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Burt Neuborne
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April 25, 2008

Hon. John F. Walter
United States District Court
Central District of California
312 N. Spring Street
Room 176, Courtroom 16
Los Angeles, California 90012

Re: United States v. Melvyn I. Weiss
No. CR 05-587(E) – JFW

Your Honor:

My name is Burt Neuborne. I am the Inez Milholland Professor of Civil Liberties at New York University School of Law, where I have taught for the past 35 years. In 2001, I was elected a Fellow of the American Academy of Arts and Sciences in recognition of my work as a scholar and practitioner of Constitutional Law in the federal courts.

I write to ask you to take Mr. Weiss’s monumental efforts on behalf of victims of the Holocaust into account in fashioning a just sentence in this case. As an academic lawyer who has devoted much of my career to the study of the judicial process, I acknowledge the seriousness of Mr. Weiss’s behavior. I believe strongly, however, that a truly just sentence should also reflect the unique – indeed almost incalculable – contribution to justice made by Mr. Weiss in connection with a decade of litigation, negotiation and advocacy on behalf of elderly Holocaust victims.

I write from deep personal knowledge of Mr. Weiss's leadership of the Holocaust litigation. I serve as court-appointed Lead Settlement Counsel in the so-called Swiss bank litigation,¹ and as the United States government's lawyer-appointee to the Board of Trustees of the German Foundation "Remembrance, Responsibility and the Future," established to settle the so-called German slave labor litigation.² I affirm without hesitation that Mr. Weiss was the heart and soul of both the Swiss bank and German slave labor litigation. He conceived of the litigation, funded it, organized it, directed its strategy, led the negotiations, and developed the implementation mechanisms. While I was proud to assist him in the process, it was Mr. Weiss who pulled the plough.

I have no business or economic ties to Mr. Weiss. I met him for the first time in January, 1997 when Chief Judge Korman asked me to serve as co-counsel in the Swiss bank litigation pending before him in the Eastern District of New York. I was somewhat apprehensive about serving as co-counsel with Mr. Weiss because of his reputation as a fierce advocate and an aggressive negotiator. Within weeks, however, my apprehensions had disappeared. I found Mr. Weiss to be a brilliant strategist, and a completely committed advocate for the victims. He could not have been kinder to me, educating me in the complexities of class action practice, and counseling me on a daily basis about how best to proceed. He led the negotiations, and helped to develop our legal theory. In my opinion, without Mr. Weiss, the Swiss bank case would not have moved forward.

During the climactic 12 days of negotiations in Judge Korman's chambers in August, 1998 that culminated in settlement, it was Mr. Weiss who spoke for the victims – passionately; brilliantly; and effectively. Once the case was settled for \$1.25 billion, it was Mr. Weiss who persuaded most of the lawyers to waive fees for having obtained the settlement, and who persuaded me to accept Judge Korman's post-settlement appointment as Lead Settlement Counsel in January, 1999. I accepted the appointment only

¹ See *In re Holocaust Victim Assets Litig.*, 105 F. Supp.2d 139 (E.D.N.Y. 2000)(upholding Swiss bank settlement).

² See *In re Nazi Era Cases Against German Defs. Litig.*, 198 FRD 429 (D.N.J. 2000)(upholding German slave labor settlement).

after extracting a promise from Mr. Weiss that he would counsel me throughout the implementation phase. Scarcely a day passed in the next seven years that I did not hold him to his promise. Mr. Weiss's commitment and generosity of spirit helped us to pilot an unorthodox and complex class action settlement through the courts and, most importantly, through the practical problems of distribution. We have now distributed more than \$1 billion to more than 400,000 victims throughout the world. While I am proud to have played a constructive role in the process, it was Mr. Weiss who played the crucial role in making it possible, and who played an unceasingly constructive role in making it happen.

Mr. Weiss's role in the German slave labor litigation was equally remarkable. In 1996, the German Federal Constitutional Court ruled in *Karakauer* that a 1991 treaty had lifted the international bar to litigation on behalf of Holocaust victims that had been imposed by the London Debt Agreement of 1953. Mr. Weiss brought the *Karakauer* case to my attention, and urged me to join with him in seeking compensation on behalf of slave and forced laborers. When I initially declined, he refused to take no for an answer. I finally agreed to work with him. Mr. Weiss then filed the first of 60 cases on behalf of Nazi-era slave and forced laborers seeking compensation from German corporations. He provided invaluable unpaid assistance to other lawyers seeking to file similar cases. Mr. Weiss led the discussions on strategy, and launched the nationwide movement that forced German industry to seek a negotiated resolution.

When Secretary Eizenstat convened the parties to the slave labor cases in an unprecedented international negotiation involving 17 major German companies and eight nations, he asked Mr. Weiss to play a leading role as spokesman for the victims. While I expressed myself on occasion, it was Mr. Weiss who willingly assumed the emotional and financial burden of principal negotiator. The complex negotiations lasted for 18 months, shuttling on a monthly basis between Bonn and Washington, D.C., culminating in Berlin in July 2000 in the creation of a \$5.2 billion German Foundation "Remembrance, Responsibility and the Future," funded jointly by German industry and the German government, designed to compensate the victims.

Mr. Weiss played a central role at every stage of the process – from conceiving and funding the German slave labor litigation, to arguing the cases, to negotiating the innovative settlement that Chief Judge (now Attorney General) Mukasey has hailed as a “remarkable” achievement of justice.³

In August, 2000, I was appointed by the United States to the Board of Trustees of the German Foundation, with a special responsibility to protect the rights of the victims. I accepted the responsibility only after Mr. Weiss promised to work with me in carrying out my responsibilities. During the eight years that I have served on the Foundation Board, Mr. Weiss has provided me with invaluable support and counsel. While the Foundation has succeeded in distributing over \$6 billion to 1.66 million Holocaust victims, numerous issues have required legal representation of the victims, ranging from litigation over unpaid interest, to efforts by German insurance companies to avoid paying the agreed sums, to concern with currency fluctuations. I sought and received Mr. Weiss’s advice, counsel and support on virtually every contested issue. On behalf of the victims, I owe him an enormous debt of gratitude.

The above narration of Mr. Weiss’s efforts, while impressive, does not capture his passion and the generosity of his spirit. Two examples must suffice.

³ Then-Chief Judge (now Attorney General) Mukasey has stated:

A lot of things get written about lawyers these days, most of them bad. But the disposition here is a remarkable achievement for the lawyers in this case. I want to thank each of you and all of you for what you have done. It is a remarkable, remarkable thing....When lawyers get a bad rap, I will speak up for lawyers on the basis of this, if nothing else.
Transcript of Proceedings before Chief Judge Mukasey, pp.19-20. *Winters v. Assicurazioni Generali*, 98 Civ. 9186 (December 8, 2000 SDNY) (MBM). (discussing the German Foundation settlement).

As the Holocaust litigation gained public attention and a measure of success, we were overwhelmed with requests for assistance by individual victims. I was present on numerous occasions when Mr. Weiss responded to a telephone call or a poignant letter seeking help. No matter how busy he might be, I repeatedly watched Mr. Weiss speak patiently – even lovingly – to elderly victim after victim – providing counsel and reassurance; but most of all providing them with the respect and dignity that had been stolen from them. One astonishing elderly woman not only spearheaded the slave labor litigation against Volkswagen, she wrote life-affirming poetry. Mr. Weiss quietly arranged for the private publication of her poetry.

Mr. Weiss was also responsible for the decision to include non-Jews in the Holocaust litigation. While the Holocaust was a tragedy of unimaginable scope for the Jewish people, Mr. Weiss recognized the universal nature of Nazi persecution. In the Swiss bank case, he successfully urged the inclusion of Jehovah's Witnesses, Sinti-Roma (gypsies), gays, and the disabled as victims of Nazi oppression equally entitled to legal redress. In the German slave labor cases, he was instrumental in assuring compensation for non-Jewish forced laborers from Eastern Europe who had never before received recognition or compensation. Indeed, in large part due to Mr. Weiss's espousal of universality, 75% of the German Foundation's payments have gone to non-Jews.

But Mr. Weiss's wisdom in this area went even further. He recognized that a decision to include additional victims in the litigation, and decisions about settlement terms, should not be vested solely in the lawyers. He recognized, moreover, that most of the elderly Holocaust victims valiantly serving as named plaintiffs were not well-situated to make decisions affecting so many victims. Accordingly, Mr. Weiss assembled an informal Board of Advisors consisting of Jewish community leaders, both religious and secular, to advise the lawyers on such issues. Membership was open to any interested leader. The Board of Advisors fully concurred in broadening the scope of the litigation to include non-Jews, and in the terms of the settlements.

In my opinion, the ultimate success of the enterprise in distributing more than \$7.5 billion to almost two million Holocaust victims is traceable, in large part, to Mr. Weiss's wisdom, his passion, and his generosity of spirit. I implore you to weigh Mr. Weiss's magnificent contribution to justice in the Holocaust cases in fashioning a truly just sentence in this tragic case.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Burt Neuborne". The signature is fluid and cursive, with a large initial "B" and "N".

Burt Neuborne