

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TIMOTHY REIF and DAVID FRAENKEL,
as Co-Executors of the
ESTATE OF LEON FISCHER,
and MILOS VAVRA

Plaintiffs,
- against -

RICHARD NAGY, RICHARD NAGY LTD.,
Artworks by the Artist Egon Schiele known as
WOMAN IN A BLACK PINAFORE, and *WOMAN
HIDING HER FACE*,

Defendants.

Index No.: 161799/2015

(Mot. Seq. No. 8)

(Hon. Charles E. Ramos)

REBUTTAL REPORT OF JONATHAN PETROPOULOS, Ph. D

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I have been retained by Timothy Reif and David Fraenkel, co-executors of the estate of Leon Fischer and Milos Vavra to summarize and discuss evidence and scholarship relating to the art collection of Franz Friedrich (“Fritz”) Grünbaum. My 2008 Report concluding that the artworks at issue in this case were stolen, was submitted to this Court (NYSCEF 210) (the “2008 Report”). The 2008 Report was prepared for *Bakalar v. Vavra*, 819 F. Supp. 2d 293, 302 (S. D. N. Y. 2011). As explained below, that report was not considered in *Bakalar* on procedural grounds.

In this rebuttal I will address issues raised in the following reports submitted on behalf of defendant Richard Nagy (“Nagy”):

- A. Report of Sophie Lillie dated September 20, 2017 (NYSCEF 249) (“the Lillie Report”)
- B. Report of Laurie A. Stein dated September 20, 2017 (NYSCEF 252) (“the Stein Report”)
- C. Report of Lynn Nicholas dated September 21, 2017 (NYSCEF 250) (“the Nicholas Report”)
- D. Report of Dr. August Reinisch dated September 21, 2017 (NYSCEF 263) (“the Reinisch Report”)(collectively “Nagy’s Experts”)

Professional Credentials/Witness Qualifications

I am the John V. Croul Professor of European History at Claremont McKenna College in Southern California.

Since 2008, I have published two additional scholarly monographs: *Royals and the Reich: The Princes von Hessen in Nazi Germany* (Oxford University Press, 2006); and *Artists Under Hitler: Collaboration and Survival in Nazi Germany* (Yale University Press,

2014). I have also published a number of scholarly articles on Nazi art dealers during the Third Reich and in the post-1945 era.

My current Curriculum Vitae, with a list of my publications in the last ten years, is attached hereto as Exhibit "A."

Other Cases

I have served as an expert witness in numerous cases where Holocaust victims sought to recover lost artworks. This includes *Altmann v. Republic of Austria* (No. CV 00-8913 (FMC)), originally filed in the Central District of California (six paintings by Gustav Klimt); *De Csepel v. Republic of Hungary* (No. 10 Civ. 1261 (ESH) in the District of Columbia District (art belonging to the Herzog family of Hungary); *Rosner v. United States of America* (No. 01 CV 01859) in the Southern District of Florida ("Hungarian Gold Train"); *Warin v. Wildenstein* (No. 115143/99) in New York State Court (medieval manuscripts looted by the Nazis); *Bakalar v. Vavra* (No. 08 Civ. 5119) in the Southern District of New York (artwork by Egon Schiele); *Boston Museum of Fine Arts vs. Seger-Thomschitz* in U.S. District Court, District of Massachusetts (No. No. 08-10097-RWZ) (Kokoschka painting); *Schoeps v. The Museum of Modern Art* (No. 07 Civ. 11074 (JSR)) in the Southern District of New York (painting by Picasso); *Grosz v. The Museum of Modern Art* (No. 09 Civ. 3706 (CM) (THK)) in the Southern District of New York (three pictures by George Grosz); *Schoeps v. Bayern* (No. 13 Civ. 2048 (JSR)) in the Southern District of New York (painting by Picasso); *Cassirer v. Thyssen-Bornemisza Collection Foundation* (No. CV 05-03459 (JFW)) in the Central District of California, Western Division (painting by Pissarro); *Marei von Saher v. The Norton Simon Museum* (No. CV 07-2866 JFW (SSx)) in the Central District of California, Western Division

(two paintings by Cranach the Elder); and *Frenk v. Rabenou*, in the Supreme Court of the State of New York (No. 650298/2013), (art collection of Paul Westheim).

I have been retained by counsel for Timothy Reif and David Fraenkel at the rate of \$300 per hour.

Brief Summary of This Report

The 2008 Report was prepared for the *Bakalar v. Vavra* case. It concluded that Fritz Grünbaum's art collection including the drawing by Egon Schiele, *Seated Woman with Bent Left Leg* (1917) was taken from the Austrian Jewish cabaret artist Franz Friedrich ("Fritz") Grünbaum by the Nazis while he was imprisoned and murdered in the Dachau Concentration Camp. The 2008 Report shows that *Woman in a Black Pinafore* (1911) and *Woman Hiding her Face* (1912) ("the Artworks"), met the same fate. Today I reaffirm the 2008 Report's conclusions, summarize scholarly and factual developments since 2008, and reject the erroneous, speculative, and ahistorical contentions of the Lillie, Stein, and Nicholas Reports and confirm that the overwhelming undisputed historical evidence demonstrates that the Artworks were stolen from Fritz Grünbaum.¹

Additionally, I briefly summarize evidence supporting the contention that art dealer Richard Nagy acted in bad faith in acquiring the Artworks in response to the Nicholas Report's erroneous argument that Nagy acted in good faith. Finally, I address the Reinisch Report's contention that Austria does not provide a remedy for Holocaust victims and their heirs in recovering Nazi-looted art. I discuss this in light of the 1955 Austria State Treaty guaranteeing the return of artworks and relevant U.S. foreign policy and domestic law, which has consistently been that Holocaust victims would have a forum in the United States to undo acts of Nazi terror.

¹ Cited herein with page references as "Stein __" "Lillie __" "Nicholas __" "Reinisch __."

Because the 2008 Report was commissioned by the Grünbaum Heirs after discovery closed in *Bakalar v. Vavra*, the Court granted plaintiff David Bakalar's motion to exclude the 2008 Report as untimely. Accordingly, the 2008 Report was never considered by the *Bakalar v. Vavra* trial judge in deciding that case.

My research and scholarship from 2008 to the present reaffirms the 2008 Report's conclusions that Fritz Grünbaum lost his art collection, including the Artworks, due to Nazi spoliation while he was in Nazi custody in the Dachau and Buchenwald Concentration Camps from 1938 to his death in January 1941. The historical record shows that both Fritz Grünbaum's property and the property of his wife and widow, Elisabeth Grünbaum ("Elisabeth"), were under the control of "Aryan" trustee Ludwig Rochlitzer who was appointed by the Nazis to liquidate their property in January 1939 pursuant to the 3 December 1938 Aryan Trustee Act.

I have reviewed the Lillie, Stein, and Nicholas Reports' contentions that the Grünbaum Heirs have not presented evidence that the Nazis gained control of Fritz Grünbaum's art collection. As described below, the evidence and scholarship refutes these contentions. For the Court's convenience, I summarize and discuss the direct evidence showing Nazi control of Fritz Grünbaum's art collection in 1939 through his death in 1941. Additionally, I summarize and discuss circumstantial evidence in historical context and in light of contemporary scholarship disproving the Stein, Lillie, and Nicholas speculations relating to Grünbaum family members and friends secreting or selling the Artworks.

The Lillie, Stein, Nicholas and Reinisch Reports overlook and misunderstand direct evidence of Nazi custody and control of Grünbaum's art collection, including the Artworks, by ignoring evidence that the Nazis appointed an "Aryan" trustee for their property, including the art collection in 1939. Lillie and Stein describe Rochlitzer as the Grünbaums' "attorney" (Lillie

10-11, Stein 26). According to the Aryan Trustee Law, Ludwig Rochlitzer controlled the Grünbaums' property.² The Aryan Trustee Law of 3 December 1938, titled "The Proclamation of the Regulation Concerning the Utilization of Jewish Property" stated, "Upon the delivery of the order on the basis of which a trustee is appointed according to Paragraph 2, the owner of the business enterprise is deprived of his/her right to dispose of the assets which are administered by the appointed trustee. The owner shall only be granted this right again if the appointment of the trustee is cancelled."³ The record contains no evidence that Rochlitzer's appointment as the Grünbaums' trustee was cancelled any time prior to Rochlitzer's death in 1945.

The Lillie, Stein, Nicholas and Reinisch Reports ignore direct evidence of Nazi custody and control of Grünbaum's art collection, failing to discuss and understand the "*Gesperrt*" and "*Erledigt*" ("blocked" and "settled") official Nazi stamps on Fritz's June 30, 1939 Jewish Property Declaration. Viennese Jews were required to fill out Jewish Property Declarations pursuant to the law of 26 April 1938, which provided that Jewish property declared in the Jewish Property Declarations would be available to Field Marshal Hermann Göring to implement the Four Year Plan.

The Four Year Plan was enacted by the Nazis in 1936 to put the German economy in service of re-armament and gave Goering plenipotentiary powers to govern by decree. The "*Gesperrt*" and "*Erledigt*" stamps on Fritz's Jewish Property Declarations are direct evidence that the Nazis had control of Fritz Grünbaum's art collection and that the art collection, like the rest of the Grünbaum's property, had been mobilized by Nazi officials in service of the German war economy. The Lillie, Stein, Nicholas, and Reinisch Reports dispute neither the 2008

² Rochlitzer wrote to Elisabeth Grünbaum in January 1939 that he had been was the "administrator commissioned by the Devisenstelle Vienna for and your husband's assets." Dr. Ludwig Rochlitzer to Elisabeth Grünbaum (31 January 1939) at Stein Exhibit 11. Because Fritz Grünbaum was an entertainer, composer and cabaret artist, he was self-employed and operated his own business, which Rochlitzer therefore came into control.

³ "Proclamation of the Regulation Concerning the Utilization of Jewish Property" (3 December 1938) (The Aryan Trustee Act/Law).

Report's conclusions regarding the authenticity of the Rochlitzer appointment, nor the Jewish Property Declarations that bear the stamps "*Gesperrt*" and "*Erledigt*." Thus, the Court may consider this undisputed direct evidence of Nazi spoliation of Fritz Grünbaum's art collection.

In the wake of Fritz's death in Dachau, official court records documenting his 1941 probate proceeding in Vienna showed he had no assets. Elisabeth Grünbaum was deported to the Maly Trostenets death camp near Minsk in October 1942. In ignoring these official Nazi records, Lillie, Stein, Nicholas and Reinisch close their eyes to and thus deny the established historical reality that Nazis systematically looted the property of concentration camp and death camp victims prior to murdering them. As with nearly all death camp victims, the Nazis completely despoiled Elisabeth of her property before murdering her.

I write to summarize evidence and scholarship that may be helpful to the finder of fact in drawing historiologically permissible inferences from the record in light of my specialized knowledge of Nazi spoliation practices. My methodology includes reviewing the work of other scholars in the field and builds upon my efforts for over three decades reviewing Nazi-era records. The evidence that the Nazis had custody of Fritz Grünbaum (imprisoned in the Buchenwald and Dachau concentration camps) and his artworks (stored and "blocked" in a Schenker & Co. warehouse, an entity utilized by the Nazis to despoil property) is overwhelming, reliable, and uncontroverted. As discussed below, the theories of Lillie, Stein and Nicholas are directly contradicted by historical records, the reliability and meaning of which are not subject to legitimate scholarly debate. The Reinisch Report's silence on the anti-Semitic measures controlling Jewish property from 1938 to 1942, including the Jewish Property Declaration Law of 26 April 1938 and the 3 December 1938 Aryan Trustee Act, amounts to a concession that, as a

legal scholar, Reinisch does not challenge the correctness of the 2008 Report's conclusions regarding the spoliation of Fritz Grünbaum's art collection.

A. Lillie and Others Concede That Fritz Grünbaum Owned The Artworks

In weighing the credibility of Nagy's Experts, the Court should consider that Lillie and others have conceded Grünbaum's ownership of the Artworks. In *Bakalar v. Vavra*, Judge William Pauley concluded that Egon Schiele's *Seated Woman with Bent Left Leg* (1917), together with his oil painting *Dead City III*, were among 65 artworks, including the Artworks, by Schiele appearing in a 1956 Swiss auction catalogue (the Gutekunst & Klipstein or "1956 Kornfeld Catalogue") that all belonged to Fritz Grünbaum when he was arrested by the Gestapo in March, 1938.⁴ The Artworks at issue here, *Woman in a Black Pinafore* (1911) and *Woman Hiding her Face* (1912), are numbers 21 and 22 respectively in the 1956 Kornfeld Catalogue.⁵ Judge Pauley's conclusion that Grünbaum owned the Artworks was consistent with the 2008 Report. Lillie recognizes the unanimous scholarly opinion that the Artworks share the "same provenance" of *Seated Woman with Bent Left Leg* (1917).⁶ Lillie thus concedes that the Artworks belonged to Fritz Grünbaum.⁷ According to Lillie's 2005 article "Die Tote Stadt," Eberhard Kornfeld told Lillie that all the works by Schiele in the 1956 Kornfeld Catalogue came

⁴ Gutekunst & Klipstein, *Egon Schiele. Katalog zur Ausstellung Gutekunst & Klipstein 1956* (D & M 00634 – D & M 00659). The catalogue includes an initial listing of 54 works, plus an additional 11 works after the essay by Arthur Roessler. The attached price list notes that six works (numbers 19, 31, 33, 34, 41, and 43) that were exhibited were private property ("Privatbesitz") and thus presumably not offered for sale.

⁵ 1956 Gutekunst & Klipstein catalogue (P0052-P0081). She writes, "I note that the two artworks in question, *Woman Hiding Her Face*, and *Woman in a Black Pinafore*, share the same provenance as the works investigated by *Bakalar vs. Vavra*, the Michalek Commission and the Austrian Restitution Panel, in that all of those works originate in the 1956 Gutekunst & Klipstein catalogue and all were consigned to that dealership by Mathilde Lukacs."

⁶ Lillie 2.

⁷ Sophie Lillie, "Dead City: The Unresolved Destiny of the Art Collection of Fritz Grünbaum," [translation of] "Die Tote Stadt. Das ungeklärte Schicksal der Kunstsammlung Fritz Grünbaum," in Marie-Theres Arnbom and Christoph Wagner-Trenkwitz, eds., *Grüss mich Gott! Fritz Grünbaum. Eine Biographie, 1880-1914* (Vienna: Verlag Christian Brandstätter, 2005), 158.

from the Grünbaum collection. Lillie's 2005 article concluded that the Artwork also belonged to Fritz Grünbaum.⁸

Art dealer Jane Kallir, who authored a catalogue raisonné of Schiele's works on paper, testified at the *Bakalar v. Vavra* trial that she believed all the works in the Gutekunst & Klipstein catalogue from 1956 belonged to Fritz Grünbaum.⁹ Sotheby's also acknowledged that *Woman in Black Pinafore* had belonged to Fritz Grünbaum.¹⁰ Thomas Gibson also acknowledged the Grünbaum provenance (he asks why Sotheby's left it out).¹¹ Sarah Jackson, then the Historic Claims Director of the Art Loss Register, wrote to Richard Nagy on 6 October 2004 that Schiele's *Girl in a Pinafore* (1911) "had previously been owned by the Jewish cabaret singer, Fritz Grünbaum."¹²

Documents from art dealer Richard Nagy also show Nagy's acknowledgment that the Artworks belonged to Fritz Grünbaum (*See* ARIS Art Title Protection Insurance at NYSCEF 196) (*Woman Hiding Her Face*). Similarly, Nagy voided his purchase in *Woman in a Black Pinafore* before requiring it after *Bakalar*.

⁸ Sophie Lillie, "Dead City: The Unresolved Destiny of the Art Collection of Fritz Grünbaum," [translation of] "Die Tote Stadt. Das ungeklärte Schicksal der Kunstsammlung Fritz Grünbaum," in Marie-Theres Arnbom and Christoph Wagner-Trenkowitz, eds., *Grüss mich Gott! Fritz Grünbaum. Eine Biographie, 1880-1914* (Vienna: Verlag Christian Brandstätter, 2005), 158.

⁹ Jane Kallir testimony, 15 July 2008 in Exhibit J (NYSCEF 253). 337. Kallir testified here, "And I was not able to match these works up with specific images until I received the information that everything in the Kornfeld catalog, the 56 catalog, came from the Grünbaum collection." On page 363, Jane Kallir states regarding the comparison of the Kornfeld (Gutekunst & Klipstein) 1956 catalogue and the Galerie Würthle catalog, "You can only do that once you know that the works in the Kornfeld catalog came from the collection of Fritz Grünbaum."

¹⁰ Melanie Clore to Thomas Gibson (28 September 2004) at Exhibit W (NYSCEF 266). Melanie Clore says in the 28 September 2004 letter (N000017-19) that "Herr Kornfeld has now confirmed that all the Schiele works consigned to the 1956 exhibition came directly from the family (i.e. Fritz Grünbaum's sister-in-law) following the death of Fritz and Elizabeth."

¹¹ Thomas Gibson to Melanie Clore (24 September 2004) at Exhibit W (NYSCEF 266).

¹² Sarah Jackson to Richard Nagy (6 October 2004) at Stein Exhibit 1 (N000014-15).

B. Lillie's 2005 Conclusions That Grünbaum's Art Collection Was Taken From Him While He Was In Dachau And That Mathilde Lukacs' Alleged 1950s Possession Was Irrelevant To Legal Title Are Inconsistent With Her New Report

From 2005 through 2012 the Grünbaum Heirs consistently pursued the following theory in the *Bakalar* case: Fritz Grünbaum lost possession of his art collection while he was in Nazi custody from March 1938 until his death in January 1941 and thus he and his heirs retained title to the art collection.¹³ The Grünbaum Heirs have disputed that Lukacs ever had possession of the art collection, and have argued that even if she had possession of the art collection and sold it, her possession would have made her a thief under the Austrian law of decedent's estates.¹⁴ The Grünbaum Heirs consistently argued that the idea of the Nazis giving the art collection to Mathilde Lukas was preposterous. This theory is consistent with the 2008 Report and with the views expressed in Lillie's 2005 writings.

In 2005, Lillie published an article concluding that Fritz Grünbaum's art collection was taken from him while he was in Dachau and that the story of Lukacs selling the art collection in 1956 was irrelevant because Lukacs could not have had "de jure" title. Thus, Lillie agreed with the 2008 Report's conclusions. However, the conclusions of the Lillie Report are inconsistent with her 2005 conclusions, which I reproduce below. Because Lillie has failed to explain why she changed her mind since 2005, the Lillie Report is unreliable.

1. Lillie's 2005 Conclusion That Grünbaum's Art Collection Was Taken From Him While He Was In Dachau

In 2005, Lillie wrote as follows about Elisabeth Grünbaum:

Unconfirmed is the assumption that Lilly Grünbaum would have had unlimited access to the art property after the registration of the collection by the National Socialist Property Registration Office (*Vermögensverkehrsstelle*) in 1938. Moreover, being the wife of a well-known regime critic and Jewish, Lilly Grünbaum would have been unable to save her property or her life. As a

¹³ (See Answer and Counterclaims in *Bakalar v. Vavra* S.D.N.Y. 05-cv-03037 ECF Doc. 7 ("Bakalar Answer")).

¹⁴ See *Bakalar* Answer.

Jew she already lacked the legal grounds to claim her husband's estate. It is equally unlikely that her sister was able to rescue the art collection. Only a politically unsuspecting person would have been able to react in this manner at that time....¹⁵

In 2005, Lillie questioned other scholars who argued that there was a duress sale of the

Artworks by Elisabeth Grünbaum:

The Lilly Grünbaum export license application reveals a very important detail, which to date had been neglected as an indicator: with this application also came the accounting for shipping costs and special fees from the Office of Monument Protection. Together these sources document that the collection and other objects (*Obersiedlungsgut*) had been moved from the apartment located on the Rechte Wienzeile no. 29 in Vienna's fourth district to the premises of the shipping company. This fact contradicts the thesis of Tina Walzer und Stephan Templ, quoted by Hans Veigl, which says that the Grünbaum collection was removed from the apartment and sold to a Viennese antique dealer under duress. For Walzer and Templ, a sale to the *Schatzmeister* (appraiser) Dr. Franz Kieslinger, an expert on gothic sculpture and an authority on Egon Schiele's work, seems possible based on the declaration of a neighbor of the Grünbaums. Although Kieslinger's role as a National Socialist benefiting from diverse dispossessions should be questioned urgently — a sale to him cannot be proven by any source.¹⁶

Thus, in 2005, Lillie called for an investigation into Kieslinger's potential profiteering from the Grünbaum art collection, a conclusion that is inconsistent with the Lillie Report's conclusions.

2. Lillie's 2005 Conclusion That Lukacs' Possession Was A Result Of National Socialist Persecution And That The Absence Of Gift Or Purchase Evidence Renders Lukacs' Possession Illegal

In 2005 Lillie concluded that if indeed Lukacs possessed the Artworks in the 1950s, Lukacs' possession would have been the result of National Socialism and thus unlawful:

It is unclear how some parts of the Grünbaum collection appeared in the mid-1950s at the Klipstein & Kornfeld gallery in Bern. Mathilde Lukacs, sister of

¹⁵ Sophie Lillie, "Dead City: The Unresolved Destiny of the Art Collection of Fritz Grünbaum," [translation of] "Die Tote Stadt. Das ungeklärte Schicksal der Kunstsammlung Fritz Grünbaum," in Marie-Theres Arnbom and Christoph Wagner-Trenkowitz, eds., *Grüss mich Gott! Fritz Grünbaum. Eine Biographie, 1880-1914* (Vienna: Verlag Christian Brandstätter, 2005): 148.

¹⁶ *Ibid.*, 153.

Lilly Grünbaum, brought the art works in. Regarding the small dimensions of the pieces, [Dr. Rudolf] Leopold and Kornfeld concur that Lukacs might have fled from Austria carrying the works with her in her luggage. They viewed Mathilde Lukacs's acquisition of her sister Lilly Grünbaum property as 'de jure.' This representation of events is incorrect. The idea that Lukacs could have carried and saved any artwork while on a flight from the Nazis that took her across half of Europe and ended in Belgian detention camp defies the mournful reality of escape and persecution. With the facts then present Mathilde Lukacs could have been viewed, at best, as possessor of the art works, but proof of ownership either through a gift or purchase is missing. In retrospect, the legality of the transaction is due to the rise of the National Socialism and cannot be characterized as 'de jure.'¹⁷

Lillie thus concluded in 2005 that Lukacs did not possess the Artworks prior to 1945.

Lillie also concluded in 2005 that any post-1945 possession by Mathilde Lukacs would have been illegal due to the lack of evidence of gift or purchase.

With respect to Kornfeld's claims that he didn't know Fritz Grünbaum was the owner of the art collection he sold in 1956, Lillie wrote:

The catalog from Klipstein & Kornfeld mentions Grünbaum only once, namely at the provenance of the painting *Dead City III*, but in a wrong order. It states: 'Fritz Grünbaum, Dr. Alfred Spitzer, Arthur Roessler, all in Vienna, then Private Collection Vienna.' The correct order would be: Roessler (who acquired the painting from the artist), Spitzer, Grünbaum, since only after Grünbaum could the painting have been part of a private collection in Vienna, and this is the only and therefore most important indication of a possible successive owner. That the Klipstein & Kornfeld gallery does not mention the owner's name specifically is not unusual for an exhibition with works for sale....¹⁸

Lillie's 2005 article also attacked inconsistencies in Kornfeld's story regarding his acquisition of Grünbaum's art collection:

Regarding the Leopold Museum, Eberhard Kornfeld confirmed in 2000 'that all the works on paper of Egon Schiele published in our exhibition catalog in September and October of 1956 were in our possession, and that these had been previously acquired from Mathilde Lukacs during her time of residence in Brussels.' Kornfeld reinforced this statement in 2001, stating 'Mathilde

¹⁷ Ibid., 155.

¹⁸ Ibid., 158.

Lukacs sold what remained of the Grünbaum collection to us in 1955 in several installments. Thereupon we organized the 1956 Schiele exhibition.’ In his most recent statements Kornfeld revised this description to the effect that he only took on several parts of a ‘not so important graphic collection at an auction.’ Kornfeld's assurance was repeated by the Leopold Museum, which during the proceeding for the *Dead City III* affirmed that ‘all works on paper and three small oil paintings had been in the possession of Mrs. Mathilde Lukacs’ which led them to conclude that the Klipstein catalog of 1956 corresponds exactly and in full volume to the Klipstein list. This statement can be disputed, because at that time several loans from Grünbaum to the Würthle gallery were already missing in the Klipstein catalog, among them, the work *Girl with Banner* (1913) from a private collection.¹⁹

Despite Lillie’s 2005 attack on inconsistencies in Kornfeld’s statements, the Lillie Report now uncritically accepts Kornfeld’s statements regarding his purported purchase from Lukacs. Lillie’s 2005 analysis is consistent with the 2008 Report and Lillie has failed to set forth any evidence showing why she changed her mind since 2005. Accordingly, as explained more fully below, I reject the Lillie Report’s acceptance of Kornfeld’s version of events and reaffirm the 2008 Report’s conclusion that Kornfeld’s account is unreliable.

Since 2000, Kornfeld has made contradictory statements about how he obtained the Artworks, raising doubts about his truthfulness. Lillie has conceded that Kornfeld “went so far as to deny [the] existence [of correspondence with Mathilde Lukacs].”²⁰ In 2007 Kornfeld testified that “It was not until 1998 that in the course of the Reif family’s efforts to be acknowledged as heirs I learned that the works of art which were consigned to me for sale by Mathilde Lukacs of Brussels or were sold, initially came from the Grünbaum collection.”²¹ This statement is contradicted by the evidence.

¹⁹ Ibid., 158.

²⁰ Translation of Sophie Lillie, “The Dead City,” 6 (NG 0024).

²¹ Nicholas Report, p. 7, where she cites Kornfeld to Gruber (7 February 2007) at A-843.

In the 1956 Kornfeld Catalogue, Kornfeld listed Fritz Grünbaum in the provenance for the painting *Dead City III*.²² Furthermore, Otto Kallir's pre-war catalogue raisonné for Egon Schiele's oil paintings listed Grünbaum in the provenance of other works that Mathilde Lukacs supposedly sold to Kornfeld (*Self-Seer I* and *Black Girl*).²³ In his 2007 deposition, Kornfeld admitted that in preparing the 1956 Kornfeld Catalogue he consulted Otto Kallir's 1930 catalogue raisonné to find the Fritz Grünbaum provenance.²⁴ Furthermore, Kornfeld admitted that all the objects in the 1956 Kornfeld Catalogue numbered 1-53 [including the two Artworks at issue here] had the same provenance.²⁵

As *Dead City III* was object number 1 in the 1956 Kornfeld Catalogue with a Grünbaum provenance, and the Drawing in question in *Bakalar v. Vavra* was object number 51 and acquired from the same source, Kornfeld's testimony shows the Artworks also came from the Grünbaum collection.²⁶ Kornfeld also swore that in 1956 he had never heard of Fritz Grünbaum.²⁷

C. The Reinisch Report Concluding That Austrian Law Fails To Provide An Effective Civil Remedy To Jews Who Lost Property In The Holocaust and Lillie's 2008 Conclusions That Austria's Post-1955 Restitution Laws Constitute A "Second Aryanization" Of Stolen Jewish Property Are Consistent With the 2008 Report's Conclusions

Nagy purports to contest the 2008 Report's observations regarding the 1946 Nullity Act through the Reinisch Report arguing that Austria's post-1955 legislatures did not provide lasting civil remedies for Jews to recover expropriated property in Austria based on the 1946 Nullity Act.

²² Gutekunst & Klipstein, *Egon Schiele. Katalog zur Ausstellung Gutekunst & Klipstein 1956* (D & M 00634 – D & M 00659).

²³ Translation of Sophie Lillie, "The Dead City," 7 (NG 0025).

²⁴ Deposition of Dr. Eberhard W. Kornfeld (25 May 2007), 121.

²⁵ Deposition of Dr. Eberhard W. Kornfeld (25 May 2007), 121.

²⁶ Deposition of Dr. Eberhard W. Kornfeld (25 May 2007), 120.

²⁷ Deposition of Dr. Eberhard W. Kornfeld (25 May 2007), 109.

Reinisch's Report is consistent with the 2008 Report and its discussions of the 1946 Nullity Act. I understand that Reinisch's observations are irrelevant to this action, which I am informed by counsel, does not rely on Austrian replevin, but on New York's replevin statute.

Reinisch's Report, however, confirms Austria's shameful post-1955 denial of remedies to dispossessed Jews and its shameful betrayal of the promises Austria made in the 1955 Austria State Treaty. Despite having passed a 1946 law nullifying acts of Nazi expropriation during Allied occupation, Austria's post-1955 efforts (once the Allies left Austria) to cut off Jewish property claims have been documented by and criticized by historians and journalists, including Lillie.²⁸ Article 26 of the 1955 Austrian State Treaty, the equivalent of a constitution, to which the United States is a signatory, required Austria to return Jewish property stolen by the Nazi regime and did not attach any time limits to Austria's obligation.²⁹ The Reinisch Report simply chronicles Austria's legislature's violations of the 1955 Austria State Treaty by passing inadequate restitution remedies cutting off remedies of Jewish Property owners.

U.S. government policy since World War II supports restitution of Nazi looted art. On 16 January 2013, the U.S. Department of State issued a statement that read, "This month we commemorate the seventieth anniversary of the Inter-Allied Declaration against Acts of Dispossession Committed in Territories under Enemy Occupation and Control, known as the London Declaration of January 5, 1943. Beginning with the London Declaration, the United States implemented a policy of returning Nazi-looted art, including art taken through forced and coerced transfers, to its countries of origin, with the expectation that the art would be returned to

²⁸ Sophie Lillie, "Restitution in Österreich als 'Zweite Enteignung,'" in Inke Bertz and Michael Dormmann, eds., *Raub und Restitution. Kulturgut aus Jüdischem Besitz von 1933 bis Heute* (Berlin: Jüdisches Museum Berlin, 2008), pp. 245-51. See also Andrew Decker, "A Legacy of Shame," *ARTnews* 83/10 (December 1984), 54-76; and Oliver Rathkolb, "From Legacy of Shame to the Auction of 'Heirless' Art in Vienna: Coming to Terms 'Austrian Style' with Nazi Artistic Booty," at <http://www.museum-security.org/ww2/Legacy-of-Shame.html> (accessed 6 January 2016).

²⁹ Accessible at https://www.cvce.eu/content/publication/1999/3/2/5c586461-7528-4a74-92c3-d3eba73c2d7d/publishable_en.pdf (accessed November 9, 2017).

its lawful owners.”³⁰ This statement went on to affirm the principles articulated in the Washington Conference of 1998 and the Terezin Declaration of 2009. Subsequently, the Holocaust Expropriated Art Recovery Act (the “HEAR Act”) “was passed unanimously in the U.S. Congress and signed into law by President Obama” in December 2016: The HEAR Act “regularised a federal statute of limitations of six years, beginning with the discovery of an object, during which claims can be made for the recovery of Nazi loot in the U.S. The Statute affirms a U.S. interest in the restitution of art stolen during the Nazi era.”³¹ In other words, the HEAR Act reaffirmed consistent US policy of providing remedies to victims of Nazi thefts of artworks.

Lillie has long been a critic of Austria’s failure to provide adequate remedies for Jews seeking to recover property looted by the Nazi regime. In 2008, Lillie explored the limited and problematic efforts of the Austrian authorities regarding restitution of Nazi looted property and Austria’s misappropriation of objects looted from Jews in “*Restitution in Austria as ‘Second Expropriation.’*” She wrote: “The devastating proportion of these restricted exports—some critics speak of a ‘second Aryanization’—proves the fact that the Austrian Art Restitution Law of 1998 expressly concerns objects that in the course of export proceedings were merged without compensation into [Austrian] federal property.”³² Stein’s Report also concedes: “For Austrian victims, in comparison with German victims, the process of making claims was generally

³⁰ See the statement issued by Secretary of State Hillary Clinton on 16 January 2013 at <https://2009-2017.state.gov/secretary/20092013clinton/rm/2013/01/202932.htm> (last accessed 31 October 2017).

³¹ For the HEAR Act, see Exhibit AA (NYSCEF 270). See also David D’Arcy, “Legal Battle Over Schiele Works Owned by Jewish Entertainer Who Died in Dachau,” in *The Art Newspaper* (6 April 2017).

³² Sophie Lillie, “Restitution in Österreich als ‘Zweite Enteignung,’” in Inke Bertz and Michael Dormann, eds., *Raub und Restitution. Kulturgut aus Jüdischem Besitz von 1933 bis Heute* (Berlin: Jüdisches Museum Berlin, 2008), pp. 245-51. The German reads, “Das verheerende Ausmass dieser Ausfuhrbeschränkungen—manche Kritiker sprechen von einer ‘zweiten Arisierung’—beweist die Tatsache, dass sich das österreichische Kunstrückgabegesetz von 1998 ausdrücklich auf Gegenstände bezieht, die im Zuge eines Ausfuhrverfahrens unentgeltlich in Bundeseigentum übergegangen sind.”

hindered by the stance of Austria about its role in the Nazi regime and by restrictive export regulations that had been in place since the early 20th century.”³³

The Reinisch Report underscores Lillie’s 2008 observations regarding Austria’s failure to return Nazi looted artworks and the scholarly consensus that Austria has violated its treaty obligations with the United States by failing to provide adequate civil remedies to Jews seeking the return of property looted by the Nazis. Reinisch is correct: Austria’s legal system has presented insurmountable hurdles to Jewish victims and their families, frustrating their ability to avail themselves of the 1946 Nullity Act.³⁴

D. Summary of Lillie’s 2017 Report: Lillie’s New Theory That The Grünbaum Artworks Eluded The Nazis

The Lillie Report argues that because there is no evidence that Fritz Grünbaum’s collection was formally confiscated through a documented seizure, the Court should draw the logical conclusion that the Nazis never took the artworks. This argument should be rejected. *First*, Lillie’s argument contradicts her previous writing concluding that the Nazis had custody of both Grünbaum and his assets and that Lukacs could not have legally acquired Grünbaum’s artwork due to the absence of evidence of a purchase or a gift. *Second*, the facts that Lillie concedes contradict her argument that the Artworks eluded the Nazis. Lillie agrees that “the Grünbaum crates did not leave the country before the export license expired in December 1938” (Lillie 8). She relies on a 14 November 1941 probate proceeding following Fritz Grünbaum’s death to draw the erroneous legal conclusion that Fritz Grünbaum “no longer owned the art collection” by 1941 (Lillie 9).

In sharp contrast to her 2005 conclusions that each of the Grünbaums were dispossessed by Nazi acts discussed above, Lillie now speculates that Elisabeth Grünbaum could have

³³ Stein 42.

³⁴ *Republic of Austria v. Altmann*, 541 U.S. 677, 124 S.Ct. 2240159 L.Ed.2d (2004).

“recovered” Fritz Grünbaum’s art collection. Lillie’s report provides no reasoning for her change of heart. Additionally, Lillie’s new arguments are not based on evidence and are further based on the false assumption that Fritz Grünbaum’s July 1938 Dachau power of attorney could have conveyed ownership of the art collection to Elisabeth. Lillie states “The most likely date for Elisabeth Grünbaum to recover her art collection from Schenker & Co. would have been after 31 January 1939” (the date of Rochlitzer’s letter and before 14 January 1941 (the date of Fritz Grünbaum’s death) (Lillie 13).

Lillie further speculates that Ludwig Rochlitzer, the Nazi-appointed guardian of the Grünbaum property, conspired with Elisabeth to conceal the Grünbaum collection from the Nazis. In support of this theory, Lillie cites Rochlitzer’s projected legal bill of RM 6,500 as a subterfuge by which this Nazi-appointed lawyer assisted Elisabeth in saving assets from the Nazi spoliation machinery and reducing Fritz’s estate taxes. As set forth below, Lillie’s speculations that the Grünbaum art collection eluded the Nazis is directly contradicted by the historical record.

E. Summary of Stein’s Report: Speculations That Jewish Families Took Property Back From The Nazis After June 1939

Stein, like Lillie, concedes that the Grünbaum art collection appears to have been stored at the Schenker Vienna warehouse from September 1938 to 30 June 1939. Stein points to Elisabeth paying the storage fees on 30 June 1939 at Schenker in support of this.³⁵ Stein concedes that, “It is not known where [the Grünbaum artworks] were stored during the late 1930’s through the war period.”³⁶

Stein then speculates about what happened to the works: they may have been “held by attorney Ludwig Rochlitzer or by Lilly’s friend Margarethe Hassel or held by an unknown

³⁵ Stein 28, citing the Asset Declaration of 30 June 1939.

³⁶ Stein 37.

person in Vienna for safekeeping”³⁷ She also writes, “We do not know if the Lukacs or Reis families were able to take some of this material with them in their export shipments”³⁸ Stein also notes, “Elisabeth Grünbaum could have, in her capacity under her Power of Attorney, transferred ownership of the Schieles to her family members or exchanged or sold them to them [sic] for Reichsmark currency as they were departing Nazi-occupied Austria”³⁹

Stein’s speculation that the Grünbaum art collection eluded the Nazis is directly contradicted by the historical record. Because we know that Elisabeth’s sister, Mathilde Lukacs and the latter’s husband Sigmund Lukacs left Vienna in August 1938 and Elisabeth’s other sister, Anna Reis and the latter’s husband Berthold Reis, departed in September 1938⁴⁰, and in that we know the Artworks were still in Schenker until 1939, certain of Stein’s theories are patently untenable. I explain why below.

F. Summary of Evidence Showing Nazi Control of Grünbaum’s Art Collection Contradicting Theories That The Artworks Eluded The Nazis

As Lillie correctly observed in 2005, any theories that Lukacs’ or a family member smuggled Grünbaum’s art collection out of Vienna during the Nazi era deny the “mournful reality” of the Holocaust. Lillie noted in 2005 that Lukacs’s return to Vienna was virtually impossible. The Lukacs were in great jeopardy in Belgium during the war. Stein concedes that on 26 October 1943 Lukacs and her husband “were ‘imprisoned by the Gestapo and after a few days detained in an old people’s home until our release.’”⁴¹ As the 2008 Report made clear, Mathilde Lukacs did not return to Vienna after her emigration in August 1938 until 1948.⁴² To suggest, as Stein now does, that Lukacs did so and recovered Fritz Grünbaum’s art collection

³⁷ Stein 37.

³⁸ Stein 37.

³⁹ Stein 37-38.

⁴⁰ Stein 30.

⁴¹ Stein 21. She cites Exhibit 13, where she quotes Sigmund Lukacs’s statement of 15 May 1947.

⁴² The 2008 Report 55.

before 1945 would constitute a denial of the realities of the Holocaust, including an atmosphere of anti-Semitic violence and restrictions on Jews' travel.

Professor Ruth Klüger, a native of Vienna deported during the war to the Theresienstadt and Auschwitz concentration camps recalled in *Still Alive: A Holocaust Girlhood Remembered* that "Vienna was a city with no exit, a city that banished you and then didn't allow you to leave." She explained, "With the Jewish star on one's coat, one didn't go on excursions or into museums. Even before we were required to wear it, half the city was forbidden, *verboten*, taboo, or out of reach for Jews. The signs telling Jews and dogs to stay outside were ubiquitous."⁴³ She describes the social ostracism, the hostility, she felt on the part of the city's Christian residents. Professor Raul Hilberg, a pre-eminent Holocaust scholars (and also a native of Vienna), noted that the Nazi regime endeavored

[T]o impose progressively severe restrictions on Jews, and to widen the range of prohibitions until they infused every sphere of life. Any subject could be on the table. Jewish physicians were not allowed to have German patients. Jewish entrepreneurs were deprived of their industrial enterprises. Jews were prohibited from wearing a uniform or sending out carrier pigeons... In December 1938, Heinrich Himmler... availed himself of this access to newspapers for the publication of a provisional police ordinance invalidating drivers' licenses held by Jews.⁴⁴

Under such circumstances to which many have born witness, it would be impossible or extremely unlikely that Elisabeth Grünbaum or any other Jew could enter the Schenker warehouse in 1939 and remove 446 artworks.

Additional direct evidence of Nazi looting of Grünbaum's art collection has been ignored by Lillie, Stein, Nicholas and Reinisch. Ludwig Rochlitzer was appointed the "administrator" Fritz and Elisabeth Grünbaum's property, which means that Fritz Grünbaum's art did not elude

⁴³ Ruth Klüger, *Still Alive: A Holocaust Girlhood Remembered* (New York: City University of New York, 1992), 25-26.

⁴⁴ Raul Hilberg, *Sources of Holocaust Research: An Analysis* (Chicago: Ivan Dee, 2001), 22-23, 25.

the Nazis. The Nazi-ownership of the Schenker & Co.—the transport firm was purchased by the German state railways in 1931 which in turn came under the aegis of the Nazi regime in 1933—means that the artworks were literally under Nazi control. The “*Gesperrt*” and “*Erledigt*” stamps on the art collection portion of Fritz’s Jewish Property Declaration are direct evidence signifying official Nazi expropriation of Fritz’s art collection. The Aryan Trustee Act rendered a Jew legally powerless to transfer property under a trustee’s control.

G. Lillie and Stein Ignore and Sanitize The Official Nazi Stamps “*Erledigt*” and “*Gesperrt*” On Fritz’s Property Declaration: Direct Evidence Showing Nazi Custody and Control Of Fritz’s Art Collection

As discussed in the 2008 report, there are two stamps with very important words on the 30 June 1939 form listing what remained of Fritz Grünbaum’s property. One stamp says “*Gesperrt*” and the other reads “*Erledigt*.” Lillie simply ignores these stamps, which renders her report wholly unreliable. Stein addresses these stamps and by re-translating the word “*Gesperrt*” as “restricted.” According to *Langenscheidt’s Dictionary* and *Cassell’s German-English, English-German Dictionary* the word “*Gesperrt*” means “blocked” or “quarantined” or “frozen” or “embargoed.” (The word “restricted” is not among the words in the two dictionaries.)⁴⁵ The certified translation of the stamps appearing on the portion of Fritz’s Jewish Property Declaration from the *Bakalar* case was “blocked.”⁴⁶

The second Nazi stamp next to Fritz’s art collection: “*Erledigt*” means “settled” or “completed.” The “*Gesperrt*” and “*Erledigt*” stamps are official stamps signifying that as of 30 June 1939 the Grünbaums could not move the art collection and that the Nazis had secured possession of the art collection. The notation at the bottom of this form —“Category VI” reads,

⁴⁵ “*Gesperrt*” is the past tense of the verb “*sperren*.” See *Cassell’s German-English, English-German Dictionary* (New York: Macmillan, 1978), 567; and *Langenscheidt’s Standard Dictionary of the English and German Languages* (Berlin: Langenscheidt, 1970 ed.), 1086.

⁴⁶ See the translation provided at D & M 00262 and Stein Exhibit 11, NYSCEF 192.

“Blocked Property: Cash and stocks/bonds have been seized through a blocking order of the Foreign Currency Office. Disposal of which is permitted only with the approval of the Foreign Currency Office.”⁴⁷ There is no record of the Foreign Currency Office giving Elisabeth Grünbaum approval to dispose of her or Fritz’s assets. This form and the notations are direct evidence of Nazi control over Grünbaum’s art collection. There is no evidence that either of the Grünbaums ever regained control, and since Elisabeth did not own the art collection, any speculation that she did so would not be relevant to a discussion of Fritz’s legal title to the art collection.

H. Absence of Nazi Era Records Showing Property Transfers To Grünbaum Family Members Make Stein and Lillie’s Conjectures Unlikely

There are no Nazi-era records of any Nazi authorities giving Elisabeth, any of her family members, friends, or agents the authority to visit the Schenker warehouse or to remove the artworks. Lillie concedes that Nazis in Adolf Eichmann’s Vienna habitually left records of such actions as a matter of mandatory recordkeeping (Lillie 4-8). With respect to the instances in 1938 that Lillie and Stein cite where Jews escaped Vienna with their property, there was a paper trail documenting the escape. Accordingly, the absence of such records is consistent with the inference that the Nazis never gave Fritz Grünbaum’s art collection to Elisabeth Grünbaum or any of her family members, friends, or representatives.

I. Stein and Lillie Overlook The Allied Bombing of Schenker As The Reason For Missing Nazi-Era Documents

Dr. Gerhard Lipowec, then the General Counsel for Schenker & Co., stated in court proceedings in 2007, that Schenker’s Vienna records relating to the Grünbaums were destroyed

⁴⁷ Elisabeth Grünbaum (for Fritz Grünbaum), “Vermögensbekenntnis” (29 July 1938) (DBM 000455).

when Vienna was bombed in 1945.⁴⁸ Stein's report gives the reader the misleading impression that Stein had access to Schenker's Grünbaum file and seen that the Nazis did not leave a paper trail consistent with the looting of Grünbaum's art collection. Stein writes: "That firm did not leave any paper trail, a trail which is usually located in such files, of any action to seize or appropriate the Grünbaum property including their art."⁴⁹ As far as I know, neither Stein nor anyone else has seen Schenker's Grünbaum records.

If Allied bombing destroyed all of Schenker's records in Vienna, it means that *additional* evidence of the Gestapo seizing Grünbaum's property might be missing. In other words, the explanation for a missing paper trail is likely to be a 1945 bomb, as Schenker claims, not, as Stein suggests, the lack of a Nazi seizure. Additionally, the Gestapo's Grünbaum records have never been found, despite diligent search and are believed to have been destroyed. Thus, Stein's argument that an absence of Schenker records supports the proposition that the Nazis did not take Fritz's art collection is incorrect and historiologically unsound.

J. Stein and Lillie Make False Comparisons Between 1938 and 1939 Jewish Expropriation Cases Ignoring Eichmann's Administration and The Additional Restrictions On Jewish Transfers Of Property Post-*Kristallnacht*

In looking to 1938 case studies to support the speculation that the Grünbaum family escaped with artworks in 1939, Lillie and Stein overlook Adolf Eichmann's tightening grip on Vienna's increasingly ghettoized and pauperized Jewish community in the period from 1938 to 1939.⁵⁰ When the Nazis encountered the bureaucracy of the Austrian federal state in March 1938, it took some time to assert full administrative control and implement effective spoliation

⁴⁸ Dr. Gerhard Lipowec's statement "that Allied bombing raids had destroyed the company's headquarters and warehouses during the war" is quoted in Jason Horowitz, "Lawsuit Over Schiele Drawing Has Legs," in *Observer* (19 February 2007) at <http://observer.com/2007/02/lawsuit-over-schiele-drawing-has-legs/> (accessed 10 November 2017).

⁴⁹ Stein 28.

⁵⁰ Martin Dean, *Robbing the Jews: The Confiscation of Jewish Property in the Holocaust, 1933-1945* (Cambridge: Cambridge University Press, 2008), 84-131.

practices. The cases of Viennese Jews recovering property relied on by Lillie and Stein all occurred in 1938 when it was possible to slip through the cracks. By 1939, the period which Lillie and Stein each concede the Artworks remained in Vienna, and during which the Nazi “Aryan” Trustee Rochlitzer exercised control over the Grünbaums’ property, historians have agreed that the Nazi spoliation machine had achieved a much higher level of efficiency, making such transfers or escapes highly unlikely.

Neither Lillie nor Stein carefully analyzes the likelihood of Viennese Jews taking property out of Vienna after Kristallnacht on 9 November 1938, rendering their conclusions untrustworthy. Undisputed documents show Elisabeth Grünbaum paying the post-Kristallnacht “atonement tax” or *Sühneleistung*: also known as the JuVa Tax (short for Jewish Capital Levy).⁵¹ The atonement tax was levied by Hermann Göring as Head of the Four Year Plan Office on 12 November 1938 ostensibly to make Jews pay for all the property destroyed during what were actually anti-Jewish riots and property destruction by Nazis.⁵² The “atonement tax” of RM 1 billion was initially applied at 20 percent of all property, but later the rate increased to 25 percent (and it was far from the only punitive tax imposed on Jews). The Grünbaums’ payment was accompanied by supporting documentation listing both Fritz and Elisabeth Grünbaum’s property as of 12 November 1938, including the “pictures and graphic works,” but also jewelry, silver, rugs, fur, and real estate (in Slovakia).⁵³

⁵¹ Avraham Barkai, *From Boycott to Annihilation: The Economic Struggle of German Jews, 1933-1943* (Hanover: University Press of New England, 1989), 136-37; and Dean, *Robbing the Jews*, 113-16.

⁵² Elisabeth Grünbaum to the Vermögensverkehrsstelle, n.d. (DBM 000469 – DBM 000470). See also Diemut Majer, *“Non-Germans” Under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe with Special Regard to Occupied Poland, 1939-1945* (Baltimore: The Johns Hopkins University Press, 2003), 157-60.

⁵³ “Vermögensaufstellung – Stand 12. November 1938” (DBM 000472).

Historians view *Kristallnacht* as a turning point for Nazi looting operations.⁵⁴ Professor Alan Steinweis has written, “The Kristallnacht was a monumental development in Nazi anti-Jewish policy It inaugurated the definitive phase of so-called Aryanization, that is, the coerced expropriation of German-Jewish property.”⁵⁵ In emphasizing “the organized physical violence” and public nature of the pogrom, Steinweis adds, “Kristallnacht marked a radical break from the Nazi regime’s anti-Jewish policy up to that point, which had emphasized legal and bureaucratic measures.”⁵⁶ Historian Bruce Pauley explained that “Then a few days after Kristallnacht the Vienna edition of the *Völkischer Beobachter* [the Nazi Party newspaper] openly called for robbing the Jews of their apartments. Already by December 1938 44,000 Jewish apartments in Vienna had been Aryanized out of a total of 70,000. In early May 1939 various officials in the city housing office complained that a new law against Jews was not stringent enough.”⁵⁷ Following *Kristallnacht*, the Nazi regime intensified the persecution. For example, on 3 December 1938, the Aryan Trustee Act was issued, and it included a range of provisions, including Article 15, that prohibited Jews from selling to a private party any object that was valued at over RM 1,000; and that such an object could only be acquired by a Reich approved purchasing office.⁵⁸ While none of the Schieles would have been valued at over RM 1,000, the measure shows the rapidly increasing restrictions. And, as noted above, this Aryan Trustee Law

⁵⁴ See Martin Dean’s chapter, “The Anschluss and Kristallnacht: Accelerating Aryanization and Confiscation in Austria and Germany, 1938-1939” in Dean, *Robbing the Jews*, 84-132 (and specifically his section on *Kristallnacht* on pages 111-12). See also Martin Gilbert, *Kristallnacht: Prelude to Destruction* (New York: Harper Perennial, 2007).

⁵⁵ Alan Steinweis, *Kristallnacht 1938* (Cambridge: Harvard University Press, 2009), 4.

⁵⁶ Steinweis, *Kristallnacht 1938*, 4, 9.

⁵⁷ Bruce Pauley, *From Prejudice to Persecution: A History of Austrian Anti-Semitism* (Chapel Hill: University of North Carolina Press, 1992), 289.

⁵⁸ The German title of the order was “Verordnung über den Einsatz des jüdischen Vermögens.” See Gert Kerschbaumer, “Gutgläubiger Erwerb oder institutionelle Habgier?,” in Gabriele Anderl and Alexandra Caruso, eds., *NS-Kunstraub in Österreich und die Folgen* (Vienna: Studien Verlag, 2005), 161.

deprived the Jewish victim of the right to dispose of his or her own property, and instead invested the state-appointed trustee with the control over its disposition.

Stein's reliance on the Lukacs family's exports of art in August 1938 and the Herzl/Reis family in September 1938 (that is, before Kristallnacht in November) to suggest that Fritz Grünbaum's art collection escaped Nazi control in and after 1939 is historiologically unreliable and not in line with scholarly consensus.⁵⁹ As Lillie concedes, the "'movables' belonging to Elisabeth Grünbaum's other sister, Anna Reis and her husband Berthold Reis, which was [sic] also dispatched by Schenker & Co." also occurred in 1938.⁶⁰ Because the Grünbaum art was still in Schenker in 1939, there is no way that the Herzl, Lukacs, or Reis family members could have taken Grünbaum's art collection abroad when they fled in 1938.

K. Lillie and Stein Sanitize the Theft of the Other Grünbaum Property By The Nazis, Which Is Strong Circumstantial Evidence That The Art Collection Was Also Looted

Lillie uses phrases such as Fritz Grünbaum's "estate was over-indebted" at the time of his death⁶¹ and Stein writes about "The Asset Registration documentation, seen as a whole, [which] illuminates the process of increasing restrictions on Jews who remained in Nazi territories",⁶² but their portrayal of Aryanizer Ludwig Rochlitzer as a polite and benign actor belies his official role as the Nazi in charge of liquidating the Grünbaums's assets. Important circumstantial evidence that the Grünbaum property did not evade Nazi spoliation: the simple fact that the vast majority of Jewish property belonging to murder victims was indeed stolen on a financially staggering scale. Historian Götz Aly estimates that in the years 1938 and 1939, between eight and nine

⁵⁹ Stein 30.

⁶⁰ Lillie 8.

⁶¹ Lillie 13.

⁶² Stein 28.

percent of the total German government budget was stolen from Jews.⁶³ Nowhere in the Reich did any Nazi bureaucrat achieve the type of success in profiting from the misery of fleeing Jews than Adolf Eichmann in Vienna. In their analyses, Lillie and Stein overlook the mechanics and purpose of the 26 April 1938 law declared that all declared Jewish property would be available to Field Marshal Hermann Göring to implement the Four Year Plan.⁶⁴

Scholars are unanimous in concluding that in mid-1939, Eichmann's spoliation machine was at the height of its ruthless efficiency and profitability for the Nazi war machine.⁶⁵ Upon entering Vienna in March 1938, the Nazis radically increased discriminatory measures aimed at Jewish property. When Adolf Eichmann arrived in Vienna on 1 August 1938 he launched a looting operation unparalleled in human history. His efforts were buttressed by the increasingly repressive Nazi laws, such as the Aryan Trustee Law cited above that regulated Jewish property. Despite my many years of research in this field I am aware of no case where an Austrian Jew removed property from Schenker after 30 June 1939.

⁶³ Götz Aly, *Hitler's Beneficiaries: Plunder, Racial War, and the Nazi Welfare State* (New York: Metropolitan Books, 2006), 38.

⁶⁴ The 26 April 1938 order requiring Jews to register their property came from Hermann Göring in his capacity as head of the Four-Year Plan Office: see <http://www.verfassungen.de/de/de33-45/juden38-2.htm> (accessed 31 May 2017); and Diemut Majer, "Non-Germans" *Under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe with Special Regard to Occupied Poland, 1939-1945* (Baltimore: The Johns Hopkins University Press, 2003), 158-60.

⁶⁵ Dean, *Robbing the Jews*, 84-111, 127-31. Dean connects Eichmann's efforts to Göring, writing about the latter, "Göring, who played such a key role in decisions concerning the Jewish Question at this stage, was also preoccupied with financing rearmament and clearly looked to Jewish wealth as a valuable windfall that could help him bridge the gap until Hitler's aggressive foreign policy started to reap serious material dividends." (p. 130). See also the chapter, "Eichmann and the Development of the 'Vienna Model,'" in Hans Safrian, *Eichmann's Men* (Cambridge: Cambridge University Press, 2009), 14-45; and David Cesarani, *Becoming Eichmann: Rethinking the Life, Crimes and Trial of a "Desk Murderer"* (New York: Da Capo, 2007).

L. Lillie and Stein Misunderstand and Misinterpret Direct Evidence Of Nazi Custody And Control Over Grünbaum Property Including An “Aryan Trustee”

Contentions in the Lillie and Stein Reports that there is no evidence that Grünbaum’s art collection was in Nazi custody is directly contradicted by evidence that Lillie and Stein themselves accept as authentic.

For example, neither Lillie nor Stein question the Grünbaum Jewish Property Declarations. Elisabeth Grünbaum dutifully and precisely completed the many forms listing all Grünbaum property. Because each spouse had separate property under Austrian law, she filed a separate declaration that included an inventory of Fritz’s art collection. Elisabeth did not own the art collection. Beginning with the “27 April 1938 List Regarding the Property of Jews,” each document appears to be completed with painstaking care.⁶⁶ Many other documents ensued, including Elisabeth’s cooperation with the 28 July 1938 appraisal of Fritz Grünbaum’s Dunhill lighter, pocket watch, and jewelry at a value of RM 750.⁶⁷ Lillie and Stein overlook this evidence of Nazi control of the Grünbaum’s property.

Additionally, Lillie and Stein concede that Elisabeth Grünbaum, using a power of attorney, declared her and her husband’s assets to the Nazi authorities (Lillie 21, Stein 18). This concession is inconsistent with the argument that Grünbaum’s property escaped Nazi control. On 1 August 1938, Elisabeth Grünbaum submitted a handwritten letter to the Property Control Office (VVS or Vermögensverkehrsstelle) in Vienna, and enclosed the Jewish property

⁶⁶ Elizabeth Grünbaum (on behalf of “Franz Friedrich (Fritz) Grünbaum, “Verzeichnis über das Vermögen von Juden, 27 April 1938,” 29 July 1938 (DBM 000444 – DBM 0000447. Also D & M 00001-07). The Kieslinger inventory followed on 20 July 1938 (See Dr. Franz Kieslinger, “Schätzungsgutachten” 20 July 1938 (D & M 000448 – D & M 000449); and then on 1 August 1938, Elisabeth Grünbaum signed a property declaration “for Franz Friedrich Grünbaum as per authorization from 16 July 1938” (See Elisabeth Grünbaum to the Vermögensverkehrsstelle,” 1 August 1938, (DBM 000454)). This declaration, dated 29 July 1938 but evidently signed by Elisabeth on 1 August 1938, included the notation of “pictures and graphic works and water colors valued at 5,791 RM.” The value, of course, was derived from the inventory compiled by Dr. Franz Kieslinger that is also found in the file.

⁶⁷ Carl Brunner, “Wert 27.4.1938 Herr Franz Friedrich (Fritz) Grünbaum,” 28 July 1938 (DBM 000452).

declaration form.⁶⁸ Elisabeth noted that her husband was in “protective custody,” in Dachau, suggesting compliance with wording supplied by Nazi authorities and her own restricted liberty. This evidence shows that Grünbaum property was processed by the Property Control Office, an agency described as the “central Aryanization authority in occupied Austria.”⁶⁹ The Property Control Office served primarily as a brokerage agency for selling off viable Jewish business to “Aryans” and also liquidating the non-viable remainder (which was the majority of the business).

As indicated above, the direct evidence unquestioned by Lillie and Stein shows that the Grünbaums’ assets were gradually taken from them in a process that began prior to June 1939. On 31 March 1939, for example, Elisabeth Grünbaum relinquished a pearl necklace, a ring, two watches and a cigarette case to the Dorotheum, the then state-owned auction house that processed plunder stemming from a number of Nazi plundering agencies: the Dorotheum receipt includes the printed notation “Public Purchasing Agency According to Paragraph 14 of the Proclamation of the Utilization of Jewish Property”).⁷⁰ These objects are recorded on a 9 November 1939 document and were effectively stolen from Fritz and Elisabeth (the family has never recovered them).⁷¹ The fate of the Grünbaums’ jewelry shows that they were victims of state-organized expropriation making it impossible or extremely unlikely that they could have hidden an art collection from the Nazis.

⁶⁸ Elisabeth Grünbaum to the Vermögensverkehrsstelle,” 1 August 1938, (DBM 000454).

⁶⁹ Gabriele Anderl and Alexandra Caruso, “Einleitung,” in Gabriele Anderl and Alexandra Caruso, eds., *NS-Kunstraub in Österreich und die Folgen* (Vienna: Studien Verlag, 2005), 20. The German reads, “zentralen ‘Arisierungsbehörde’ im besetzten Österreich.”

⁷⁰ Dorotheum receipt, 9 November 1939 (D & M 00032-33). The German reads, “Öffentliche Ankaufsstelle nach § 14 der Verordnung über den Einsatz des jüdischen Vermögens.” The document also includes a notation next to the 9 November 1939 date that reads “31.3” and I interpret this to mean that the valuables were relinquished on 31 March 1939. The Dorotheum was gradually privatized between 1998 and 2001. See the entry for “Dorotheum” on Wikipedia at <https://de.wikipedia.org/wiki/Dorotheum> (accessed 5 June 2017).

⁷¹ Diemut Majer notes, “In spring 1939, all jewelry and precious metal objects in Jewish hands had to be surrendered without compensation.” See Diemut Majer, *Non-Germans Under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe with Special Regard to Occupied Poland, 1939-1945* (Baltimore: The Johns Hopkins University Press, 2003), 159-60.

M. Lillie and Stein Misinterpret Nazi Ownership Of Schenker And Ignore A Thriving Post-War Trade In Nazi-Looted Art

The 2008 Report describes how, by 1939, Schenker, the storage and logistics company at which Fritz Grünbaum's art collection was kept, had become an instrument of the Nazi state. Schenker was originally Jewish-owned, but had been bought by the German Railways in 1931 and by 1939 was purged of Jewish employees and management.⁷² Under German ownership Schenker's headquarters moved from Vienna to Berlin in 1931, facilitating a Nazi takeover of Schenker's management in 1933. Lillie utterly fails to discuss Schenker's history.

Stein's account sanitizes Schenker despite its clear role as a facilitator of Nazi despoiling. She uses phrases such as "a transport and moving firm"⁷³ and an "agent in communication with the Third Reich authorities about stored property"⁷⁴ and "an extraordinary network of involvement with the German authorities."⁷⁵ The Stein Report concedes Schenker's "deep involvement in transactions and transgressions," but does not explain the relevance of Schenker's and the Deutsche Reichsbahn's active role in persecuting European Jews, including the Grünbaums, to Fritz Grünbaum's art collection.⁷⁶

Although the Stein Report mentions the transport of "people," it fails to convey the enormity of Schenker's role as an instrumentality of Nazis. Schenker is comparable to certain other companies in the Third Reich, such as Degussa, a firm that smelted dental gold taken from

⁷²See Herbert Matis, "Die Spedition Schenker & Co. während des Dritten Reiches," in Alice Teichova, Herbert Matis, and Andreas Resch, eds., *Business History* (Vienna: OGU, 1999), (DBM, 03079).

⁷³ Stein 24.

⁷⁴ Stein 25.

⁷⁵ Stein 30. Stein also writes, "Documentation in the National Archives in College Park, Maryland and in the National Archives in Britain and in Germany all attests to the firm's deep involvement in transactions and transgressions." Stein 31. Historian Herbert Matis notes that Schenker was "indirectly owned by the state and was therefore far more subject to the influences of politics than purely private companies." Herbert Matis, "Die Spedition Schenker & Co. während des Dritten Reiches," in Alice Teichova, Herbert Matis, and Andreas Resch, eds., *Business History* (Vienna: OGU, 1999), (DBM, 03082). See also Dieter Stiefel and Herbert Matis, *Unlimited: The History of Schenker International Freight Forwarding from 1931 to 1991* (Dückerer Theiss, 2002); and their earlier volume, Dieter Stiefel and Herbert Matis, *The Schenker Dynasty, 1872-1931* (Vienna: 1995).

⁷⁶ Stein 31.

Holocaust victims and gold looted from countries conquered by Nazi Germany, and produced Zyklon B, the cyanide gas that was used to kill people in Auschwitz.⁷⁷ Both Schenker and Degussa fired all Jewish employees (a considerable number in the case of Schenker because the company had been founded by Jews). The Stein Report leaves the false impression that Schenker was some kind of a U-Haul operation where a Jewish woman and her friends could enter after the summer of 1939 and freely take property. In contrast, 2008 Report accurately discusses how the firm's leadership, including SS-General Dr. Edmund Veessenmayer, played a key role in the persecution of Central European Jews (most notably he teamed with Adolf Eichmann in Vienna and then in Budapest as they helped implement the regime's genocidal policies).⁷⁸

A recent restitution to the Graf family, whose artworks were stored with Schenker, illustrates Schenker's role. "Their Vienna storage facility, Schenker, informed the Graf's by letter that the entire contents of their storage locker had been confiscated by the Gestapo on November 16, 1940...."⁷⁹ "The painting's exact whereabouts during the war years is unknown, but in 1952, a minor art dealer James Alfred Spiller sold it at auction...."⁸⁰ The Graf case, as recounted by the *New York Times*, illustrates how Schenker's loyalties did not run to their Jewish "clients." Works stored at Schenker in Vienna effectively "disappeared" during the war, only to turn up shrouded in mystery in the 1950s (or later).

⁷⁷ Peter Hayes, *From Cooperation to Complicity: Degussa in the Third Reich* (Cambridge: Cambridge University Press, 2004).

⁷⁸ The 2008 Report 30.

⁷⁹ Nina Siegel, "After Decades, a 'Bittersweet' Resolution Over Lost Art," in *New York Times* (28 May 2017), at <https://www.nytimes.com/2017/05/28/arts/design/michele-marieschi-painting-sothebys-auction-restitution.html?mwrsm=Email> (last accessed 28 May 2017).

⁸⁰ Nina Siegel, "After Decades, a 'Bittersweet' Resolution Over Lost Art," in *New York Times* (28 May 2017), at <https://www.nytimes.com/2017/05/28/arts/design/michele-marieschi-painting-sothebys-auction-restitution.html?mwrsm=Email> (last accessed 28 May 2017).

Contrary to the Stein Report's speculations, any gaps in the fate of artworks stored at Schenker would not suggest that these artworks were returned to their victims, but rather would strongly suggest that former Austrian Nazis who revived their careers after the war took the art collection and sold it into the thriving clandestine market in stolen art. I have published extensive research into the network of Nazi dealers who enriched themselves during the war and then again profited from the art trade after 1950.⁸¹ Jewish victims whose artworks were stored at Schenker systematically lost their property due to state-operated and state-sanctioned initiatives and then were systematically looted by corrupt Austrian and Swiss art dealers in the post-war period: Grünbaum's art collection almost certainly met this fate.

N. Lillie and Stein Overlook The 2008 Report's Observations Regarding Official Viennese Corruption and Viennese Post-War Trafficking In Nazi Looted Objects

I concur with the Lillie and Stein Reports' observation that we do not know exactly what happened to Fritz Grünbaum's art collection after 30 June 1939. The 2008 Report theorized that the most likely scenario is that a Nazi operative removed the works from the Schenker warehouse. In the 2008 Report, I discussed how corruption and self-enrichment was rampant in the Third Reich (see, for example, the scholarship of Frank Bajohr and Götz Aly).⁸² We also

⁸¹ Among other works, see Jonathan Petropoulos, "Art Dealer Networks in the Third Reich and in the Postwar Period," in the *Journal of Contemporary History* Vol. 52, No. 3 (July 2017) at <http://journals.sagepub.com/doi/10.1177/0022009416637417>; Jonathan Petropoulos, "Five Uncomfortable and Difficult Topics Relating to the Restitution of Nazi Looted Art," in *New German Critique* 130, vol. 33, no. 1 (130) (February 2017): 125-42; Jonathan Petropoulos, "Inside the Secret Market for Nazi-Looted Art," in *ARTnews* (January 2014), 84-89; and Jonathan Petropoulos, "For Sale: A Troubled Legacy," in *ARTnews* 100/6 (June 2001), 114-20.

⁸² Frank Bajohr, *Parvenüs und Profiteure. Korruption in der NS-Zeit* (Frankfurt: S. Fischer, 2001); and Götz Aly, *Hitler's Beneficiaries: Plunder, Racial War, and the Nazi Welfare State* (New York: Metropolitan Books, 2006).

know there was additional corruption with regard to the freight forwarding companies such as Schenker (see the work by Gabriel Anderl, Edith Blaschitz, and Sabine Loitfellner).⁸³

As with most unsolved cases, one must look at opportunity and motive. It is most likely that Fritz Grünbaum's art collection entered Eberhard Kornfeld's possession in the 1950s via some form of corruption. Herbert Gruber suggests that the person or persons who obtained the Schieles: 1) ascribed worth to the collection; 2) knew that the artworks belonged to Fritz Grünbaum; 3) wanted to liquidate the artworks; and 4) had the logistic capacity to transfer Grünbaum's collection in the postwar period out of occupied Vienna and occupied Austria.⁸⁴ We do not know when the works were taken out of Vienna: whether prior to war's end in 1945, during the 1945-55 occupation period, or in 1955-56. That said, the person would have needed the sophistication to get them out of Austria and to Kornfeld in Switzerland. To point 2, the person obtaining the works would also know that they were in the Schenker warehouse. This knowledge, then, would indicate some familiarity, or indeed involvement, with the case.

O. As The 2008 Report Correctly Concluded, Nazi-Era and Post-War Austrian Corruption Scenarios Are Much More Likely Than The Speculations of Lillie, Stein, and Nicholas

The 2008 Report was written to counter speculation about the fate of Fritz Grünbaum's art collection that appeared highly unlikely. In response to various speculative theories, I concluded that the most likely scenario was Nazi/Austrian corruption.⁸⁵ As discussed below, the last decade's historical and scholarly developments have rendered even more improbable the speculations in the Lillie, Stein, and Nicholas Reports even more improbable. Accordingly, I

⁸³ Translation of Gabriel Anderl, Edith Blaschitz, and Sabine Litfellner, "Corruption in Forwarding Agencies in Vienna in Regard to Jewish Moving Goods – Two Case Studies," in *The Aryanization of Personal Property* (Vienna: Historical Commission, 2002), 176-215 (D & M 01058 – D & M 01062).

⁸⁴ Herbert Gruber, "Kritik am Dossier Fritz Grünbaum erstellt von der Provenienzforschung bm: ukk—LMP durch Mag. Dr. Sonja Niederacher am 30. Juni 2010," (21 January 2011), 19.

⁸⁵ The 2008 Report 26.

reaffirm the 2008 Report's conclusion that corruption involving Nazis and former Nazis is the most likely route for Grünbaum's art collection from Schenker to Kornfeld.

With these considerations in mind, the most likely suspects are Franz Kieslinger, Ludwig Rochlitzer, and Otto Benesch. Each knew about the collection. Benesch had emigrated in 1938 and did not return to Austria prior to 1945; but he could have played a role in the postwar disposition of the collection. Rochlitzer's death in March 1945 meant that he could not have transferred the collection in the postwar period. It is most likely that Kieslinger had the logistical capabilities to smuggle the collection out of occupied Vienna and occupied Austria. Kieslinger would have known Eberhard Kornfeld: they were both prominent in the art trade in the German-speaking world, they both admired Schiele and Austrian modernism and had friends and colleagues in common. This included Otto Benesch, who returned to Vienna in 1947 and headed the Albertina Museum (the Albertina sold off de-accessioned works through Kornfeld in April 1956 and Benesch wrote the biographical sketch of Schiele for the September 1956 Kornfeld Catalogue). In other words, Kieslinger and Kornfeld were part of the same network—members of the art trade in German speaking Central Europe who shared an appreciation for Schiele and sold the artist's works.⁸⁶

Ludwig Rochlitzer, as the trustee overseeing the "Aryanization" of the Grünbaum estate, may have been in a position to remove the works from Schenker. However, Schenker guards would not have permitted him access to the Grünbaums' property without all the necessary documents. Aryan trustees who were caught stealing property faced harsh punishment, which could include execution. Accordingly, if Rochlitzer was involved in the removal of the

⁸⁶ See Jonathan Petropoulos, "Art Dealer Networks in the Third Reich and in the Postwar Period," in the *Journal of Contemporary History* (January 2016) at <http://journals.sagepub.com/doi/10.1177/0022009416637417> (accessed 30 May 2017). Note that Sonja Niederacher writes that Kornfeld became active in business beginning in 1951. See Sonja Niederacher, *Dossier Fritz Grünbaum* (30 June 2010), 52.

Grünbaums' property, he likely would have collaborated with someone like Franz Kieslinger, who was better positioned to “legally” obtain the art collection for a price acceptable to Nazi authorities. But clearly, any such arrangement or corruption occurred after the artworks entered Schenker—that is, after the collection had been absorbed into the Nazi plundering machine.⁸⁷

P. Lillie and Stein Ignore And Sanitize Kieslinger's and The Dorotheum's Role In Nazi Art Looting

Although the 2008 Report discussed Dr. Franz Kieslinger, Nagy's experts seek to “white-wash” his infamous past as a major Nazi art looter. Lillie describes Kieslinger innocuously as “an art dealer who regularly served as an expert for the Vermögensverkehrsstelle.”⁸⁸ Stein describes Kieslinger as “an official appraiser and an expert in medieval art for the Dorotheum auction house.”⁸⁹ Kieslinger inventoried the Grünbaum collection in their apartment in July 1938 while Fritz Grünbaum was imprisoned in a concentration camp. Kieslinger's inventory, according to the law of 26 April 1938 was to document the art collection for expropriation by the Nazi state in support of Göring's Four Year Plan.⁹⁰ In *Was einmal war*, Lillie's book documenting Viennese Jewish collections, Kieslinger appears as the state-appointed expert in multiple instances of Jewish families being despoiled.⁹¹ The elimination of this information from the Lillie Report is deliberately misleading. As Lillie has documented elsewhere, Kieslinger was a major Nazi art plunderer.

⁸⁷ Note that the way that the Grünbaum assets were systematically stripped away after the “Aryanization” process began shows that the estate was taken over by the Nazi bureaucracy. The Grünbaums' assets were gradually liquidated, until it was the art and a bit more that was left in July 1939 (RM 8,370, of which RM 5,791 was art).

⁸⁸ Lillie 5. Alexandra Caruso, “Raub in geordneten Verhältnissen,” in Gabriele Anderl and Alexandra Caruso, eds., *NS-Kunstraub in Österreich und die Folgen* (Vienna: Studien Verlag, 2005), 90-109.

⁸⁹ Stein 18.

⁹⁰ For more on The Four Year Plan, see Adam Tooze, *Wages of Destruction: The Making and Breaking of the Nazi Economy* (New York: Penguin Books, 2006), 219-30, 301-08

⁹¹ Sophie Lillie, *Was einmal war. Handbuch der enteigneten Kunstsammlungen Wiens* (Vienna: Czernin Verlag: 2003), 190, 200, 215, 324, 361-62, 398, 430, 527, 572, and 911.

Franz Kieslinger (1891-1955) was a Nazi Party member, having joined on 1 May 1938 (number 7,683,103). Kieslinger was employed after 1938 as the business manager at the “Aryanized” art dealership S. Kende which was taken over by the Munich auction house Adolf Weinmüller. Kieslinger headed Weinmüller’s Viennese branch starting in early 1938. Kieslinger also continued as an expert appraiser and consultant for Vienna’s Dorotheum.⁹² Like many other Nazi perpetrators, Kieslinger got his start in Vienna, initially freelancing as “an appointed consultant” of the Nazi regime as he inventoried Jewish art collections subject to seizure. Dr. Meike Hopp estimates that Kieslinger inventoried about 15 collections in Vienna at this time (1938-39).⁹³

In 1940, Kieslinger left Vienna to play a prominent role in the Dienststelle Mühlmann, the Nazis’ most notorious art looting agency in the Netherlands headed by Dr. Kajetan Mühlmann.⁹⁴ As noted in the 2008 Report (51) Mühlmann, another Austrian, stole Jews’ art collections in Vienna, in Poland, and then in the Netherlands. Kieslinger continued to help Mühlmann plunder in Vienna and then worked as Mühlmann’s right-hand man in the occupied Netherlands. He helped catalogue the plunder taken by special commandos (Sonderkommandos) that raided the homes of Dutch Jews. At The Hague, Mühlmann lived in a house with Peter Gern, the head of the Nazis’ Security Service (Sicherheitsdienst or SD), a branch of the SS. Mühlmann was an SS colonel. Some 75 percent of Dutch Jews perished during the Holocaust, the highest percentage for any Western European country. Mühlmann and Kieslinger sent plundered art to Nazi leaders including Adolf Hitler, Heinrich Himmler, and Hermann Göring. Kieslinger also held a position in the office of the Reichskommissar for the Occupied

⁹² Alexandra Caruso, “Raub in geordneten Verhältnissen,” in Gabriele Anderl and Alexandra Caruso, eds., *NS-Kunstraub in Österreich und die Folgen* (Vienna: Studien Verlag, 2005), 103.

⁹³ Dr. Meike Hopp email to author (11 August 2010).

⁹⁴ See the chapter on Mühlmann in Jonathan Petropoulos, *The Faustian Bargain: The Art World in Nazi Germany* (New York: Oxford University Press, 2000); and the Wikipedia entry on Franz Kieslinger at https://de.wikipedia.org/wiki/Franz_Kieslinger (accessed 5 January 2016)

Netherlands, headed by Dr. Arthur Seyss-Inquart (yet another Austrian) as Kieslinger oversaw the seized art collections.⁹⁵

During the war, Kieslinger also delivered artworks looted from Jews to the auction houses of Weinmüller in Munich and the Dorotheum in Vienna.⁹⁶ Catalogues from the Weinmüller auction house from 1936 to 1945 discovered only in 2013 document Kieslinger's leading role as a consigner of looted art.⁹⁷ The Dorotheum, founded in 1707 by Habsburg Emperor Joseph I, evolved into one of the greatest liquidators of Nazi plundered art during World War II: after the *Anschluss* in March 1938, the Dorotheum's business leadership was replaced, the Jewish employees were fired, and the institution was integrated into Nazi plundering operations.⁹⁸ While many in Vienna trafficked in looted works, the Dorotheum was by far the most significant institution and "profited by accepting consignments of property confiscated from Jews from the Gestapo, from the customs and finance authorities, and from the municipal government in Vienna."⁹⁹ As Kieslinger admitted after the war, "thousands of artworks passed through my hands."¹⁰⁰ Dorotheum officials claimed after the war that its records were lost in the Allied bombing raids. However, more recent scholarship has shown that

⁹⁵ Kieslinger's post was in the "Abteilung Feindvermögen des Reichskommissars zum Sammelverwalter für alle Kunstgegenstände aus Feindbesitz in den Niederlanden." See the report of A. J. van der Leeuw, "Die Bestimmung der vom Deutschen Reich entzogenen und von der Dienststellen Dr. Mühlmann übernommenen Kunstgegenstände" (27 August 1962).

⁹⁶ Gabriele Anderl, "... Ein schwerreicher Kunsthändler aus München." Die 'Arisierung' des Kunstantiquariats S. Kende in Wien durch Adolph Weinmüller," at http://www.doew.at/cms/download/q39r/anderl_arisierung_kunstantiquariat.pdf (accessed 31 May 2017); and Meike Hopp, *Kunsthandel im Nationalsozialismus. Adolf Weinmüller in München und Wien* (Cologne: Böhlau, 2012).

⁹⁷ See "Weinmüller's Nazi Auction Catalogues Published Online" at <https://www.justcollecting.com/miscellania/weinmullers-nazi-auction-catalogues-published-online> (accessed 29 October 2017).

⁹⁸ See more generally, Stefan August Lütgenau, Alexander Schröck, and Sonja Niederacher, *Zwischen Staat und Wirtschaft. Das Dorotheum im Nationalsozialismus* (Vienna: Oldenbourg, 2006). Note that this study, which runs over 475 pages, does not even mention Franz Kieslinger, which is a serious oversight.

⁹⁹ See the Wikipedia entry for "Dorotheum" at <https://de.wikipedia.org/wiki/Dorotheum> (accessed 5 June 2017). The German reads, "Das Dorotheum profitierte durch Einlieferungen von nationalsozialistischer Stellen wie der Gestapo, den Zoll- und Finanzbehörden und der Gemeinde Wien."

¹⁰⁰ Robert Holzbauer, "The Austrian Federal Office for Heritage Protection: Assisting in the Loot during the War, Administering Restitution after the War," at http://members.aon.at/robert.holzbauer/gsa_new_orleans.pdf (accessed 5 January 2016). The German reads, "durch meine Hände sind tausende Kunstwerke gegangen..."

these Dorotheum officials later destroyed lists of the stolen artworks.¹⁰¹ Viennese destruction of documents in the post-War period has made research into the fate of Nazi looted artworks difficult. Based on the foregoing, the attempt to white-wash Kieslinger's Nazi status and role as an art looter should be rejected, and the 2008 Report's conclusion that Kieslinger likely had a corrupt role in the fate of Fritz Grünbaum's art collection should be accepted as highly likely.

Q. In Discounting the 2008 Report's Corruption Thesis, Lillie and Stein Overlook Kieslinger's Post-War Relationship With The Dorotheum and Schiele Collector Dr. Rudolf Leopold

The Lillie, Stein and Nicholas Reports overlook Kieslinger's post-war financial activities relative to Schiele and a corrupt art-dealing milieu. In the postwar period, Kieslinger evaded justice and continued to be active in the art trade in Vienna. Kieslinger maintained his long-term relationship with the Dorotheum until his 1955 death.¹⁰² Kieslinger did not leave a "Nachlass" or literary estate. His daughter, who still lives in Vienna, told a German restitution expert (Dr. Meike Hopp) that all his papers had been destroyed. Whether this is true is unverified, but historians do not have Kieslinger's documents as a resource. As noted in the 2008 Report and overlooked by the Lillie, Stein, and Nicholas Reports, Kieslinger was also a passionate supporter of Egon Schiele. Kieslinger was the mentor to Dr. Rudolf Leopold, who emerged as a leading Schiele collector (and namesake of Vienna's Leopold Museum). Dr. Leopold recalled Kieslinger escorting him to a 1954 auction where he purchased a large portrait by Schiele: "I did, however, know one person who valued Schiele, namely Dr. Franz Kieslinger."¹⁰³ Dr. Kieslinger admired the artist and believed that he would be appreciated in the future. In other words, Kieslinger cherished the art of Egon Schiele, giving him a motive to steal Grünbaum's art collection.

¹⁰¹ See the Wikipedia entry for "Dorotheum" at <https://de.wikipedia.org/wiki/Dorotheum> (accessed 5 June 2017). The German reads, "Listen vom geraubten Gut wurden später vernichtet."

¹⁰² Caruso, "Raub in geordneten Verhältnissen," 96.

¹⁰³ Diethold Leopold, *Rudolf Leopold—Kunstsammler* (Vienna: Holzhausen Verlag, 2003), 17 (DBM 005852). The English translation is DBM 005853.

On the list of suspects, who could have taken Grünbaum's art collection out of Schenker, Kieslinger is at the top. He was a high-ranking Nazi, his wartime job was to steal Jewish art collections, he had personal knowledge of Grünbaum's collection because he had inventoried it, and he had a fondness for the work of Egon Schiele. Kieslinger thus had both a profiteer's and a collector's motive. Of Grünbaum's 446-work art collection, only the Schieles have surfaced in the postwar period. Kieslinger was an expert in medieval and early modern art, and he knew in the Nazi era that there were graphic works in Grünbaum's collection by Albrecht Dürer, Rembrandt, Tiepelo, and Guido Reni, as well as wooden sculptures from circa 1600—all of which would have had value in the Third Reich, a point ignored by the Stein, Lillie and Nicholas Reports. It is entirely consistent with the facts that Kieslinger sold off the works the Nazis found "desirable" and waited until the post-War period to liquidate the Schieles.

R. In Considering Likely Paths For the Grünbaum Art Collection, Lillie and Stein Overlook Gutekunst & Klipstein's Nazi-Era Dealings and Profiteering From Jewish Misery And Kornfeld's Knowledge Of This History

Stein suggests that Kornfeld would not know about Nazi art plundering,¹⁰⁴ Lillie does not take up the subject of the dealer in her report; and Nicholas says little about him, other than to defend his deceptive, out of order provenance for Schiele's *Dead City III* painting.¹⁰⁵ Eberhard Kornfeld (b. 1923) was an experienced art dealer with clear knowledge of both the rules of selling artworks (the consigner needed to provide proof of ownership), and of Nazi art looting. Kornfeld joined Gutekunst & Klipstein in 1945 and then bought or took over the firm in 1951.¹⁰⁶ Kornfeld would have known about Gutekunst & Klipstein's wartime history. As the

¹⁰⁴ Stein 40.

¹⁰⁵ Nicholas 8.

¹⁰⁶ Declaration of the German Federal Government, Provinces, and Leading Associations regarding the Discovery and Restitution of NS-Persecutees Seized Cultural Property, in particular Jewish Property (Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-

2008 Report notes Gutekunst & Klipstein held “*Emigrantenauktionen*” (emigrant auctions—or assets left behind by Jews fleeing Nazi persecution) during the Third Reich; and Kornfeld acknowledged in 1998 that the firm had records of these sales.¹⁰⁷ As the 2008 report describes, the Nazis had planned to use Gutekunst & Klipstein to auction off graphic works purged from German state museums in 1939, but the war broke out preventing the sale. Circumstances strongly suggest that that Kornfeld was well aware of issues of Nazi looted art from the very start of his career. As a professional art dealer in Switzerland, by 1956 Kornfeld would have been acutely aware of the issue of stolen art being laundered through Switzerland during World War II.¹⁰⁸ Under the applicable Swiss law in 1956, Kornfeld was legally responsible to raise questions about property that passed through Germany or occupied countries during the war.¹⁰⁹ Kornfeld was the President of the Swiss Art Dealers’ Association from 1959 to 1996.¹¹⁰ During this 37 year tenure, he would have been aware of the issues associated with Nazi art plundering. His presidency of the Swiss Art Dealers’ Association also coincides with a period when

verfolgungs-bedingt entzogenen Kulturgutes, insbesondere aus jüdischen Besitz), *Handreichung* (Bonn/Berlin: BKM, 2001), 36 (DBM 04991).

¹⁰⁷ The 2008 Report 63-67; Esther Tisa Francini, Anja Heuss, and Georg Kreis [the “Bergier Report”], *Raubgut – Fluchtgut. Der Transfer von Kulturgütern in und über die Schweiz 1933 – 1945 und die Frage der Restitution* (Zurich: Chronos, 2001), 164 (BDM 05100). According to Francini, Heuss, and Kreis, “Neben der Galerie Fischer befasste sich auch die Galerie Gutekunst & Klipstein in Bern in den dreissiger Jahren mit ‘Emigrantenauktion.’” The notes says that, “Die Galerie Kornfeld verwahrt ebenfalls mit handschriftlichen Anmerkungen zu Verkäufen und Käufern versehenen Auktionskataloge der damaligen Zeit, verfügt jedoch über ausführliche Korrespondenzen zu den Auktionen.” They cite an interview with Eberhard Kornfeld on 19 August 1998. (p. 157). See also Gunnar Schnabel and Monika Tatzkow, *Nazi Looted Art. Handbuch Kunstrestitution Weltweit* (Berlin: Proprietas Verlag, 2007), 68-69 (DBM 04744). The translation is DBM 04753.

¹⁰⁸ For the Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control of 5 January 1943 see DBM 04282 – DBM 04284.

¹⁰⁹ Additionally, the Swiss Federal Council’s Robbed Property Order of 10 December 1945 put Swiss art dealers on notice that good faith would not be presumed in acquisitions of property from Nazi-occupied territory. Wenger Plattner expert report on Swiss Law (D & M 02551).

¹¹⁰ The German name of the association is Kunsthandverband der Schweiz. See <http://www.khvs.ch/>.

Switzerland became the center of a trade in looted cultural property, including illegally exported antiquities.¹¹¹

Kornfeld would have been conscious of a number of high profile legal cases in Switzerland in the early 1950s involving restitution of looted art.¹¹² Famous examples include Theodor Fischer and Emil Buhle's trials, as well as one involving the Neupert Gallery.¹¹³ As noted in the 2008 Report, Kornfeld certainly would have also been aware of the extraordinary plunder of artworks from Viennese Jews.¹¹⁴ Kornfeld told Swiss journalist/historian Thomas Buomberger that when Kornfeld bought the Grünbaum artworks from Mathilde Lukacs, she told Kornfeld that the artworks came from "the family's old private possession in Vienna."¹¹⁵ Thus, in the mid-1950s, Kornfeld, according to his own account, knew that these works had changed hands due to an inheritance; this would have provided an additional reason for Kornfeld to seek proof of Lukacs' good title. By 1956, Kornfeld knew about Nazi looted art and under Swiss law "could not guiltlessly be oblivious to the risk connected to transactions with goods from Germany or occupied countries...."¹¹⁶

S. Stein and Lillie Disregard Not Only Kornfeld's Guilty Knowledge But Also His Track Record of Fencing Artworks For Hitler's Former Dealer (And His Family) And Concealing Provenance Information

¹¹¹ For the J. Paul Getty Museum purchasing illegally exported antiquities trafficked through Switzerland, see Jason Felch and Ralph Frammolino, *Chasing Aphrodite: The Hunt for Looted Antiquities at the World's Richest Museum* (Boston: Houghton Mifflin, 2011), 169-91.

¹¹² Wenger Plattner expert report on Swiss Law (D & M 02552 - D & M 025553). See also William Z. Slany (U.S. State Department), *U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany during World War II* (Washington, DC: Department of State Publication, 1997).

¹¹³ Wenger Plattner expert report on Swiss Law (D & M 02551).

¹¹⁴ The 2008 Report 64.

¹¹⁵ Thomas Buomberger, "Memorandum in Regard to Gallery Kornfeld – Egon Schiele's 'Dead City III' (previously 'Dead City I'), 2 (DBM 04697). According to Tim Reif's notes of a 13 March 1998 conversation with Eberhard Kornfeld, the dealer said he had no idea that the artworks were once in the possession of Fritz Grünbaum, although he reportedly reversed this statement in a 14 January 1998 telephone conversation with Paul Langner (D & M 00125 and D & M 00158).

¹¹⁶ Wenger Plattner expert report on Swiss Law (D & M 02551).

Following the 2008 Report, Kornfeld has garnered international headlines for acting as a “fence” for Cornelius Gurlitt’s sale of artworks obtained from his father Hildebrand Gurlitt.¹¹⁷ Hildebrand sold more artworks to Hitler than any other dealer. When questioned by the Americans in 1945, Hildebrand lied and concealed over a thousand artworks. Hildebrand died in 1956. The artworks eventually passed to his son Cornelius. A number of these works were looted (there have been high profile restitutions of a Matisse to the Rosenberg family and a Max Liebermann painting to the Friedmann heirs, among others).¹¹⁸ Kornfeld concealed his relationships with the Gurlitts until the 2013 revelation of the Munich cache of over 1,200 artworks (with several hundred more in Salzburg).¹¹⁹

We now know the following that was unknown prior to 2008: Hildebrand did business with Gutekunst & Klipstein in the late 1930s (prior to Kornfeld’s arrival at the firm).¹²⁰ According to art historians: “The Bern auction house is the first address for graphic works in Switzerland.”¹²¹ Hildebrand resumed a business relationship after Kornfeld took over Gutekunst & Klipstein in 1951.¹²² After Hildebrand Gurlitt’s death in 1956, records extending to the early

¹¹⁷ See Alastair Sooke, “The True Story of the Nazi Art Dealer and a Collection that Will be Forever Tainted,” in *The Telegraph* (6 November 2017) at <http://www.telegraph.co.uk/art/artists/true-story-nazi-art-dealer-collection-works-will-forever-tainted/> (accessed 7 November 2017). Among other book-length studies, see Meike Hoffmann and Nicola Kuhn, *Hitlers Kunsthändler. Hildebrand Gurlitt, 1895-1956* (Munich: C.H. Beck, 2016); and Susan Ronald, *Hitler’s Art Thief: Hildebrand Gurlitt, the Nazis, and the Looting of Europe’s Cultural Treasures* (New York: St. Martin’s, 2015).

¹¹⁸ At least six works from the Gurlitt cache have been identified to date. See the press release of the German Lost Art Foundation, “Project Gurlitt Identifies Painting by Thomas Couture as Nazi-Looted Art” (25 October 2017) at https://www.kulturgutverluste.de/Content/02_Aktuelles/EN/Press-releases/2017/17-10-25_Gurlitt-Couture-nazi-looted-art.html (accessed 31 October 2017).

¹¹⁹ See “Gurlitt’s Art Dealer Finally Speaks out About his Notorious Client,” at *ARTFIX Daily* (17 October 2017) at http://www.artfixdaily.com/news_feed/2017/10/12/1247-gurlitts-art-dealer-finally-speaks-about-his-notorious-client (accessed 7 November 2017).

¹²⁰ Hoffmann and Kuhn, *Hitlers Kunsthändler*, 188.

¹²¹ Hoffmann and Kuhn, *Hitlers Kunsthändler*, 189. The German reads, “Das Berner Auktionshaus ist eine der ersten Adressen für Graphik in der Schweiz.”

¹²² Hoffmann and Kuhn, *Hitlers Kunsthändler*, 189. They write, “1951 übernimmt Eberhard W. Kornfeld nach dem überraschenden Tod von August Klipstein das Berner Auktionshaus, mit dem Gurlitt den Kontakt ebenfalls halt. In der Nachkriegszeit erlebt die Firma einen grossen Aufschwung, den insbesondere in den 50ern kommen vermehrt Werke des Deutschen Expressionismus auf den Markt. Manches Stück der Sammlung Gurlitt landet hier, auch Cornelius Gurlitt liefert nach dem Tod des Vaters weiterhin ein.”

1970's show that Kornfeld established a business relationship with his son, Cornelius.¹²³ In September 2010, when Cornelius was intercepted coming from Switzerland by German customs agents with a large sum of cash (9,000 Euros in the form of 500 Euro bills), Cornelius reported that he had just sold artworks to Kornfeld.¹²⁴ Kornfeld disputed Cornelius' account. Kornfeld had previously been found to have trafficked in other works of Nazi looted art, including a painting by Swiss artist Ferdinand Hodler that had been the subject of a forced sale by the Silberberg family in Breslau in the mid-1930s.¹²⁵ Kornfeld's decades-long involvement with the Gurlitt cache, however, has done far more to impugn his reputation.

In 1990, Cornelius sold Kornfeld four unidentified artworks on paper for 38,250 Swiss francs (\$48,757).¹²⁶ The artworks in question, Kornfeld said, were among those purchased by Hildebrand from a stockpile of "degenerate" art purged from German museums in the late 1930s. Author Catherine Hickley noted: "this was impossible to verify as Kornfeld volunteered no details."¹²⁷ Hickley documents eleven works Cornelius sold to Kornfeld in 1988, Hickley cites irregularities in Kornfeld's provenances in re-selling the works.¹²⁸ In criticizing Kornfeld's account of the 1990 Gurlitt sale, Hickley wrote:

This was impossible to verify as Kornfeld volunteered no details about them. Eberhard Kornfeld responded to a request for information for this book by saying he couldn't provide answers for at least six months because he was too busy with auctions and didn't know whether the documentation was still in the company files.¹²⁹

¹²³ Hoffmann and Kuhn, *Hitlers Kunsthändler*, 329.

¹²⁴ Hoffmann and Kuhn, *Hitlers Kunsthändler*, 312-14.

¹²⁵ Esther Tisa Francini, Anja Heuss, and Georg Kreis [the "Bergier Report"], *Raubgut – Fluchtgut. Der Transfer von Kulturgütern in und über die Schweiz 1933 – 1945 und die Frage der Restitution* (Zurich: Chronos Verlag, 2001), 191.

¹²⁶ Catherine Hickley, *The Munich Art Hoard: Hitler's Dealer and his Secret Legacy* (London: Thames and Hudson, 2015), 156-57.

¹²⁷ *Ibid.*, 156.

¹²⁸ *Ibid.*, 156. She writes that "The catalogue neglected to mention the Degas' previous owner in Paris, Charles Comiot."

¹²⁹ *Ibid.*, 156-57.

Kornfeld's unwillingness to reveal his gallery's records has severely damaged his reputation. The Stein Report mischaracterizes Kornfeld as forthcoming, with regard to several restitution cases from the "mid-2000s until 2012" ... "Eberhard Kornfeld provided detailed information in response to inquiries in these restitution cases..."¹³⁰

T. Stein and Lillie Overlook Overwhelming Additional Evidence That Kornfeld Knew Who Grünbaum Was In 1956 And That The Artworks Came From Grünbaum

In failing to identify Kornfeld as a likely participant in a corrupt transaction to liquidate property he knew to be stolen, the Lillie Stein Reports fail to analyze the ample and uncontroverted evidence that Kornfeld knew that he was purchasing Grünbaum's property in 1956. Aside from Kornfeld's own 1956 catalogue bearing Grünbaum's name, his story that Lukacs told Kornfeld that all artworks came from the same source, a family inheritance, and despite Kornfeld's admission that he had consulted scholarly literature showing Grünbaum's pre-war ownership of the Schieles he was purchasing, the overwhelming circumstantial evidence renders untrustworthy Kornfeld's statement that he did not know that Grünbaum had owned the Schieles.

As the 2008 Report describes, in the 1920's Grünbaum had already made a name for himself as a collector¹³¹ With 446 works in his collection as of September 1938, he counted as a major collector. Grünbaum was clearly a major collector of Schiele (at least 81 works). Grünbaum's collection was particularly strong in graphic works, the specialty of Gutekunst & Klipstein, as well as Kornfeld. In short, Kornfeld's gallery was known for selling the kind of works that Grünbaum collected. Kornfeld did not begin working at Gutekunst & Klipstein until 1945, but he would have been cognizant of the firm's history and areas of emphasis.

¹³⁰ Stein 35.

¹³¹ Paul Stefan, "Fritz Grünbaum als Sammler" in *Die Bühne* (26 March 1925) (DBM 05091 – DBM 05092).

The point I made in the 2008 Report about Vienna naming a square after Grünbaum in 1995 was that Grünbaum was sufficiently famous as to merit that honor, not to suggest that Kornfeld learned about Grünbaum from the square as the Stein Report maintains.¹³² Grünbaum appeared in many films and was arguably the most famous German-language comedian in Europe in the interwar period. For Kornfeld to say that he “did not know who Fritz Grünbaum was” is highly improbable based purely on Grünbaum’s fame.¹³³

U. Lillie and Stein Overlook Professor Otto Benesch As A Source Of Knowledge Of The Grünbaum Provenance In The 1956 Sale By Kornfeld

The Lillie and Stein Reports overlook that Otto Benesch, the director of the Vienna’s Albertina Museum in 1956 had a direct financial relationship with Kornfeld in 1956 and likely knew when he wrote the introduction to the 1956 Kornfeld Catalogue that the artworks in the sale belonged to Grünbaum. Otto Benesch (1896-1964) was the son of a major collector of Schiele (Heinrich Benesch). Otto, who served as director of the Albertina from 1947-1961, wrote in the introduction to the 1956 Kornfeld Catalogue:

Three major collections of his drawings formed during Schiele’s lifetime: Dr. Oskar Reichel, Dr. Heinrich Rieger, and Heinrich Benesch. While the former were partly scattered and partly destroyed, the latter [Benesch’s father’s] continued to exist as the one most complete. One half of it is now in the writer’s ownership, the other was transferred to the Albertina which possesses the most omnibus [complete] and most beautiful Schiele collection today.¹³⁴

It is striking that Benesch said nothing about the Grünbaum provenance of the artworks his introduction was presenting. As a contemporary of Fritz Grünbaum (1880-1941), a fellow Viennese collector of Schiele, and as the Director of the Albertina Museum, Benesch would certainly have known that Grünbaum was the source of the artworks. The Grünbaum collection

¹³² Stein 39.

¹³³ Nicholas Report, 7, where she cites Kornfeld’s deposition of 2007 (p. 110 at A594).

¹³⁴ Otto Benesch, “Egon Schiele,” in Gutekunst & Klipstein, Bern, *Egon Schiele. Bilder, Aquarelle, Zeichnungen, Graphiken, Lager- und Ausstellungskatalog Nr. 157* (8 September – 6 October 1956), (P0058).

of Schieles sold by Kornfeld also included a portrait of Otto Benesch's father (object number 43).¹³⁵

Otto and Kornfeld had a very close business relationship. On 20 April 1956, Kornfeld had held an auction of "*Doubletten der Albertina*" (Doubles of the Albertina), where Kornfeld had sold allegedly redundant works from the Albertina museum's collection (graphic works by Rembrandt, Dürer, and other Old Masters).¹³⁶ Otto Benesch likely attended the April 1956 auction (which occurred less than five months prior to the sale of the Grünbaum works and at almost exactly the time that Kornfeld was purportedly acquiring works from Lukacs). Regardless, Otto clearly had a close relationship (and more specifically, a business relationship) with Kornfeld. Otto, preparing his introduction for the September 1956 sale, would likely have discussed the Grünbaum provenance with Kornfeld. Benesch's silence suggests his complicity in profiting from the sale of Grünbaum's artworks.

V. Lillie And Stein Overlook That Otto Kallir Likely Discussed The Grünbaum Provenance of The Artworks Corresponding To The Artworks

Neither Lillie nor Stein address the high probability that New York-based Austrian émigré art dealer Otto Nirenstein Kallir (1894-1978) discussed the Artworks' provenance with Kornfeld when Kallir bought 20 of them on 18 September 1956 to bring them to New York.¹³⁷ As the 2008 Report describes, Grünbaum was Kallir's client in Vienna (both at the Neue Galerie and his previous employer, the Galerie Würthle), and had purchased many Schiele works from Kallir, including in the 1956 Kornfeld Catalogue. Kallir and Kornfeld certainly would have

¹³⁵ Gutekunst & Klipstein, Bern, *Egon Schiele. Bilder, Aquarelle, Zeichnungen, Graphiken, Lager- und Ausstellungskatalog Nr. 157* (8 September – 6 October 1956).

¹³⁶ Gutekunst & Klipstein, *Radierungen und Holzschnitte Alter Meister. Auktion Nr. 81* (20 April 1956).

¹³⁷ The receipt for Otto Kallir's purchase of the artworks from Gutekunst & Klipstein (18 September 1956) (KAL 001 - KAL 001-10). See also Kornfeld to Kallir (11 September 1956), which lists 21 works bought by Kallir (KAL 0109-10).

discussed Grünbaum, particularly since Kornfeld admits consulting Kallir's 1930 catalogue raisonné of Schiele oil paintings showing Grünbaum's ownership.

As noted in the 2008 Report, the two men corresponded about the 1956 Kornfeld Catalogue's preparation.¹³⁸ Kornfeld wrote to Kallir on 5 September 1956: "The catalogue has been prepared in great detail and all the graphic sheets in the exhibition will be reproduced."¹³⁹ Kornfeld offered to send Kallir smaller format reproductions of most of the works in the sale prior to publication. The two dealers therefore were clearly on good terms and had shared information about the Artworks. In a letter addressed to Kallir on 14 September 1956 at the Hotel Schweizerhof in Lucerne, Kornfeld wrote: "I would be very pleased to be able to greet you here [at the Gutekunst & Klipstein gallery in Bern] next Tuesday, all the more so because we can use the opportunity to discuss the matter of the subsequent delivery of the Kollwitz-book."¹⁴⁰ The two men had undertaken a joint publishing venture concerning the graphic works of Käthe Kollwitz—a sign of their close professional relationship.¹⁴¹

Kornfeld and Kallir thus each knew that the Schieles purchased by Kallir came from Fritz Grünbaum's collection. With their good relationship over the years (up until Kallir's death in 1978), it is extraordinarily unlikely that they would not have discussed the Grünbaum provenance at some point.

¹³⁸ The 2008 Report 61-62; Gutekunst & Klipstein, Egon Schiele. Katalog zur Ausstellung Gutekunst & Klipstein 1956 (D & M 00634 – D & M 00659).

¹³⁹ Eberhard Kornfeld to Otto Kallir, 5 September 1956 (KAL 0106). The German reads, "Der Katalog ist sehr detailliert bearbeitet, und alle Blätter der ganzen Ausstellung werden reproduziert."

¹⁴⁰ Eberhard Kornfeld to Otto Kallir, 14 September 1956 (KAL 0111). The German original reads, "Ich würde mich freuen, Sie nächsten Dienstag bei uns begrüßen zu dürfen, umso mehr, als wir bei dieser Gelegenheit noch die Angelegenheit noch die Angelegenheit einer Nachlieferung des Kollwitzbuches besprechen könnten."

¹⁴¹ Dr. August Klipstein, *The Graphic Work of Käthe Kollwitz. Complete Illustrated Catalogue* (New York: Galerie St. Etienne, 1955) (KAL 0337 – KAL 0340). Note that while Kallir's gallery is listed as the publisher, the copyright is held by Klipstein & Co., Bern.

W. Lillie, Stein, and Nicholas Misconstrue The 2008 Reports Discussion Of The 1956 Gutekunst & Klipstein Catalogue Listing “Fritz Grünbaum” As The Prior Owner of Dead City III

Lillie and Stein erroneously suggest that the 2008 Report concluded that Kornfeld acquired Schiele’s *Dead City III* from Fritz Grünbaum because that is what the 1956 Kornfeld Catalogue stated. The 2008 Report’s point regarding the provenance of *Dead City III* was not that Kornfeld acquired the work from Grünbaum—he did not go to the Dachau concentration camp and purchase the artwork from the imprisoned actor—but rather, that Kornfeld published a misleading provenance. The 2008 Report correctly points out that according to ethical provenance guidelines, Kornfeld should have put a phrase like “private collection” after Grünbaum’s name so as to truthfully indicate that there was another holder of the work after Grünbaum, if that is what he intended to convey to the purchaser. In her 2005 essay, “Dead City,” Lillie criticized Kornfeld’s incorrect provenance in the 1956 Kornfeld Catalogue.¹⁴² Lillie pointed out that the “private collection,” needed to be the last entry for Kornfeld’s provenance to be truthful and accurate. The 2008 Report accurately concludes that the conventions of listing provenance required Kornfeld to include a “place-holder.” The Nicholas Report completely misconstrues this.¹⁴³

Not all art dealers at this time listed the provenance of works sold. However, if they did so, they had professional and ethical obligations to be accurate. Standards of crafting a provenance do not vary for auction houses or galleries. A provenance lists all known possessors of the artwork and indicates with a place-holding phrase where anonymity is requested. The Stein Report acknowledges that in the price list for the 1956 Kornfeld Catalogue, “Six pieces

¹⁴² Sophie Lillie, “Dead City: The Unresolved Destiny of the Art Collection of Fritz Grünbaum,” [translation of] “Die Tote Stadt. Das ungeklärte Schicksal der Kunstsammlung Fritz Grünbaum,” in Marie-Theres Arnbom and Christoph Wagner-Trenkowitz, eds., *Grüss mich Gott! Fritz Grünbaum. Eine Biographie, 1880-1914* (Vienna: Verlag Christian Brandstätter, 2005): 158.

¹⁴³ Nicholas p. 8. Again, the point I am making is that by failing to put a “place-holder” after Grünbaum, Kornfeld gives the misleading impression that he acquired the work directly from Grünbaum, which he clearly did not.

were noted as belonging to a ‘private collection’ (*Privatbesitz*).”¹⁴⁴ In other words, Kornfeld used this “place-holder” to indicate an owner desiring anonymity.¹⁴⁵ He did not indicate “privatbesitz” – that the current owner wished to remain private – with *Dead City III*, a key work in the sale. The Stein and Nicholas Reports fail to note the ethical lapse represented by Kornfeld’s misleading provenance. In documenting the history of a Schiele owned by Grünbaum, Kornfeld misled purchasers. If he indeed obtained the work from Lukacs, Kornfeld knew that the last entry could not be Fritz Grünbaum. If Kornfeld was going to list the *Dead City III*’s provenance, he needed to do so truthfully.

X. Lillie and Stein Overlook That Kornfeld Forged His Correspondence With Lukacs And Never Produced Invoices

Consistent with the 2008 Report, counsel for the Grünbaum heirs maintain that Fritz Grünbaum’s collection never entered into Mathilde Lukacs’ possession. This argument is supported by the handwriting analysis of purported correspondence between Mathilde Lukacs and Eberhard Kornfeld: approximately 25 documents dating to the period between May 1952 and October 1957.¹⁴⁶ Although the 2008 Report questioned the authenticity of the documents, none of Nagy’s Experts engage the very problematic documentation provided by Kornfeld in 1998. The Stein Report’s claim that “accusations that Kornfeld may have forged documentation to provide Lukacs as a cover for illicit acquisition, or that he should have discussed his sources with a colleague and client such as Kallir, do not merit further comment”¹⁴⁷ do not rebut the charge or address the serious questions raised by documents that appear to be forgeries. These documents deserve to be scrutinized and questioned for several reasons: 1) there are signatures

¹⁴⁴ Stein p. 34. She cites exhibit 6.

¹⁴⁵ By using the phrase “Privatbesitz,” Kornfeld was using coded language, which is the point (to conceal a possessor’s identity). But in that he testified that all the works in the sale came from Grünbaum’s collection, the phrasing may have meant that the works were not for sale.

¹⁴⁶ Translation of Christian Farthofer, “Handwriting Expertise,” 7 November 2005 (D & M 02141 – D & M 02185).

¹⁴⁷ Stein 41.

purportedly from Lukacs that appear to vary wildly in form and in spelling (with some spellings of Mathilde containing an “h” and others having no “h”); 2) some of the signatures are in pencil, which violated conventions of the time and are inconsistent with Kornfeld’s department more generally; 3) there are no invoices for key objects, including the Artworks in question, and the extant documents do not cover all the works Kornfeld claimed to have obtained from Lukacs; and 4) Kornfeld refused to hand over the original documents for analysis in 2008 and has taken steps to obstruct an objective evaluation of the documents.

Regarding the inconsistencies in the signatures, one finds signatures that are radically inconsistent (see the assembled chart). Document P0004 is signed “Mme M. Lukacs” slanting upward. Document P0015 is signed “Mme. M. Lukacs” and her signature drifts downward. Document P0017 has even more of a downward slant. Document P0023 is signed “Mathilde Lukacs” (although she does not cross the “t”). Document P0029 is signed Math. Lukacs” (with an accent over the “c”). Document P0035 has a “MLuk” and then trails off in a downward direction. P0050 has an “M” above and “Lukacs” below. Document D & M 02213 has a very shaky hand that differs from many other signatures. The fact that some of the documents produced by Kornfeld feature her signature with an “h,” while others do not is particularly troubling.¹⁴⁸ In the Farthofer report, document D & M 02216 and in the Stein report, Exhibit 18, her name is spelled “Matilde” (the same applies to document D & M 02178). Indeed, in her marriage certificate from 18 April 1909, she spells her name “Matilde Herzl.”¹⁴⁹ The assembled signatures, that vary so much, raise questions about the origins and authenticity of all the documents.

¹⁴⁸ Compare a signature without an “h” (D & M 02178) with those with an “h” (D & M 02175). There also divergent signatures in the receipts from 7 December 1955 (D & M 00156) and 24 April 1955 (D & M 00155). See more generally William Cohan, “Unravelling the Mystery of Dead City” in *ARTnews* (April 2008), 120.

¹⁴⁹ See the marriage certificate of “Matilde Herzl” and Sigmund Lukacs (18 April 1909) at JCV 110/1909.

Furthermore, to have key documents signed by Mathilde Lukacs in pencil raises serious doubts. Kornfeld himself confirmed in his 2007 deposition that certain signatures from Lukacs for receipts were in pencil.¹⁵⁰ I reaffirm the 2008 Report's conclusions that pens were very important in the 1950s; they were instruments that expressed a great deal about a person. Kornfeld has generally been characterized by those who know him as an elegant individual.¹⁵¹ In time period (circa 1953-54), Kornfeld signed letters to art dealer Curt Valentin, and invariably used a pen to sign his name.¹⁵² That he would allow transactional documents with legal implications to be signed in pencil raises questions that the opposing experts fail to consider, or answer. It is also highly unlikely that Lukacs would have signed important transactional documents in pencil. Lukacs would have known that the art belonged to her murdered brother-in-law, that she was not the sole heir, and that she had not obtained court authorization to possess or sell the artworks. Kornfeld testified in his 2007 deposition that two of the pencil signatures occurred when Lukacs was in Bern—presumably at his art gallery.¹⁵³ Under those circumstances, she would likely have used a pen in order to conform to custom and not given any grounds for someone to challenge the transaction. Kornfeld did not provide a convincing explanation for the use of pencil.

As the 2008 Report notes, analysis of the alleged correspondence between Lukacs and Kornfeld conducted by Herbert Gruber (“Gruber III”) raises doubts about its authenticity.¹⁵⁴ For example, there are invoices for certain artworks, but not for others. Documents P0019-P0021

¹⁵⁰ Eberhard Kornfeld deposition (25 May 2007), 32-34 and 38.

¹⁵¹ The 2008 Report 56-57; See the reflections in the celebratory tome on the occasion of Kornfeld's 80th birthday in Christine Stauffer, ed., *Festschrift für Eberhard W. Kornfeld zum 80. Geburtstag* (Bern: Verlag Kornfeld & Cie, 2003).

¹⁵² See the correspondence between Kornfeld and Curt Valentin in Museum of Modern Art, Curt Valentin Papers, VII, A.1. See, for example, Kornfeld to Valentin (16 December 1953).

¹⁵³ Eberhard Kornfeld deposition (25 May 2007), 34.

¹⁵⁴ The 2008 Report 57; Herbert Gruber, “Supplemental Report of Herbert Gruber, (“Gruber III”) (13 January 2008) (DBM 05294 – DBM 05303).

show an invoice from 1953 show an invoice for 19 works sold to Otto Kallir; P0033 is an invoice from 21 September 1955 for a dozen works; P0048-P0049 is from 1956 and lists some 45 works. But invoices are lacking for many others that Kornfeld purportedly purchased from Lukacs, including the Artworks. I reaffirm here the 2008 Report's conclusion that Gruber is correct in stating that the "correspondence conflicts with Kornfeld's bookkeeping and with the summary of purchases that Kornfeld provided."¹⁵⁵

Sonja Niederacher's report of her visit to the Galerie Kornfeld in Berne in May 2010 reported that she was permitted to inspect "stock books and house catalogues" (*Lagerbücher und die Hauskataloge*), but not Kornfeld's receipts for the individual alleged Lukacs transactions. Those controversial documents appear to have been concealed by Kornfeld. Additionally, Niederacher reported that Kornfeld reorganized the files and took them out of "their original archival context." This included letters supposedly from Lukacs. I infer from Niederacher's description that the "re-organization" of these files did not facilitate research and was suspicious. The failure to produce the original documents has prevented a handwriting analysis that can be submitted to a U.S. court of law. Handwriting expert Christian Farthofer's efforts to conduct a scientific handwriting analysis were frustrated in 2005 by Kornfeld's refusal to provide original handwriting samples. Kornfeld's failure to provide the original documents for forensic analysis supports the 2008 Report's negative inferences.

Kornfeld's refusal to produce the original documents is amplified by Farthofer's observation:

Furthermore, for instance, several signatures which were produced at an earlier date appear to be made rather slowly and show disturbances in writing (they seem to be explainable plausibly by age-induced deterioration), while others were written in a rather speedy and fluent way

¹⁵⁵ Gruber, "Gruber III," 9 (DBM 05302).

of writing at a later point in time. Based on those findings I have massive doubts that all the signatures were produced by one person.¹⁵⁶

In light of all the factors discussed above, the 2008 Report's conclusion that the evidence strongly suggests that these documents were forged is reaffirmed. Kornfeld likely received the artworks from someone other than Lukacs and later fabricated documents to launder the art collection.

Y. Stein and Lillie Overlook That The Timing And Method Of The 1956 Sale Were Suspicious

The timing of Kornfeld's sale is suspicious. In his expert report, Dr. August Reinisch notes that the window for claims in Austria regarding Nazi looted art closed on 31 July 1956 (see Reinisch 11). Kornfeld then put the works on view (and up for sale) in Bern on 8 September of 1956.¹⁵⁷ Accordingly, Grünbaum's collection was not seen in public until five weeks after the deadline for restitution ended.

Z. Stein and Lillie Overlook Evidence of Nagy's Guilty Knowledge In Purchasing The Artworks

Nagy knew the Artworks were problematic when he bought interests in them in June 2004 and December 2013. Nagy's first acquisition came over five years after the seizure of two Schiele paintings by New York District Attorney Robert Morgenthau (an action that occurred in January 1998). These events made national headlines and sent shock waves through the art world (museum officials became alarmed that the seizures would jeopardize loans from foreign institutions and organized various responses). The Morgenthau seizures were a sensation. The reclamation of *Dead City III* in 1999, an act undertaken by Austria's Leopold Museum during

¹⁵⁶ Translation of Christian Farthofer, "Handwriting Expertise," 7 November 2005 (D & M 02141 – D & M 02185), with the quotation on p. 13 at D & M.02154.

¹⁵⁷ The formal title of the exhibition catalogue is *Egon Schiele, Lager- und Ausstellungskatalog Nr. 157, 8 September – 6 Oktober 1956*.

the short interval when there uncertainty about the rightful heirs of Fritz Grünbaum, drew yet more attention.

The Nicholas Report notes that in June 2004, “Nagy bought a half interest in *Pinafore* from Sotheby’s but did not immediately take delivery.”¹⁵⁸ Nagy then took delivery in February 2005. In the fall of 2005, Nagy then, according to the Nicholas Report: “cancelled the purchase of the half share with Thomas Gibson, who issued Nagy a credit note to that effect.”¹⁵⁹ When the *Bakalar* case was resolved, “Nagy reacquired his half share of *Pinafore*, which was still in Gibson’s possession.”¹⁶⁰ Nicholas also states (in connection with Nagy acquiring *Woman Hiding her Face* in December 2013) that “*Bakalar* had declared that the Lukacs/Grünbaum items were not loot.”¹⁶¹ Contrary to the characterizations of the Nicholas Report, Nagy’s behavior shows that he knew that the Artworks were problematic.

Nagy wrote to Hugh Gibson of Thomas Gibson Fine Art Ltd. On 9 December 2013 to re-purchase (or “re-confirm the purchase”) of *Woman in Black Pinafore* and wrote, “The good news is that the courts in New York have found in favour of Mr. Bakalar and I agree with you that the likelihood of the work being contaminated is very slight.”¹⁶² In 2014, Nagy obtained an insurance policy creating a litigation fund for one of the Artworks, *Woman with Her Face Hidden (Frau, das Gesicht Verbergend)* from 1912), acknowledging that it was a Grünbaum Schiele and containing the following language: “Art Title Protection Insurance, Acknowledgement of Impact of *Bakalar v. Vavra* Litigation Point 4: The Applicant seeks to sell or buy the Fine Art with an ARIS title insurance in order to bolster the finality of the legal

¹⁵⁸ Nicholas 9.

¹⁵⁹ Nicholas 10.

¹⁶⁰ Nicholas 10.

¹⁶¹ Nicholas 11.

¹⁶² I am presuming from the salutation (“Dear Hugh”) that Nagy is writing to Hugh Gibson at Thomas Gibson. See Nagy to Hugh [Gibson] (9 December 2013) at Exhibit Y (NYSCEF 268).

precedent in *Bakalar v. Vavra* and certainty of commercially transacting the Fine Art.”¹⁶³ It is clear that Nagy knew that the Artwork might be, in his words, “contaminated” by ownership by a Holocaust victim. Nagy clearly acknowledged risk of ownership claims—that the work may indeed have been looted and never properly restituted. “Very slight” may not be a great risk, but it is there. Clearly, Nagy had doubts about title to the Artworks, decided to take a gamble, and also to amass an insurance-funded war chest against claims from the Grünbaum heirs.

Nagy made no efforts to resolve the issue of title by contacting the Grünbaum heirs. A different approach was taken by Christie’s auction house in the autumn of 2014, when representatives of the auction house came to terms with the Grünbaum heirs prior to the sale of a Schiele watercolor titled, *Town on the Blue River*, a work once in Fritz Grünbaum’s collection. A contemporaneous article in the *New York Times* quoted Monica Dugot, “... international director of restitution at Christies. ‘We have to be in a position where we can be sure we can convey good title to works in our sales.’”¹⁶⁴ It is clear from the extant documentation that Nagy did not take similar steps to insure that he could convey good title.

The undisputed evidence shows that Nagy knew when he acquired the Artworks that the Grünbaum heirs had already claimed them as belonging to Fritz Grünbaum’s estate and Nagy knew, in obtaining an insurance policy against precisely that risk, that there was a risk that the *Bakalar v. Vavra* judgment would not be final.

AA. The 2008 Report Correctly Concluded That Mathilde Lukacs Could Not Have Good Title To The Artworks: Stein and Lillie Misinterpret Skrein’s Activities

¹⁶³ Exhibit Z.

¹⁶⁴ Patricia Cohen and Graham Bowley, “Dispute Over Nazi Victim’s Art: Christie’s and Sotheby’s Differ on Handling of 2 Schieles,” in *New York Times* (24 October 2014). See <https://www.nytimes.com/2014/10/25/arts/design/christies-and-sothebys-differ-on-handling-of-2-schieles.html> (accessed 30 October 2017).

As the 2008 Report correctly concluded: if Lukacs obtained the Artworks after Fritz Grünbaum was imprisoned in Dachau, then she did not have good title. Lukacs was not the sole heir and therefore, if she took the Artworks, she stole from the other heirs. According to Austrian law, as Dr. Katrin Höfer has noted, one “requires proper legal authority before acquiring an inheritance”—and Mathilde Lukacs clearly never obtained such authorization.¹⁶⁵ Both Fritz Grünbaum and Elisabeth Grünbaum died without legally binding wills. The “*Erbschein*” (certificate of heirship) issued by the Probate Court at Dachau established that Elisabeth Grünbaum would have received half of Fritz Grünbaum’s estate, with his blood heir—his sister Elise (or Alzbeta) Zozuli di Salino (nee Grünbaum) (born in Brünn in 1885 and died in Pilsen, Czechoslovakia in 1977)—receiving the other half.¹⁶⁶

In 1952, Elise Zozuli di Salino contacted Dr. Rudolf Skrein about the estate of Fritz Grünbaum.¹⁶⁷ This meant that Skrein knew about another heir. Regardless of the reason why Dr. Skrein withdrew the application in 1954 for Lukacs to be recognized as Elisabeth’s legal heir, the fact remains that Lukacs did not have this legal designation. In other words, if Lukacs obtained the works after Elisabeth Grünbaum’s death in 1942 (and we have established that it would have been virtually impossible for her to return to Vienna between August 1938 and October 1942), then she is a thief in the chain of possession. Lukacs did not have a court order establishing her as sole heir and there were clearly other heirs.¹⁶⁸ If Lukacs did in fact obtain the works (a questionable proposition), and did not have a court order, then she was a thief. By not obtaining a court order and the other heirs’ approval to sell the works, she would have been

¹⁶⁵ Dr. Kathrin Höfer, “Supplemental Legal Opinion on Aspects of Law of Succession under Austrian Law for the Period from 1952 – 1956” (10 September 2007), 2 (DBM 04254).

¹⁶⁶ Probate Court Dachau, “*Erbschein*” (30 June 2004) (DBM 03586 – DBM 03593). Fritz Grünbaum’s brother, Paul Grünbaum (1884-1940) was killed in Riga.

¹⁶⁷ Gruber cites Exhibit H.

¹⁶⁸ Note that Elisabeth Grünbaum had four sisters and three brothers, but only three siblings survived the war. Anna Herzl (1882-1948) died shortly after the war. See the family tree for Elisabeth Grünbaum (P 0332 P 0336).

stealing from them. The Lillie Report's conclusion, "Mathilde Lukacs' withdrawal of her application in and of itself does not seem out of order" makes no sense. Further, Lillie's speculation about "the costs" of the probate proceedings makes no sense.¹⁶⁹ The Stein Report's interpretation of the withdrawn application is also not convincing.¹⁷⁰

The evidence regarding the 1954 application to have Lukacs named Fritz and Elisabeth Grünbaum's legal heir deserves closer scrutiny. Dr. Rudolf Skrein, using Lukacs' name, applied on 16 June 1954 to an Austrian court to declare Elisabeth Grünbaum to be dead (to allow Lukacs to be named Elisabeth Grünbaum's legal heir).¹⁷¹ Lukacs (through Skrein) subsequently withdrew this application on 16 July 1954.¹⁷² If Lukacs indeed attempted to take action through Skrein, these steps suggest that Lukacs knew she needed a court order to have good title to the property or revenues associated with the Fritz Grünbaum and Elisabeth Grünbaum estates. Lukacs' inability to obtain this court order combined with a subsequent sale of the Artworks indicates bad faith. When Skrein rescinded the application, as Stein concedes, he noted that "His client was not in the position to provide the required documents."¹⁷³

BB. Stein and Lillie Ignore Possible Identity Theft By Kornfeld And Skrein of Lukacs: A Hypothesis Consistent With The 2008 Report's Corruption Conclusion And Lillie's Erroneous Invocation of Austrian Law Relative To Powers of Attorney Prior To 1983

Lukacs' signature is not found on any of the documents relevant to the petition and motion for withdrawal submitted by Skrein. Skrein claimed to have a power of attorney to represent Lukacs, but there is no such a document signed by Lukacs. This suggests that Skrein

¹⁶⁹ Lillie 20.

¹⁷⁰ Stein 43.


¹⁷¹ The intent to claim the estate is reflected in Mathilde Lukacs's argument stated in the document that Elisabeth Grünbaum was Fritz Grünbaum's "universal heir." See the translation of Mathilde Lukacs, application to Vienna Regional Court for declaration of death of Elisabeth Grünbaum, 16 June 1954 (DBM 04774 – DBM 04775); and Dr. Rudolf Skrein to the Landesgericht für ZRS, 16 July 1954 (D & M 00992 – D & M 01003, and D & M 0051-52).

¹⁷² Skrein to the Landesgericht für ZRS 16 July 1954) (D & M 0051-52). See also Dr. Kathrin Höfer, "Rebuttal Expert Opinion" (29 October 2007), 4 (DBM 04736).

¹⁷³ Stein 43.

was not acting for Lukacs, but instead was perpetrating identity theft to launder Grünbaum's art collection. This would explain why Skrein abandoned his efforts when pressed for documentation. Skrein's 1954 efforts coincide roughly chronologically with Kornfeld's purported acquisition of the Grünbaum collection. Whether Kornfeld and Skrein collaborated on this attempted deception, or whether Lukacs simply failed in an attempt to use the court to circumvent other family members who would have been heirs, the result was the same: the Austrian court did not grant Lukacs the right to any property in the Grünbaum estate.

Conclusion For the above reasons, I hereby reaffirm the 2008 Report's conclusions that the artworks in the 1956 Gutekunst & Klipstein sale belonged to Fritz Grünbaum and today should be returned to his heirs because he lost them as a result of Nazi persecution while in the Dachau Concentration Camp, where he was murdered.



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