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Baltimore City

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Education, Health, &
Environmental Affairs Committee

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Environment Subcommittee



The Senate of Maryland

ANNAPOLIS, MARYLAND 21401

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July 9, 2012

Dr. Edward C. Papenfuse
State Archivist and Commissioner of Land Patents for Maryland
State Archives Building
350 Rowe Blvd.
Annapolis, MD 21401

Dear Dr. Papenfuse:

We write to you regarding our very serious concerns about the independence of the historian approved for the review of the digitized records submitted by SNCF in connection with Sections 12-501 through 12-511 of the State Finance and Procurement Article. As outlined in detail below, and based upon the information we have reviewed, the historian selected by SNCF and approved by the State Archivist, Dr. Michael Marrus, seems to be anything but independent of SNCF, as required by Section 12-506.

Pending a determination of the nature of the relationship between Mr. Marrus and SNCF and thus whether Mr. Marrus can indeed, given the facts outlined below, be considered independent, we respectfully request that you withdraw your determination that the entity has met the requirements of the statute, or, in the alternative, that you suspend this determination until a more thorough examination of these troubling issues can be undertaken.

In addition, based upon our review of your written notice submitted on June 22, 2012, and all of the related materials that you have provided in connection with this notice,¹ we are deeply concerned that the entity has failed to meet the

¹ These materials included, as provided in the email you sent to Delegate Sandy Rosenberg on June 22, 2012 at 4:50 PM, (1) the letter from Michael R. Marrus to Dr. Edward C. Papenfuse dated December 13, 2011; (2) the Final Report of Michael R. Marrus dated March 12, 2012; (3) the letter from Trudy Huskamp Peterson to Dr. Edward C. Papenfuse dated December 13, 2011; (4) the Final Report by Trudy Huskamp Peterson dated March 24, 2012; (5) the letter from Trudy Huskamp Peterson to Dr. Edward C. Papenfuse dated June 19, 2012; and (6) the Report from Henri Zuber dated May 24, 2012.

requirements of Sections 12-507(2) through 12-507(5). Nowhere in your written notice or in any of the supporting documentation provided by the designated historian, the designated archivist, or the entity, have we seen anything that even addresses, let alone fulfills, certain requirements of these sections.

As you can appreciate, this glaring omission is deeply troubling and of grave concern to our constituents. To the extent that the information required by these sections has not been provided to you, it would seem to be impossible to determine that the entity has met the requirements of this statute. Again, we respectfully reiterate our request above that you withdraw your determination that the entity has met the requirements of the statute, or, in the alternative, that you suspend this determination until a more thorough examination of these apparent omissions can be undertaken.

Outlined below are instances we have found, from publicly available sources, that raise serious questions about the "independence" of the designated historian, Michael Marrus, as required by the statute. As you will no doubt appreciate, all of these statements, indicating a clear bias and lack of impartiality, were made in 2010, the year before passage of the statute at issue, and thus before Mr. Marrus was designated as the relevant historian.

- "Michael R. Marrus, a University of Toronto law and history professor who has written extensively about Jewish persecution in Vichy France, said SNCF "became part of the Nazi war machine" after Germany defeated France in 1940. Marrus said the French government took responsibility for the crimes of its World War II-era Vichy government in the mid-1990s and has paid reparations to survivors and victims' families. Those payments have been slow to come and in many cases had to be forced by lawsuits, Marrus said. ***However, he said, he believes continuing to "stigmatize" SNCF more than 60 years after the atrocities were committed is "nonsensical." "No one in the SNCF now was making decisions back then," Marrus said.*** (emphasis added). "Holocaust Group Faults VRE Contract," *The Washington Post*, July 7, 2010.
- "Michael Marrus, a historian and University of Toronto professor, has written extensively about the Holocaust in France. ***He agrees with Townsend that SNCF and its subsidiary shouldn't be punished today for what happened 70 years ago.*** "When the deportees reached Paris, they were taken on a bus, so what about the bus companies?" Marrus asks. "What about the companies that supplied the petrol for the buses?" In occupied France, the entire society became part of the Nazi war machine, Marrus says...***But, Marrus says, the French government and SNCF have come to terms with their past. In the 1990s, the government began paying reparations, and the train company opened its books.***" (emphasis added). "Holocaust Survivors Blast French Rail's U.S. Pursuits" *NPR.org*, August 23, 2010.
- "University of Toronto law professor Michael Marrus told The Jerusalem Post that the California bill was "a misguided effort in the generally admirable

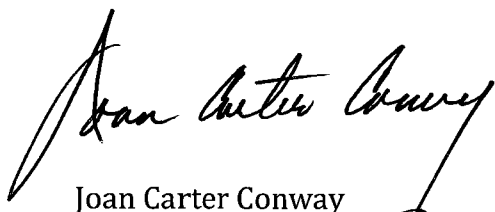
quest for justice for historic wrongs." ... "How does one draw the line?" he asked. "What about American companies or institutions that profited from slavery?" ... ***"To what degree is the SNCF in 2011 the company that committed wrongs or crimes in 1942-45?" he asked. "All, or almost all, of the wrongdoers have now died. Should the present-day company pay? And who should be paid? French courts have, after lengthy litigation, decided no." Marrus said SNCF had made "extraordinary efforts" to come to terms with its past, holding both a symposium and commission of inquiry into its wartime role. "When is full disclosure and acknowledgement of responsibility enough?" he asked.*** (emphasis added). "Railroads to Disclose Holocaust Role under Proposed CA Bill," *Jerusalem Post*, August 16, 2010.

As you can see, Mr. Marrus' public statements, made well before the passage (or even introduction) of the legislation at issue, raise serious concerns about his impartiality and the independence required under the law. In fact, these statements display significant and deeply entrenched preconceived notions and biases about SNCF, its current responsibility for its role in the Holocaust, and indeed even the status of the company "open[ing] its books" (the very subject of the statute at issue).

We are also attaching to this letter an invitation to a March 1, 2012 event at the Embassy of France. This invitation makes clear the exhibition "was made possible through the generous support of SNCF" and that Michael R. Marrus would be present at the event. This event, involving both SNCF and Michael R. Marrus, was held less than two weeks before Mr. Marrus issued his Final Report in connection with this statute. Consistent with the statements outlined above, it is very difficult for us to understand how Mr. Marrus could be considered "independent" as required by the law.

For the reasons stated above, we respectfully request that you withdraw your determination that the entity has met the requirements of the statute, or, in the alternative, that you suspend this determination until a more thorough examination of these troubling issues can be undertaken.

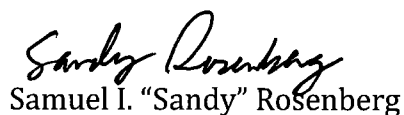
Respectfully,



Joan Carter Conway



Peter A. Hammen



Samuel I. "Sandy" Rosenberg

cc: Secretary Beverly K. Swaim-Staley
Matthew D. Gallagher, Chief of Staff, Governor Martin O'Malley
Frank Principe, Chief of Staff, MDoT
Bonnie A. Kirkland, Assistant Attorney General

From: Mémorial de la Shoah <deborah.farnault@memorialdelashoah.org>

Date: February 24, 2012 10:34:09 PM EST

To: [REDACTED]

Subject: Invitation from the Ambassador of France to the United States, and M. Jacques Fredj, Director of Mémorial de la Shoah

"Hélène Berr - A Stolen Life"
An exhibition created, designed and toured by
The Mémorial de la Shoah, Paris, France.



Opening Reception Invitation
March 1, 2012
La Maison Française
Embassy of France

Almost two years after the publication of her journal, written between 1942 and 1944, the Mémorial de la Shoah chose to return to the tragic destiny of Hélène Berr, a young Jewish Parisian girl. Expanding beyond the strict framework of a journal and the personality of Hélène Berr, this exhibit elaborates on the background of the Occupation and more broadly addresses the persecution of the Jews in France during World War II.

A student of English, Hélène Berr was 20 years old when she began writing her journal. The year was 1942, and the anti-Jewish laws of Vichy began, little by little, to radically change her life. Until March of 1944, the date of her arrest, she kept her journal on a daily basis.







François Delattre,
The Ambassador of France to the United States of America

Cordially invites you and a guest
To the opening reception of the exhibition

"Hélène Berr, A Stolen Life"
Designed, created, and circulated
by the Mémorial de la Shoah, Paris, France

In presence of
Jacques Fredj, General Director of the Mémorial de la Shoah,
Michael R. Marrus, Professor Emeritus of Holocaust Studies, University of Toronto
and
Murielle Job, Niece of Hélène Berr

On March 1, 2012 at 7:00 PM
At La Maison Française

RSVP at clement.villiers@ambafrance-us.org
Business Attire

La Maison Française
Embassy of France
4101 Reservoir Road, NW
Washington, D.C. 20007

This exhibition was made possible through the generous support of SNCF (France Railway Company)