> The trial records seem never to have even been examined by those entrusted with making, what proved to be, a political decision to commute the sentences of Krupp and a score of other convicted Nazis granted early release.

It was not the first time John McCloy had been seemingly indifferent to those involuntarily confined during time of war because of their ethnicity or national origin. As Assistant Secretary of War in the Roosevelt administration—the official most responsible for the wartime treatment of Japanese Americans<sup>69</sup>—he had been a strong proponent of internment as a military necessity<sup>70</sup> and had even attempted to bury a report contradicting this hard-liner position.<sup>71</sup> He would testify years later, that having personally inspected all of the American camps, that the internment had been in “the best interest of the country” and that “[o]n the whole [the] concentration of the Japanese population and its redistribution throughout the country resulted in their finding a healthier and more advantageous environment.”<sup>72</sup> It seems rather doubtful that many of those of Japanese ancestry held for years behind the barbed wire would have agreed.

Neither should it have been surprising that American High Commissioner McCloy would mischaracterize the work of the three American judges who had convicted and sentenced the German industrialists. McCloy had already done worse. In 1944, as the United States Supreme Court prepared to hear argument in *Korematsu vs. United States*, the most crucial and eventually notorious of the Japanese internment cases, it was McCloy who successfully held off Interior Secretary Ickes and others in the administration who wanted to concede the absence of any evidence of American-Japanese espionage.<sup>73</sup> Associate Justice Stanley Reed, who would join the majority opinion declaring the internment

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67. *Id.* at 673.

68. *Id.* at 682.

69. PETER IRONS, JUSTICE AT WAR: THE STORY OF THE AMERICAN JAPANESE INTERNMENT CASES 15 (Univ. of California press 1983).

70. *Id.* at 195.

71. *Id.* at 209.

72. *Id.* at 352.

73. *Id.* at 344, 302.

constitutional, would later declare that the government's claim that there had actually been instances of such dangerous and treasonous conduct by Americans of Japanese ancestry was vital to his difficult decision.<sup>74</sup> It is fitting that the most remembered and honored opinion ever authored by the illustrious Associate Justice and former lead Nuremberg prosecutor, Robert Jackson, is his timeless dissent in *Korematsu*.

On November 3, 1981, before a blue-ribbon federal commission re-examining the internment, the eighty-six-year-old McCloy attested, and later attempted to retract, that the World War II confinement of Japanese Americans had been an appropriate form of "retribution for the attack that was made on Pearl Harbor."<sup>75</sup> This from the man who had prematurely ordered the release of convicted Nazi war criminals and returned to Krupp his family's fortune.

Having been reinstated as the head of his conglomerate by McCloy, Alfried Krupp would become the German public's most popular industrialist. He appeared on the August 19, 1957 cover of Time magazine—not as part of an expose on the exploitation of wartime slave labor, or because of the murders he had ordered, the thefts he had perpetrated or his mass-produced weapons which had played a significant role in Hitler's wartime successes. Rather, the publication hailed Krupp, "the wealthiest man in Europe—and perhaps the world," as the symbol of the economic miracle that was postwar Germany.<sup>76</sup> As the 1950s approached its end, he was about to become Europe's only billionaire.

In the late 1950s, four decades before the better-known and more all-encompassing slave labor German reparations cases of the late 1990s, a legal brief entitled "The Forced Labor of Jewish Concentration Camp Inmates within the Krupp Combine," authored by the Conference on Jewish War Claims (the "Conference") arrived at the Krupp Corporation. It was a request, or demand, that the company provide a financial settlement to Jews who had been made to toil in Krupp's wartime factories.<sup>77</sup> The document included the following allegations: "The firm of Krupp exploited the prisoners' labor without ever paying them for it, nor did it ever attempt to compensate its forced laborers for the injuries to life, health, freedom, and honor which were sustained."<sup>78</sup>

The corporation's representatives were adamant that any discussions of settlement could not involve any possibility of payments to the

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74. *Id.* at 356

75. IRONS, *supra* note 69, at 353.

76. FERENCZ, *supra* note 9, at 76.

77. MANCHESTER, *supra* note 3, at 793.

78. *Id.* at 790.

heirs of already deceased Jews, nor would they consider making any charitable contributions on their behalf.<sup>79</sup> Only if the "Conference" was prepared to accept this limitation would the corporation negotiate the claim. In other words, in order for talks to begin, the plaintiffs would have to agree that there would be neither debt, nor justice, for the dead.<sup>80</sup>

Furthermore, perhaps fearing that it could involve tens of millions of dollars in additional payouts, the company took the position that the Conference on Jewish War Claims was not empowered to negotiate on behalf of potential Gentile, as opposed to Jewish, plaintiffs. This refusal to allow the conference to negotiate payments to anyone other than Jews was contrary to the position taken by the Farben Corporation which had recently reached a settlement agreement with the Conference. Farben was a major German company which had also used slave labor, as well as having operated a plant near Auschwitz Birkenau.<sup>81</sup>

Plaintiff's pro bono counsel Benjamin Ferencz, who had been the youngest of the Nuremberg lead prosecutors and a trial counsel against Krupp himself, was appalled by the pre-negotiation restrictions demanded by the Corporation. He was particularly sympathetic to the argument that former subjugated Jews and Gentiles should remain unified whenever possible. Ferencz, however, sadly concluded that Krupp (still apparently believing Jews to be a discrete and insular people separate from the rest of the world) would never make payments to non-Jewish victims based upon a claim asserted by a Jewish organization. In the end he agreed to the company's demands. In exchange for the plaintiff's limiting their claimants by not including deceased Jews or any Gentiles, the corporation agreed to begin negotiations.

The Conference on Jewish War Material Claims' attorneys proposed payment of \$1,250 to each living Jewish survivor. At first Ferencz optimistically believed that this modest request would lead to a quick settlement. Farben had reached an earlier agreement with the Claims Conference for the same \$1,250 per survivor. In addition, Krupp had previously been quite generous when making retroactive compensation to his former German employees. In 1953, once he had felt secure at the head of his family business again, he sold off some of his land in order to make good on back payments owed to the company's pensioners.<sup>82</sup>

Ferencz, however, had not appreciated that the very thought of

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79. *Id.* at 791.

80. BAZYLER, *supra* note 18, at 60.

81. *Id.*

82. PETER BATTY, *THE HOUSE OF KRUPP* 224 (Stein & Day 1967).

compensation to the non-German forced laborers, even in such a minimal sum, was abhorrent to Krupp. Alfried had spent much of the 1950s continuing to deny that he had done anything wrong, while conveniently eliminating the visible evidence and reminders of his crimes. As historian Peter Batty observes: “One by one, Krupp bulldozers leveled most of Alfried’s wartime concentration camps for new housing developments, and no one talked about the Jews anymore, partly because there were so few to attract attention.”<sup>83</sup>

By 1957, he had demolished the facility and barracks at Neukolln where my mother’s group had labored for him.

Negotiations were fierce and unpleasant. “Each session was marred by recriminations, accusations of bad faith” and even with what the Jewish representatives described as “anti-Semitic remarks” from the corporation’s representatives, Ferencz later wrote.<sup>84</sup>

Krupp’s claim that he had never been responsible for the treatment of his former slave laborers was not merely legally inaccurate—it defied logic. His 1951 release from confinement had not absolved him of responsibility for criminal convictions involving the use of slave labor and his treatment of the slaves. It had been proven in court that he had signed detailed contracts giving the SS the authority to supervise and inflict punishment on the forced laborers in his enterprises, and he had admitted in affidavits to having, on several occasions, personally inspected the clearly abused and exploited slaves at a number of his factories. It was at his insistence, and over the protests of other Nazis, that a munitions plant be constructed in Auschwitz itself, and it had been on his personal orders that his foreman entered Auschwitz to select laborers fit to work as those rejected were consigned to die in the gas chambers. As with any other criminal defendant adjudged guilty, there was no legal reason preventing his victims from suing him civilly.

As settlement discussions dragged on, the plaintiffs were considering the unprecedented step of filing suit in the New York Supreme Court where they would seek \$100,000 on behalf of each of the forced laborers. Even John McCloy, to whom Krupp owed his early release and the return of his fortune, intervened to suggest that a settlement would be a wise business decision.<sup>85</sup> McCloy and Krupp had remained in close contact, with Alfried apparently having grown to view the older American as something of a mentor.<sup>86</sup> Yet even this counsel, as well as

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83. MANCHESTER, *supra* note 3, at 871.

84. *Id.* at 793.

85. FERENCZ, *supra* note 9, at 81–82; *see also* JAMES, *supra* note 58, at 244.

86. MANCHESTER, *supra* note 3, at 834.



the prospect of a lawsuit filed in American courts, was not enough to persuade Europe's richest industrialist to settle.<sup>87</sup>

There was at that moment, however, one additional bit of outside pressure that led the Corporation to finally compromise with its Jewish adversaries. In spite of it having been one of the brokered conditions for his original prison release and the return of his property, Alfried still hoped to avoid having to divest his corporation of its Nazi-sanctioned monopolistic holdings. Dredging up his past crimes might delay or even interfere with what would eventually prove to be his successful campaign to maintain his existing industrial monopolies. Krupp grudgingly agreed that he would consider making some payment to each of his surviving Jewish laborers.

Given the Conference's original request of \$1,250 per survivor, approximately \$2.5 million would have been sufficient to satisfy the modest demand for what they estimated would be approximately two thousand Jewish survivors.<sup>88</sup> The corporation, on the other hand, asserted that only about one thousand two hundred of their former Jewish laborers were likely still alive. The intentional destruction of the company's business records as the war approached its end, however, had made an accurate count of exactly how many Jews had gone into his labor camps difficult to determine. Calculating how many had actually survived to the time of the settlement appears to have been nothing more than educated guess work by both parties.

McCloy arranged a meeting between the parties in the midtown New York offices of Chase Manhattan Bank. As a product of those talks it was announced on December 23, 1959, that the Corporation had agreed that one thousand two hundred (the Corporation's estimate of the number of surviving Jewish former Krupp slaves) multiplied by just under \$1,200 (for a total close to \$1.5 million) would be immediately provided in compensation.<sup>89</sup> The corporation's representatives also stated that an additional nearly \$1 million would be set aside in what in the unlikely event that their predicted number of survivors proved to be an underestimation.<sup>90</sup> The understanding reached between the parties included acceptance by the would be plaintiffs that the total would not exceed the promised ten million Deutschmarks (\$2,380,000) and that by agreeing to such payment the potential civil defendant was not admit-

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87. FERENCZ, *supra* note 9, at 84.

88. *Id.* at 79-80.

89. *Id.* at 86.

90. MANCHESTER, *supra* note 3, at 791.

ting liability or responsibility for any alleged past misconduct.<sup>91</sup>

Insightful members of the news media were not fooled by the settlement's rejection of legal responsibility or the company's press releases which alleged the payment was a voluntary contribution made in order to "heal the wounds suffered during World War II."<sup>92</sup> The London Sunday Dispatch found this claim to be "mean-spirited and tawdry."<sup>93</sup> They described it as "the most grasping, clutching, derisory 'gift' in recent memory" and reminded its readers that Krupp had produced war-time profits on "the blood and misery and starvation of . . . Jewish slaves who worked for him during the war."<sup>94</sup>

For Krupp's refusal to agree to a larger payout, a Labour Party member of Briton's Parliament called Alfried a "rascal [who] got away with murder and is now getting away with the swag."<sup>95</sup> However, when the meager extent of the final settlement was raised on the floor of the British Parliament, the Under Secretary of State for Foreign Affairs explained that while his government was sympathetic to the ill-treatment of the survivors who had not been compensated, Britain would not become involved.<sup>96</sup>

Alfried not only seems to have been little affected by the negative foreign comments, he appears to have also been confident that he would never have to provide the additional \$1 million yet to be deposited with the Conference.<sup>97</sup> In the last months of the War, Krupp's own squads had dispatched boxcar after boxcar of his Jewish workers to various death camps.<sup>98</sup> It would have seemed unlikely to him that one thousand two hundred Jews, no less two thousand, had outlived both their captivity in his factories and the likely death sentence inherent in those spring 1945 transports to extermination camps,<sup>99</sup> as well as having had the good fortune not to have perished in the ensuing fifteen years.

To his disappointment, Krupp lacked an adequate understanding of three facts:

First, in the waning weeks of the war, extermination facilities such as Ravensbruck were no longer functioning efficiently. The commander at Buchenwald, for example, had refused to accept delivery of any addi-

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91. FERENCZ, *supra* note 9, at 86.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* at 88.

96. *Id.*

97. MANCHESTER, *supra* note 3, at 791.

98. *Id.* at 792.

99. *Id.* at 791.

tional Jews since by the spring of 1945 his underlings no longer at time to murder all those already in their confinement. Thus, more Jews than Alfried had assumed outlived his death camp deliveries.<sup>100</sup>

Second, assuming he knew of their existence, Krupp may have failed to consider the nearly five hundred women in my mother's group. Mistakenly sent from Auschwitz to Berlin instead of the non-Jewish workers factory they had requested, they were apparently been provided with living conditions and sustenance normally afforded Gentiles forced laborers, but not Jews. As a result, 493 of the original five hundred Jewish women sent to the Krupp factory in Berlin in August 1944 survived the war. It was the highest survival rate of any Jewish group shipped from Auschwitz to an SS controlled labor camp<sup>101</sup> and they were now filing claims for reparations. In fact, the man who had built a wartime fortune in part on a business plan that depended on working Jewish slaves to death would eventually be outlived by most of the Jewish women who had toiled at his munitions factory near Berlin.

Third, Alfried was correct if he believed that wartime deprivations would have likely shortened the longevity of some survivors. When interviewed by Ferencz at his New York office, former Jewish slave workers all described suffering from chronic insomnia, and would often "burst into tears" when describing their lives under Krupp.<sup>102</sup> The Jewish claimants from his factory at Essen, who were almost all in their late thirties and early forties at the time of the settlement, prematurely suffered from ailments which would normally have not appeared until old age. One report concluded that by the 1970s, nearly two thirds of the Jewish survivors of Essen had passed away; but, in 1960, most of these former slaves were still alive and eager to file for even a minimal amount of their long overdue compensation.<sup>103</sup>

In the end, more than seven thousand concentration camp inmates applied for the funds.<sup>104</sup> The vast majority would be disappointed. Proving that they had worked for Krupp was difficult for some. As a result of incomplete records, only a small percentage of those claiming to have worked in Krupp factories such as the one at Reichenbach were ever able to establish their eligibility.<sup>105</sup> On the other hand, about seventy-five percent of the Jewish women who had survived slave labor at

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100. *Id.* at 792.

101. AGASSI, *supra* note 34, at 158, 167.

102. MANCHESTER, *supra* note 3, at 865.

103. FERENCZ, *supra* note 9, at 96.

104. *Id.*

105. *Id.* at 97.

plants in Neukolln, Essen and a factory at Geisenheim qualified for compensation.<sup>106</sup>

Each of the first applicants deemed eligible (including my mother) were sent \$750, with a few receiving as much as \$825, and were told that more money would hopefully follow. However, in spite of no fees being charged by the Conference or its attorneys, it soon became clear that just under \$1.5 million (the amount the Krupp Corporation had already turned over to the Conference) would not be enough to pay each of the Jewish survivors the \$1,200 initially announced.

As more Jewish survivors came forward and their claims validated, each initial payment was temporarily reduced to \$500 to insure that all of them would be provided some compensation. As the number of claimants approved approached the plaintiff's original estimate of two thousand, the funds dwindled away and payments had to be stopped until receipt of the anticipated additional \$1 million promised by the Corporation.<sup>107</sup> "Claimants could not understand why some of their comrades had been paid while others were told to wait."<sup>108</sup>

As the reserves were running out, the plaintiffs' attorneys first learned that Krupp would not be contributing the additional money his representatives had promised.<sup>109</sup> The Corporation's top representative, who maintained that the original agreement had been merely a gratuitous promise and not a legally binding settlement, not only denied that the agreement had provided for these funds, he argued that the request itself was precluded by the settlement's financial limits.<sup>110</sup> The Corporation's spokesperson announced, "we do not see ourselves in the position to make further sums available. I therefore do not consider even a discussion of this matter as appropriate."<sup>111</sup> Krupp believed that he had already been made to unjustly suffer enough. Having weathered the worst of the criticism as to the paltry nature of the reparations, as far as he was concerned giving away more money was unlikely to benefit his business.

When confronted with the question of why, if he were not guilty and bore no responsibility, he had paid the one and a half million dollars in seeming reparations, his representatives continued to claim the payments had simply been a voluntary "sacrifice" made in hopes of healing

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106. *Id.* at 100.

107. *Id.* at 97, 100.

108. *Id.* at 97.

109. MANCHESTER, *supra* note 3, at 792.

110. FERENCZ, *supra* note 9, at 97.

111. *Id.* at 98.

old wounds.<sup>112</sup> The German populace proved receptive to their popular job creator's explanation. What could and should have been disastrous publicity was, at least in Germany, successfully converted into a public relations success.<sup>113</sup>

When in the course of a personal correspondence with Benjamin Fenencz in January 2015, I mentioned that my mother had been a beneficiary of his late 1959 settlement negotiations, the still angry ninety-five-year-old responded, "I am honored and pleased that your mother was one of the recipients of the meager sums we managed to squeeze out of the Krupp criminals."

Adding insult to the irreparable injury he had caused, when confronted in 1960 by requests from surviving non-Jewish slave laborers for belated compensation, Krupp responded that he was "unfortunately" unable to provide them with even a token amount. His excuse, in spite of the entire settlement having cost him a mere one-fifth of one percent of his family's fortune,<sup>114</sup> was that since "so much money has been used to the advantage of the Jews, we are not in a position to make voluntary contributions."<sup>115</sup>

In the National Socialist tradition, the explanation of the richest man in Europe to the Gentiles he had forced into the wretched conditions of his slave labor camps was that they were now to receive no compensation because the Jews had taken all the money for themselves.<sup>116</sup> The founders of the SS might have paid ready homage to their old friend's logic. The strategy achieved even more than what it may have set out to accomplish when there emerged palpable anti-Jewish resentment among the non-Jewish forced laborers left out of the agreement.<sup>117</sup>

The agreement to pay reparations to Jewish survivors, perhaps as well as the fact that non-Jewish survivors were not to be included, may also have sparked an incarnation of the old hatred. It could have been a coincidence, but within a month of the announced settlement, "there would be almost seven hundred reported cases of desecration of Jewish houses of worship and cemeteries in every state of the Federal Republic of Germany."<sup>118</sup> During this period, there were accounts of anti-Semitic incidents in "Vienna, Oslo, Antwerp, Brussels, East Berlin, Paris, Jo-

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112. MANCHESTER, *supra* note 3, at 791.

113. *Id.*

114. *Id.* at 793.

115. *Id.* at 794.

116. See FERENCZ, *supra* note 9, at 88.

117. *Id.* at 87.

118. *Id.*

hannesburg, Cape Town, Melbourne, London, [and] New York.”<sup>119</sup>

There was eventually a small measure of ironic justice meted to Alfried Krupp. What constant Allied bombings and conviction at Nuremberg could not achieve, the hubris of his overconfidence would accomplish. A series of massive early-mid 1960s business deals in Communist nations would prove to be a mistake destined to bring down his personal empire.

Krupp’s financial success had been dependent upon financing from a Frankfurt firm owned by a large group of German banks.<sup>120</sup> In order to finance its colossal speculations the company had been borrowing heavily against its future. In 1966, 270 very nervous lending institutions learned that their most significant debtor would be unable to meet scheduled interest payments on these loans.<sup>121</sup> The banks as well as the government were willing to provide assistance, but only on the condition that the Krupp corporate structure, including its ownership, was significantly changed.<sup>122</sup>

In its August 11, 1967 issue, in an article entitled “*End of the Dynasty*,”—almost exactly ten years to the day after Krupp had been praised on its cover—Time magazine reported that an agreement had “ordained the end of the house of Krupp.”<sup>123</sup> By the end of that year, the corporation ceased to exist as a private company. Its assets and debts were transformed to a philanthropic foundation.<sup>124</sup> Without Alfried Krupp, the company would manufacture elevator systems, automotive parts, bob-sleds, protective glass panels for ice hockey rinks, fireworks, and eventually military submarines and warships for the government of Israel. .

119. *Id.*

120. JAMES, *supra* note 58, at 255.

121. *Id.* at 258–59.

122. *Id.* at 259.

123. *Germany: End of the Dynasty*, TIME (Aug. 11, 1967).

124. JAMES, *supra* note 58, at 260. Funding education, science, healthcare, sports and culture, rather than producing profits, would become its stated mission. Ironically, one of the men who would play a key role in arranging the transformation of the Krupp industries was Berthold Beitz, to whom Krupp had turned over much of the operations of his empire in 1953. FERENCZ, *supra* note 9, at 75. Alfried Krupp had wanted someone who “was 100% his man” and he had found him in Beitz. JAMES, *supra* note 58, at 240. One of the arguably reprehensible things he had done for his employer had been negotiating the meager slave labor reparations settlement in 1959. However, he was also known for apparently having several hundred of Jewish workers and their families protected from deportation between 1941 and 1944 in the Boryslav region of what is now Ukraine. MANCHESTER, *supra* note 3, at 858, 827. As a result of his alleged time conduct, a humanitarian acts, World Jewish Congress President Ronald S. Lauder once praised as “one of the great Germans of the past century.” He would eventually spend the remainder of his life (until his death at age 99 in September 2013) running the reorganized Alfried Krupp Foundation. The company’s 21st century iteration of the industrial conglomerate (ThyssenKrupp AG) no longer directly produced armaments.

Time brings on all revenges.<sup>125</sup> The pressure had grown great. Little more than a week before the publication of the Time Magazine article reporting the end of the Krupp Empire, and when it was already clear that his company could no longer survive, the embittered, twice-divorced, increasingly isolated and unrepentant fifty-nine-year-old was dead.<sup>126</sup> Reportedly succumbing to a cancerous tumor, although there was a certain mystery surrounding the actual cause of death,<sup>127</sup> the man who had come close to making Adolf Hitler ruler of the world died in the company of only a nurse and with a copy of *Mein Kampf* on his bedside table.<sup>128</sup>

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125. Apologies to WILLIAM SHAKESPEARE, *TWELFTH NIGHT*, act 5, sc. 1 (Feste: "And thus the whirligig of time brings in his revenges.").

126. JAMES, *supra* note 58, at 262.

127. See MANCHESTER, *supra* note 3, at 858, 827.

128. *Id.* at 827.