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December 30, 2003

The Honorable Edward R. Korman  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11202

Mr. Judah Gribetz  
Bingham McCutchen  
399 Park Avenue  
New York, NY 10022-4689

Dear Judge Korman and Special Master Gribetz:

While holding a succession of senior positions in the Clinton Administration, I also served as President Clinton's Special Representative on Holocaust-Era Issues. In this capacity I led the U.S. government negotiating team in the Swiss, German, Austrian, and French restitution efforts to bring justice to Holocaust survivors and other victims of the Nazis. We also worked on art and personal property recovery and compensation, unpaid insurance policies, and communal property restitution in Central and Eastern Europe, and the former Soviet Union (CEE/FSU). Our efforts extended from 1995 to the end of the Clinton Administration in 2001.

It is because of my efforts in these areas, and the extensive contacts I have had since then with individual survivors and their representatives during speaking appearances around the country, that I am submitting this letter in response to your request that interested parties submit comments by the end of this year on how to allocate certain "excess," unclaimed funds and accrued interest from the Swiss bank settlement you had such a major role in achieving and which you are overseeing. I applaud you for this initiative, and for setting a hearing on these proposals for April 1. I am writing in a private capacity and not as a representative of the U.S. government or any group or organization.

My recommendations are made with both an appreciation for the care and deliberation you have already given to the current allocation process, and with a profound recognition of how difficult the allocation process actually is. It was the open-ended nature of the \$1.25 billion Swiss bank settlement which thrust upon you the difficult decision of how to

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allocate these funds among potential claimants. You properly recognized that the issue of dormant Swiss bank accounts was at the heart of our negotiations and included other worthy categories of victims who were directly or indirectly impacted by the role of the Switzerland during World War II. Indeed, it was with a recognition of these allocation problems that we determined in subsequent negotiations with Germany, Austria, and France to specifically allocate every dollar upon which agreed, and to incorporate this allocation into our settlement documents, among the various contending groups and individuals seeking payment.

Let me begin by noting that after extensive visits during the Clinton Administration to Eastern Europe and the surviving remnants of the pre-War Jewish communities there, I coined the term "double victims", to stress their unique suffering during both World War II and the Cold War that followed. I likewise recognize that today the deprivation of Holocaust survivors in CEE/FSU remains generally worse than that of survivors in other parts of the world, including Israel, the United States, and Western Europe, which have stronger social safety nets. In the states of the CEE/FSU there is nothing comparable to the Medicare, Medicaid (which allows benefits to Holocaust survivors), Food Stamps, and other social benefits provided in the United States, or the often more extensive social programs available in western Europe. It must also be recognized that until our German settlement in the year 2000, few of the post-World War II Holocaust payments by the German government have gone to survivors who lived behind the Iron Curtain.

At the same time, I have become more acutely aware of the needs of many thousands of elderly Holocaust victims in the United States. I have been shocked and saddened to learn of the extensive amount of poverty and deprivation among many survivors in the United States and in the State of Israel. My own anecdotal evidence has been substantiated by several recent studies, including those incorporated in the National Jewish Population Survey (which Special Master Gribetz co-authored), and in reports commissioned by former Secretary of State Lawrence Eagleburger for the International Commission on Holocaust Era Insurance Claims (ICHEIC), which he chairs. It appears from these studies that many of those in poverty in the U.S. and Israel are, in fact, the "double victims" who have recently emigrated from Eastern Europe and the former Soviet Union. In any event, the surveys show that some one-third of elderly Holocaust survivors in the U.S. and perhaps one half of those in New York, live below the poverty line.

I have also become sadly aware of the gaps in our own settlements. For example, many people failed to file slave and forced labor claims in time to meet the German deadline, and still others were unaware that they could file for their parents if they died after February 1999. Thousands of others have been turned down by the German Foundation because they did not have sufficient evidence they were slave laborers during the War. This is distressing since much of the evidence has been destroyed and third-party witnesses have passed away. Still others are

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ineligible for the German and Austrian payments because they were hidden during the War and did not qualify as slave and forced laborers.

I also believe that it is important to have some percentage of the funds we obtained in our settlements set aside for Holocaust education and remembrance projects, and to perpetuate Judaism in Eastern Europe and elsewhere around the world in the face of the grievous damage done by Hitler to the Jewish religion and Jewish culture. However, for the next several years, the vast bulk of money should be focused on elderly survivors in need, so they do not have added suffering to what they endured during World War II.

The dilemma is how to meet such great needs among survivors around the world with the limited means at our disposal. Frankly, there is a debilitating internal struggle among representatives of survivors about how to divide these amounts, not out of venality but because all seek the maximum benefit for deserving survivors they represent in various parts of the world. The State of Israel has become directly involved with senior officials from the Israeli government and the Jewish Agency visiting you to request additional allocations to Holocaust survivors in their country, particularly given the acute financial and budget crisis through which Israel is now going, as well as for Jewish education in the CEE/FSU. Other survivor groups and representatives in the United States have their own ideas, for example, for home care services in Florida and elsewhere in the U.S. The United Jewish Communities, that represents the United Jewish Federation movement, the most broadly based Jewish charitable organization in the U.S., will submit their proposal to you. Federation money goes for use in the U.S., to the State of Israel, and to the American Joint Distribution Committee, which serves needy victims abroad, primarily in the CEE/FSU.

There are four large sums of unallocated money to which we can look, only one of which is within your direct jurisdiction. However, you have the unique moral authority to help encourage a Solomonian resolution, which takes into account all existing funds, recognizing there can be no perfect justice, with so little money and such great needs. What I recommend is that you seek to coordinate a "global settlement". You might make your judgment about the allocation of the remaining unclaimed Swiss bank funds and interest after taking into account the other sums involved. At the same time, all of the burden should not be placed on these sums, nor on you. The American Jewish community needs to do the maximum for destitute Holocaust survivors in our own midst, and to promote Jewish education.

One sum is in ICHEIC. Through an agreement with Secretary Eagleburger funds for insurance claims were included in the German settlement and passed through to ICHEIC. As part of the German settlement we created a Humanitarian Fund (350 million DM, around \$175 million) and a claims fund (200 million DM, around \$100 million) for insurance, both of which were passed through to ICHEIC. ICHEIC has made a 10 year commitment to fund \$132 million

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in social welfare benefits. The Humanitarian Funds were a recognition that many of the unpaid insurance policies had no living beneficiaries. These funds would be made available for home care for needy Jewish victims, and/or for Holocaust education and remembrance projects, as ICHEIC would determine.

The second sum is the substantial fund which the Conference on Jewish Material Claims Against Germany (Claims Conference) has accumulated from the sale of properties in the former East Germany, to which they took title after the fall of Communism and the reunification of Germany. The Claims Conference has been recognized as legal heirs by the German government for over 50 years for Holocaust victims. I do not know the precise amount of funds the Claims Conference has, nor the amount they may still obtain. But I understand they have been paying some \$90 million per year from unclaimed Jewish properties in the former East Germany. Eighty percent of these funds go directly for the benefit of victims, about half to Israel, 10 percent in the U.S., about 25 percent to the former Soviet Union, and the balance in the rest of the world. Twenty percent of those funds go for education, almost all to the State of Israel. I have expressed my views to the Claims Conference, whose work I greatly admire, that for the next several years a larger percentage be allocated to survivors and less for education, as important and lasting as the latter allocation is to the future of Judaism in the world. But they recently reaffirmed their traditional 80/20 split, making it even more critical to look to other funds, including the Swiss amounts, to help victims. At the same time, I am very pleased that the Claims Conference has decided to reopen the time for property claims in the former East Germany to March 31, 2004.

The third amount is any excess funds in our German, Austrian, and French settlements. In Austria there is a very substantial amount of unclaimed money in the slave and forced labor category. In their wisdom, the Austrian government led by Chancellor Wolfgang Schuessel and his special negotiator Maria Schaumayer, agreed to a larger sum than we believed were likely to be claimed, in order to be certain everyone who was eligible received the equivalent of 10,000 DM. The Republic of Austria has not yet decided what to do with the excess funds. It is unclear if there will be any excess money in the French funds, but only a small amount of money has been drawn from the Draï fund. I have been told that there is 548 million DM in interest that has accumulated in the German fund, which has not yet been allocated.

The last sum of money is the interest accrued in the Swiss bank settlement, plus the potentially substantial amount of unclaimed funds of the \$800 million you set aside for dormant Swiss bank claims. Obviously, you will not know how much is unclaimed until the March 15, 2004 date you have set. But it may be in the hundreds of millions of dollars. You have

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previously allocated 75 percent of looted asset money in the Swiss settlement (initially \$100 million, increased by an initial interest amount of \$45 million and then a second tranche of interest of \$60 million, for a total of some \$205 million) to victims in the former Soviet Union, 12-1/2 percent to Israel, 4 percent to victims in the U.S., and around 10 percent for the rest of the world. Over \$550 million has been distributed to date to 245,000 claimants. This has permitted the critically important distribution of food packages to some 135,000 survivors in need in the CEE/FSU who have registered with the Hesed program of the American Joint Distribution Committee. Nothing should be done to diminish this important program. We can all be proud that 10 percent of these looted asset funds have been distributed to thousands of non-Jews, particularly Romanis and Jehovah's Witnesses, who were also victims of the Third Reich.

I suggest the following course of action:

1. At your hearing, request Secretary Eagleburger of ICHEIC, representatives of the Claims Conference, and officials of the Republic of Austria and the German and French governments to inform the court of how they propose to allocate their funds, including any excess unclaimed funds. This will give you a matrix to help you make your own determination on the allocation of the Swiss funds. The purpose is not to change their own allocation system, which they will control as independent actors (the U.S. government or its representatives sit on the board of the foundations in Germany, Austria, and France), but rather to factor them in when considering your own Swiss bank allocation formula. For instance, as mentioned earlier, it is my understanding that ICHEIC intends to set aside \$132 million over 10 years for humanitarian purposes, based more on a population distribution of survivors than a needs-based formula. Under this, some 16 percent would go to U.S. survivors, 21 percent to the FSU, and 42 percent to Israel. Likewise, the Claims Conference gives priority to Israel in its distribution of East German property funds, with some 55 percent to Israel, and 23 percent to the FSU, and 10 percent to the U.S.
2. Have the authors of the population surveys for ICHEIC and the Jewish Population Survey give you a needs assessment of survivors worldwide, with population and poverty distribution, taking into account the fact that the "double victims" have fewer government resources upon which to rely. There are conflicting conclusions among and between the authors of these reports. It would be helpful if you could establish a consensus for a common data base, against which to base your allocation formula.
3. Try to help those who have "fallen between the cracks" of the German slave labor payments, because they either filed late or were turned down for inadequate proof or otherwise

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have been found to be ineligible. These claimants could be covered by the Swiss slave labor category, as you allocate unclaimed bank accounts.

4. Priority emphasis should continue to be placed on the "double victims" of the CEE/FSU. Of the some \$60 billion the Germans have paid in various Holocaust payments, including its BEG program, over \$22 billion has gone to survivors in Israel, \$14 billion to those in the U.S., \$14 billion to those in western Europe and the rest of the world, and less than \$200 million to survivors in the CEE/FSU. Moreover, \$200 million of Swiss money has been allocated to 139,000 slave laborers (46 percent in Israel, 24 percent in the U.S., 27 percent in the rest of the world, and only 2 percent to the CEE/FSU). Of the \$125 million thus far allocated for actual dormant bank accounts, claimants in the U.S. and the rest of the world have gotten the lion's share (\$48 million and \$62 million respectively), \$14 million has gone to Israel, and only \$185,000 to the FSU. But, of the looted asset class, as noted, only 4 percent has gone to U.S. survivors, with 75 percent to the FSU. The point of all of this is that there is a need to compare what this court has given in different categories of the Swiss settlement, to what will be allocated by the other funds mentioned.

If in fact there will be hundreds of millions of dollars of unclaimed Swiss bank funds of the \$800 million you set aside, this may allow many conflicting needs to be taken care of without sacrifice to the neediest in the CEE/FSU. With the additional funds, it would seem fair to allocate some additional percentage for the U.S. above the current 4 percent, given the population of impoverished U.S. survivors, and to Israel, as well. Some U.S. survivor representatives have told me a good home care program could be developed for \$30 million per year. One concept might be to telescope payments into a five-year time frame, rather than the current 10-year window. ICHEIC and other funds should consider doing the same.

5. No one believes more than I do in the importance of education funds for Jewish continuity. But the needs of elderly, poor survivors are so great they should receive priority for the next several, critical years. Education funds should come increasingly out of Federation and Jewish Agency programs during this period.

6. It is important that there be an accelerated completion of the unclaimed accounts so excess money can be used during the lifetime of the survivors, while the maximum effort is made to locate actual accounts. This may require more cooperation from Swiss banks in publishing a larger data base. You are in a unique position to insist upon this. There have been only 21,000 names published of a total wartime account list of 4 million (most unrelated to the Holocaust). Originally, there was a potential list of 54,000 names suggested by Paul Volcker, following his audit. This was reduced to 36,000 and then to 21,000. I understand that two of the

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largest Swiss banks are making some progress in sharing a master database. After all, this was the backbone of our effort in the Swiss bank cases.

I hope these thoughts are useful in the very difficult, but important process upon which you are embarking. Your past stellar work on the Swiss bank cases provides assurance you will act in the wisest way.

With respect and admiration, I remain,

Very truly yours,



Stuart E. Eizenstat