



**IN THE MATTER OF AN APPLICATION FOR A  
WARRANT TO SEARCH THE PREMISES  
LOCATED AT THE ART INSTITUTE OF  
CHICAGO 111 SOUTH MICHIGAN AVENUE  
CHICAGO, IL 60603**

**APPLICATION FOR TURNOVER ORDER**

**ALVIN BRAGG, JR.  
DISTRICT ATTORNEY  
NEW YORK COUNTY  
BY: MATTHEW BOGDANOS**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, PART 61

IN THE MATTER OF AN APPLICATION FOR A  
WARRANT TO SEARCH THE PREMISES LOCATED AT  
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MICHIGAN AVENUE CHICAGO, IL 60603

APPLICATION FOR  
TURNOVER ORDER

MATTHEW BOGDANOS, an attorney admitted to the practice of law in the State of New York, affirms the following under penalties of perjury:

1. I am a Senior Trial Counsel in the Office of the District Attorney of New York County and Chief of the Antiquities Trafficking Unit. I submit this Application in support of an Order pursuant to Penal Law §450.10(5) authorizing the transfer of a drawing by the Austrian artist Egon Schiele, descriptively titled *Russian War Prisoner* (“*Russian War Prisoner*”), from the constructive custody of DANY pursuant to this Court’s authority under Criminal Procedure Law § 690.55(1), to its lawful owner, the heirs of Fritz Grünbaum: Judge Timothy Reif, David Fraenkel, and Milos Vavra. See Exhibit 1A (Photograph of *Russian War Prisoner*) and 1B (Photograph of *Russian War Prisoner* Verso).<sup>1</sup>

2. This Application is based on detailed examinations of numerous Nazi-era records, including appraisal inventories, export applications, correspondence; documents received pursuant to Grand Jury subpoenas; depositions and legal filings in collateral investigations; and other evidence obtained pursuant to the ongoing active criminal investigation into a smuggling network that trafficked Nazi-looted art from Europe through New York County.

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<sup>1</sup> Schiele often used both the front (recto) and back (verso) of the paper for his watercolor and pencil drawings. He did so in the artwork at issue here. On the verso of *Russian War Prisoner* is a pencil drawing, signed by Schiele and dated 1913, descriptively titled *Standing Nude Couple*.

3. As will be set forth in detail, the documented inventorying, impounding, and eventual sale of Fritz Grünbaum's stolen art collection is one of the most flagrant Nazi-era lootings of a Holocaust victim's cultural property yet uncovered.

a. The evidence demonstrates that Grünbaum's art collection, particularly his 80-plus works by Egon Schiele, were systematically stolen from Grünbaum after he was imprisoned in the Dachau Concentration Camp for the crime of being Jewish and then sold for personal profit as part of a conspiracy involving at least the following two individuals.

b. First, was Nazi-looted-art trafficker and launderer Eberhard Kornfeld, who operated out of his Bern, Switzerland, auction house. The evidence will show that not only was Kornfeld known to have dealt in Nazi-looted art throughout his career, most especially in the post-war years, but also it was through his machinations that Fritz Grünbaum's Schieles were laundered for so long. Further evidence will be seen through his longstanding business relationship with two prominent members of the Gurlitt family. One was Wolfgang Gurlitt—a known trafficker of art stolen from Holocaust victims and cousin of Hildebrand Gurlitt—who was himself one of Adolf Hitler's hand-selected curators for his planned "Führermuseum." The other member of this war-profiteering family was Hildebrand's son, Cornelius Gurlitt, who inherited his father's looted art collection at his father's death.

c. Second, was gallerist Otto Kallir, who operated out of his New York City gallery. The evidence will show that Kallir had known Grünbaum personally in Vienna between the two world wars and had coveted Grünbaum's Schiele collection prior to Grünbaum's 1938 arrest by the Nazis. As a result, after Grünbaum's Schiele artworks, including *Russian War Prisoner*, were stolen by the Nazis and laundered by Kornfeld, many were

brought to the United States by Kallir, and ultimately purchased from his New York City gallery by American museums or private collectors.

### **Procedural Background**

4. Since at least 2011, the Manhattan District Attorney's Office has investigated international antiquities-trafficking networks that plunder the world's priceless cultural heritage and traffic those antiquities into and through New York County. In 2017, the Office established a specialized Antiquities Trafficking Unit ("ATU") containing experienced Special Agents from the Cultural Property Group of the Department of Homeland Security's New York Office of Homeland Security Investigations ("HSI"), highly trained and skilled antiquities trafficking analysts, and specially trained Assistant District Attorneys. ATU will be used to refer to this joint DANY-HSI taskforce.

a. Since 2011, the ATU has conducted more than 100 separate criminal investigations that have resulted in the convictions of 16 traffickers and their co-conspirators; the indictment and pending extradition of another 7 traffickers; the seizure of more than 4800 artworks valued at more than \$400 million; and the return so far of almost 4,500 of those artworks to their lawful owners, totaling 27 countries and several private collectors.

b. Among these investigations has been one into the theft and trafficking of a collection of drawings by the artist Egon Schiele that had belonged to the well-known Viennese cabaret artist Fritz Grünbaum prior to his 1938 arrest by the Nazis and eventual death in the Dachau concentration camp in 1941.

5. This investigation began on December 2, 2022, when I was contacted by Federal Judge Timothy M. Reif, one of Fritz Grünbaum's descendants and heirs, regarding the Nazi's

pillaging of his Great-Uncle's art collection.

a. On September 12, 2002, a court in Vienna, Austria, declared Milos Vavra and Leon Fischer to be Grünbaum's lawful heirs. Vavra was the great-nephew of Grünbaum's sister Elise Zozuli; and Fischer was the grandson of Max Herzl, the brother of Grünbaum's third wife Elisabeth. Fischer passed away and Fischer's Last Will and Testament named Timothy Reif and David Frankel as co-heirs, co-executors, and co-trustees of his estate. Judge Reif is also directly related to Grünbaum through his grandfather who was Grünbaum's cousin. Thus, Timothy Reif, David Fraenkel, and Milos Vavra are the only lawful heirs to the estate of Fritz Grünbaum.

b. On December 9, 2022, I and other members of the ATU met with Judge Reif and his counsel. We initially determined that there were 11 Schiele drawings from Grünbaum's collection for which there was a known location and had been possessed, displayed, offered for sale, or sold in New York County after their arrival in the United States from Europe. Among these 11 Schiele drawings was *Russian War Prisoner*. Based on this information, the ATU opened a Grand Jury Investigation into the 11 Drawings on December 22, 2022.

6. Since then, 10 drawings have been seized as stolen property by the ATU and an 11th was surrendered directly to the heirs by its current possessor. Of those ten seized drawings, nine have been returned to Grünbaum's heirs: seven were returned to the heirs on September 20, 2023; and two were returned to the heirs on January 19, 2024. The remaining seized drawing, the tenth of the ten drawings seized as stolen property, is the subject of this motion. For each of the seizures for which the evidence determined the artwork was stolen, the ATU followed the same procedure. First, a member of the ATU applied for and received a sharing

order from this Court authorizing the ATU to share a portion of the newly discovered evidence with designated individuals, generally the current owner (and/or counsel) of each of the drawings. Second, I conducted that authorized sharing (commonly called a reverse proffer) with the designated individuals. Thereafter, the current owners of nine of the drawings, having reviewed the evidence—similar in sum and substance to the evidence included in this application—all agreed that the evidence convinced them that their drawing was stolen by the Nazis, and they consented to its return to Judge Reif and his fellow heirs as its lawful owner.

a. On June 22, 2023, Ronald Lauder, through counsel, signed a stipulation agreeing to the return of the 1912 Egon Schiele drawing *I Love Antithesis* to the heirs of Fritz Grünbaum. *See* Exhibit 2 (Lauder Stipulation), Exhibit 3 (Photograph of I Love Antithesis).

b. On July 21, 2023, James Grooms, the Secretary and General Counsel for the Museum of Modern Art in New York City (“MoMA”), signed a stipulation agreeing to the return of the 1912 Egon Schiele drawing *Prostitute* to the heirs of Fritz Grünbaum. *See* Exhibit 4 (MoMA Stipulation 1), Exhibit 5 (Photograph of Prostitute).

c. On July 26, 2023, Nicholas Mutton, Chair of the Board of Trustees for the Santa Barbara Museum of Art (“SBMA”), signed a stipulation agreeing to the return of the 1915 Egon Schiele drawing *Portrait of The Artist’s Wife Edith* to the heirs of Fritz Grünbaum. *See* Exhibit 6 (SBMA Stipulation), Exhibit 7 (Photograph of Portrait of The Artist’s Wife Edith).

d. On August 29, 2023, the Morgan Library and Museum (“Morgan”), through counsel, signed a stipulation agreeing to the return of the 1910 Egon Schiele drawing *Self-*



*Portrait* to the heirs of Fritz Grünbaum. See Exhibit 8 (Morgan Stipulation), Exhibit 9 (Photograph of Self-Portrait).

e. On September 1, 2023, Michael Lesh, through counsel, signed a stipulation agreeing to the return of the undated Egon Schiele drawings *Portrait of a Boy* and *Seated Woman* to the heirs of Fritz Grünbaum. See Exhibit 10 (Michael Lesh Stipulation), Exhibit 11 (Photograph of Portrait of a Boy and Seated Woman).

f. On September 18, 2023, James Grooms of MoMA, signed a stipulation agreeing to the return of the 1910 Egon Schiele drawing *Girl Putting on Shoe* to the heirs of Fritz Grünbaum. See Exhibit 12 (MoMA Stipulation 2), Exhibit 13 (Photograph of Girl Putting on Shoe).

g. On October 4, 2023, Stephen Knapp, President and CEO of the Carnegie Museums of Pittsburgh (“Carnegie”) signed a stipulation agreeing to the return of the 1917 Egon Schiele drawing *Portrait of a Man* to the heirs of Fritz Grünbaum. See Exhibit 14 (Carnegie Stipulation), Exhibit 15 (Photograph of Portrait of a Man).

h. On October 4, 2023, Matthew D. Lahey, Vice President, General Counsel, and Secretary of Oberlin College & Conservatory (“Oberlin”) signed a stipulation agreeing to the return of the 1911 Egon Schiele drawing *Girl with Black Hair* to the heirs of Fritz Grünbaum. See Exhibit 16 (Oberlin Stipulation), Exhibit 17 (Photograph of Girl with Black Hair).

7. As part of this larger investigation into the stolen Grünbaum Schieles, the ATU investigated the Art Institute of Chicago (“AIC”) for its possession of *Russian War Prisoner*. Here, briefly, is the procedural background of the AIC portion of this criminal case.

a. On December 28, 2022, I first contacted Edward B. Diskant, counsel for AIC, about the ATU's investigation into *Russian War Prisoner*. I also served AIC with a letter of retention requesting his client voluntarily retain and safeguard *Russian War Prisoner*. AIC agreed to do so pending the outcome of the criminal investigation.

b. On May 4, 2023, I contacted Mr. Diskant and AIC's General Counsel, Leslie Darling, to request beginning discussions about the status of the criminal case and the anticipated next steps in the criminal investigation.

c. Thereafter, we had multiple meetings concerning the evidence the ATU had developed that AIC's *Russian War Prisoner* was stolen. To promote full and fair discussions concerning the evidence, the ATU applied for and received on July 7, 2023, an Order from this Court under Criminal Procedure Law § 190.25(4)(a) authorizing the disclosure to designated members of AIC's legal counsel newly discovered evidence obtained pursuant to subpoenas, search warrants, and witness interviews. *See Exhibit 18 (AIC Sharing Order)*. On two separate occasions—July 13 and August 25—we shared the evidence that is set forth in this motion with AIC's representatives. Our goal was due process and transparency without compromising the integrity of the ongoing investigation.

d. On September 12, 2023, the ATU applied for and received from this Court a warrant for the seizure of *Russian War Prisoner*. *See Exhibit 19 (AIC Warrant)*.

8. Under Criminal Procedure Law § 690.50(5), all property seized pursuant to a warrant issued by a court must be returned to that court “*without unnecessary delay*.”

a. Given the delicate condition of the drawing, and with AIC's assurances that the drawing would be properly safeguarded, and that AIC would continue to provide

measurements or photographs if requested, we consented to AIC's request for the drawing to be "seized in place" for a period of 60 days. Upon their further request on November 3, 2023, for the drawing to remain seized in place, and for the same reasons and based on the same assurances, we again consented to, and requested of this Court authorization for the drawing to remain seized in place for another 60 days. On November 8, 2023, this Court granted that request. *See* Exhibit 20 (AIC Extension Order 1). AIC repeated their request that the drawing remain seized in place on December 28, 2023, which we again consented to, and again requested of this Court authorization for the drawing to remain seized in place for a further period of 90 days. On January 8, this Court granted that request. *See* Exhibit 21 (AIC Extension Order 2).

b. After receiving the warrant from this Court to seize *Russian War Prisoner* on September 12, 2023, the ATU formally notified AIC that same day in accordance with Criminal Procedure Law § 450.10 of the intention to return the drawing to its rightful owner: the heirs of Fritz Grünbaum, who had requested the drawing's return. AIC immediately notified us that they would be contesting this return of the drawing. Hence, this motion.

9. Once property is seized by a court pursuant to a warrant, Criminal Procedure Law § 690.55(1) mandates that only the warrant-issuing court may determine the property's ultimate disposition. *See Simpson v. St. John*, 93 N.Y. 363, 366 (1883) (property seized pursuant to a court order "cannot be taken away until that custody is ended by...an order of the magistrate permitting its surrender to the owner").

10. The demand by the Grünbaum heirs of the return of the *Russian War Prisoner* triggered two additional statutes:

a. Under New York County Law § 935, “[a]ll property delivered into the custody and held and kept by the district attorney of the county of New York, for use as evidence or otherwise, in any criminal investigation, action, appeal, or other proceeding, shall be returned by him to its rightful owner upon proper demand therefore” (emphasis added).

b. Under Penal Law § 450.10(1) and (5), when “a request for [the property’s] release is made *prior to or during the criminal proceeding*,” the warrant-issuing court *must* deliver the demanded property to the owner, “*on satisfactory proof of his title*.” (emphasis added). Under Criminal Procedure Law § 1.20(18), a “*criminal proceeding*” is defined as “*any proceeding which... (b) occurs in a criminal court and is related to a prospective, pending or completed criminal action, either of this state or of any other jurisdiction, or involves a criminal investigation.*” There can be no question, given our ongoing criminal investigation therefore, that the determination of the owner of *Russian War Prisoner* constitutes a “criminal proceeding” before this Court and Penal Law § 450.10 controls.

c. Indeed, the Court of Appeals has affirmed the statute’s applicability to the issue of returning stolen property to its lawful owner. In *People v. Museum of Modern Art (In re Grand Jury Subpoena Duces Tecum)*, 93 N.Y. 2d 729, 740 (1999), the Court instructed:

*Penal Law § 450.10, which provides a mechanism for returning allegedly stolen property to an owner prior to, or during the pendency of, a criminal proceeding, requires proof of title before property in the custody of the People or the court can be returned. Thus, a civil-like proceeding would have to be commenced in this case.*

11. I respectfully submit this application, therefore, in accordance with New York State law as proof of Fritz Grünbaum’s heirs’ ownership of *Russian War Prisoner*. Once both parties have been heard, I will thereafter further move this Court for an Order to return this drawing to the heirs.

12. The relevant facts uncovered by this investigation span over a century, involve dozens of witnesses, and track events that unfolded across two continents. To prove the manner and scope of the Nazi looting in general—and the theft of *Russian War Prisoner* in particular—as well as its trafficking into New York County, therefore, I will first briefly introduce the people and entities who played a major role in the theft, smuggling, and laundering of this drawing.

### **Egon Schiele**

13. Egon Schiele (June 12, 1890-October 31, 1918) was an Austrian-born artist active in the Viennese Expressionist art movement. Schiele was mentored by fellow Austrian Gustav Klimt, who helped Schiele by purchasing his drawings, arranging models for him, introducing him to potential patrons, and arranging for his inclusion in exhibitions. Much of Schiele’s work focuses on portraiture, both of himself and of others. In his life, Schiele created more than 300 oil paintings and thousands of works on paper—watercolors, pencil drawings, and etchings. He continued to create new work until his death during the Influenza Epidemic of 1918.

a. When Adolf Hitler came to power in Germany in 1933, he declared those artworks of which he disapproved—including works by Schiele—to be “degenerate art” and ordered such works to be seized, sold, or destroyed. During the Nazi era, then, Schiele’s work fell distinctly out of favor. Schiele’s work would not return to prominence until after the war.

b. With rare exception, Schiele did not title his watercolor or pencil drawings. After Schiele’s death, therefore, dealers and collectors often used their own descriptive titles when selling or displaying his works. These titles were based on the content and subject of the drawing itself. Thus, the same drawing might be titled differently throughout its documented history when it was sold, exhibited, or reproduced. Dealers and collectors also identified the type of

work—oil, watercolor, pencil drawing, or etching. Thus, a work might be titled, for example, “watercolor, female nude standing.”

c. Nor did Schiele always sign his works. When he did, he sometimes used his full name, sometimes just his last name, sometimes his initials, and sometimes just “S.” Similarly, Schiele was just as variable in writing the date of composition on his artworks. He often dated his works, but he also left many works undated.

d. Thus, and despite the absence of a title, those four variables—composition (watercolor or pencil), description, signature, and year—enable Schiele’s works to be accurately identified.

### **Fritz Grünbaum**

14. Franz Fredrich (Fritz) Grünbaum was born on April 7, 1880, in Brno, Moravia, in what is now the Czech Republic. In 1899, Grünbaum moved to Vienna to attend law school, where he graduated with the equivalent of a legal masters degree. After graduation, however, instead of practicing law, he embarked on a career as an actor, librettist, and cabaret artist. He wrote his first operetta in 1903 and a few years later began a longtime stint as the master of ceremonies at Cabaret Die Hoelle in Vienna. Even during his early career, Grünbaum was outspoken against the prejudice that he experienced as a Jew in Austria—in 1910 an Austro-Hungarian imperial army officer in the cabaret audience started heckling Grünbaum with anti-Semitic insults. Grünbaum left the stage, went over to the officer’s table, slapped him, and then calmly returned to his performance.

a. During World War I, Grünbaum fought in the Austro-Hungarian army. After the war, he returned to performing in both Austria and Germany, acted in movies,

recorded pop songs in Germany, and co-founded the legendary Kabarett Simpl in Vienna—where he was the famed master of ceremonies. It was this fame that was to assure his imprisonment and murder at Dachau 20 years later.<sup>2</sup> In 1919, he became a Austrian national after the end of the monarchy and married Elisabeth Herzl.

b. The son of an art dealer, Grünbaum was an avid art collector, and in the 1920's and 1930's, amassed a collection of hundreds of artworks, including paintings, drawings, etchings, and engravings. Although eclectic in his tastes, Grünbaum focused on collecting works by contemporary Austrian avant-garde artists such as Oskar Kokoschka, Max Oppenheimer, and most especially, Egon Schiele. Grünbaum often loaned his collection of Schiele works for public exhibitions. His impressive collection was well-known amongst artistic circles in Vienna and was documented in the writings of cultural critics, such as Marcell Klang and Walther Kastner, and—as will be seen—by dealers such as Otto Kallir.

c. After Hitler's rise to power in Germany in 1933, Jewish performers such as Grünbaum were banned from stages in that country. Grünbaum relocated to perform full time in Vienna, where his nightclub routine was laced with satirical charges at the Nazis. On March 10, 1938, two days before the German invasion of Austria, Fritz walked out onto the darkened stage at Kabarett Simpl and flailed around, crying, "*I see nothing, absolutely nothing! I must have wandered into National Socialist culture.*" After the Nazis took power on March 12, 1938, they banned Grünbaum from performing in Austria as well.

15. Shortly after the German annexation of Austria (or *Anschluss*) on March 12, 1938,

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<sup>2</sup> Grünbaum's fame outlived him. He was an inspiration for the master of ceremonies character in the Broadway musical and film adaptation of *Cabaret*—originally played by Joel Gray in the 1972 movie, and then later Alan Cummings in the 1993 Broadway revival.

Grünbaum was arrested and sent to Dachau, a Nazi concentration camp. At Dachau, he continued to be defiant, mocking his captors and deploying his trademark wit against the horror and absurdities he confronted in the concentration camp. One former inmate remembered Fritz comforting the other inmates “*by arguing that absolute deprivation and systematic starvation were the best defenses against diabetes.*” After spending nearly three years shunted between concentration camps, including several months at Buchenwald, Grünbaum gave his last performance on New Year’s Eve 1940 in Dachau. Although fatally ill with tuberculosis, he performed one last time. “*I beg of you, Fritz Grünbaum is not performing for you,*” he said, “*but instead it is number [he recited his camp number], who just wants to spread a little happiness on the last day of the year.*” Two weeks later, Fritz Grünbaum was dead. His death would represent one of 35,000 documented murders at Dachau.<sup>3</sup>

### **Elisabeth Grünbaum**

16. Elisabeth Grünbaum, née Herzl, was born on April 28, 1898, the youngest of eight children born to the Viennese goldsmith Bernhard Herzl. In 1919, she married Fritz Grünbaum, and they lived together in Vienna for the next 19 years until his arrest in 1938. Elisabeth was Fritz’s third wife, and they had no children.

a. After Grünbaum’s arrest, Elisabeth made many attempts to have her husband released from Dachau. She even gave up her quota number for emigration to the United States, because she refused to leave Europe without him. While waiting for him to be released, Elisabeth was forced to move many times. In October 1938, after being compelled to place

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<sup>3</sup> See MARIE-THERESE ARNBOM AND CHRISTOPH WAGNER-TRENKWITZ, GRÜSS MICH GOTT! FRITZ GRÜNBAUM 1880-1941: EINE BIOGRAPHIE (2005) for more background on Grünbaum’s life and death.



their property into a Nazi-controlled warehouse—this will be covered in further detail—Elisabeth moved out of the apartment at Rechte Wienzeile 29 that she had shared with her husband since 1926. From there, Elisabeth went to stay in the home of a friend, Elsa Klauber—but only temporarily. In the next four years, Elisabeth moved three more times: November 1941, August 1942, October 1942.<sup>4</sup>

b. After Grünbaum's murder at Dachau in 1941, Elisabeth and Elsa attempted to escape to Shanghai. But their escape failed. On November 26, 1941, they were forced to move into a “collective apartment” in Vienna’s Ghetto. On October 5, 1942, Elisabeth was arrested and deported to the Maly Trostinets Extermination Camp near modern-day Minsk, Belarus. Elisabeth was almost certainly murdered by firing squad shortly after her arrival at Maly Trostinets, as was standard practice for prisoners at this extermination camp. *See* Exhibit 22A (Elisabeth Grünbaum Registration of Death) and 22B (English).<sup>5</sup> In June 1944, the extermination camp itself was burned to the ground, with all surviving prisoners still inside, in advance of the Soviet Army’s arrival.

### **Dachau Concentration Camp**

17. As the first concentration camp built by the Nazis, Dachau served as the model for the many centers of forced labor and murder that followed. Dachau opened in March 1933 under the auspices of Heinrich Himmler, one of the primary architects of the Holocaust.

a. Built on the grounds of an abandoned munitions factory approximately 10

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<sup>4</sup> *See* DOSSIER DER KOMMISSION FÜR PROVENIENZFORSCHUNG SAMMLUNG FRITZ (FRANZ FRIEDRICH) GRÜNBAUM (October 15, 2015) for more background and details on Elisabeth’s movements.

<sup>5</sup> Where the original document is in a foreign language—generally German—the People will mark the original language version “A” and the English translation “B.”

miles northwest of Munich in southern Germany, Dachau initially housed Hitler's political opponents—communists, social democrats, dissidents, among others. Those imprisoned at Dachau later expanded to include Jews, Romani, priests, homosexuals, Jehovah's Witnesses, and prisoners from those countries that Germany occupied or invaded.

b. Dachau was known for brutal treatment of prisoners, including forced medical experiments, mass firing squads, floggings, and hangings. There were more than 32,000 documented deaths during the camp's existence. This number does not include more than 3,000 prisoners who were transported in 1942 to Hartheim Castle near Linz to be executed by poison gas because they physically could not continue working. Nor does it include untold thousands of others whose deaths were not documented. At the time of Dachau's liberation, at least one-third of the 30,000 prisoners still in the camp were sick—more than 2,000 of whom could not be saved. Dachau was not liberated by United States forces until April 29, 1945.

### **Mathilde & Sigmund Lukacs**

18. Mathilde Lukacs (1883-1979) was the eldest sister of Fritz Grünbaum's third wife, Elisabeth. Mathilde and her husband, Sigmund Lukacs, lived in Vienna where Sigmund was a partner in the family jewelry business, along with Mathilde and Elisabeth's father, Bernard Herzl, and brother, Max Herzl. Sigmund was arrested on March 14, 1938, but was released from prison approximately two months later, after signing a commitment to leave Austria with his wife within a few weeks of his release. *See* Exhibit 23A (Lukacs Registration of Seized Assets) and 23B (English).

a. After Sigmund was released from prison, he and Mathilde made plans to flee

to Antwerp, Belgium, where Mathilde's brother Max had arranged for their entry visas. Therefore, on August 12, 1938, after successfully applying for authorization to take their property with them to Belgium, Mathilde and Sigmund took the train from Vienna to Antwerp. Once there, the Lukacs couple were forced to relocate several times due to the Nazi invasion of Belgium. They moved to Brussels in January 1941, but then both were arrested on October 26, 1943, and imprisoned in a nursing home-*cum*-prison in Anderlecht, Belgium, until the city was liberated at the end of the war.

b. After the war, on June 16, 1954, Mathilde attempted to have Elisabeth declared dead to certify her heirship. She applied to an Austrian court for a death certificate for Elisabeth but withdrew it a month later. *See* Exhibit 24A (Mathilde Lukacs 1954 Application and Withdrawal) and 24B (English). In 1959, Mathilde made a claim for restitution on behalf of her sister Elisabeth. *See* Exhibit 25A (Mathilde Lukacs 1959 Claim) and 25B (English). The claim was for Elisabeth's bank assets and jewelry, including a large pearl necklace, a diamond and platinum brooch, and a large diamond ring. Notably, although the claim listed individual objects, Mathilde did not list any artworks at all. Even more suspect, she rescinded the application after the German government requested a certificate of her right to inheritance.

c. Sigmund and Mathilde continued to live in Belgium in the 1940's and 1950's and only returned to live in Vienna, Austria, in 1960, where they lived until their deaths—Sigmund in 1971 and Mathilde in 1979.

### **Franz Kieslinger**

19. Dr. Franz Kieslinger (1891-1955) was a Vienna-based art historian, art dealer, and,

by 1940, Nazi Party member who actively participated in the looting of Jewish art collections across the Nazi-occupied territory, particularly in Austria and the Netherlands. See Exhibit 26 (NSDAP membership index card).

a. After receiving his doctorate from the University of Vienna in 1919, Kieslinger worked as an expert in medieval art for the Dorotheum auction house in Vienna. After the *Anschluss* on March 12, 1938, however, Kieslinger found a new means of augmenting his income—by serving as an expert appraiser for the new *Vermögensverkehrsstelle* [Property Transaction Office]. This office, which the Nazis established on May 18, 1938, was ostensibly created to curb the spontaneous looting of Jewish property for personal enrichment that was rampant in the immediate aftermath of the *Anschluss*. Its real function, however, was to do the looting on a more organized state-run basis and direct these seized assets into the Nazi treasury. Kieslinger, along with his old classmate and friend Bruno Grimschitz, then the Nazi-appointed Director of the Galerie Belvedere, were among the most active appraisers of Jewish art property for the new Nazi regime. See Exhibit 27 (Sophie Lille, *A Legacy Forlorn*) at p. 115.

b. Kieslinger’s work inventorying and expropriating Jewish art collections for the Nazis wasn’t limited to the appraisals he provided for the Property Transaction Office. In September 1938, Kieslinger left the Dorotheum and was appointed managing director at the Viennese auction house S. Kende, which had been “*Aryanized*,” *i.e.*, forcibly taken from its Jewish owners, by the Munich-based dealer Adolf Weinmüller earlier that year—with the result that much of the art Kieslinger had appraised in the homes of his Austrian Jewish victims was next seen for sale at Weinmüller’s auctions. See Exhibit 28A (“An Awfully Rich Art Dealer from Munich”) and 28B (English) at pp. 4-5.

c. In May of 1940, Kieslinger was summoned by *Reichskommissar* [Reich Commissioner] Arthur Seyss-Inquart to assist former State Secretary Kajetan Mühlmann in his work looting art collections in the recently occupied Netherlands. Mühlmann was coming from Poland, where *Reichsmarschall* [Reich Marshall] Hermann Göring had appointed Mühlmann as a special representative and tasked him with confiscating all artworks owned by Jews in the former Polish state. In other words, Mühlmann in Poland—like Kieslinger in Austria—had experience seizing stolen art. When Kieslinger joined Mühlmann in The Hague, he became *Sammelverwalter* [Collection Manager] of “art confiscated from enemy possession” at the newly established *Dienststelle Mühlmann* [Mühlmann Department]. See Exhibit 29A (Leben für die Kunst) and 29B (English) at p. 6.

d. Kieslinger survived the war and—despite his actions—managed to escape any major legal consequences for his role plundering Jewish art collections. The only notable repercussion he faced during the post-war Denazification process<sup>6</sup> was that the Art Looting Investigation Unit (ALIU) added him to their Red Flag Names List.<sup>7</sup> This classification as a known art-looter did not appear to damage Kieslinger’s reputation in post-war Austria much, however, as he continued to work as a certified art expert and adviser. One of the main clients he advised was collector Dr. Rudolf Leopold. The two men particularly bonded over their

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<sup>6</sup> Denazification was a post-war effort by the Allied forces to remove former Nazi Party members from public office and positions of power. The goal was not only to pursue justice by trying prominent Nazis for war crimes in the Nuremberg trials of 1946, but also to expunge Nazi ideology from German and Austrian society and culture.

<sup>7</sup> The ALIU was a unit formed in 1944 under the CIA-predecessor agency, the Office of Strategic Services. ALIU’s directive was “to collect and disseminate such information bearing on the looting, confiscation and transfer by the enemy of art properties in Europe, and on individuals or organizations involved in such operations or transactions.” See Exhibit 30 (National Archives Pamphlet). The ALIU published a series of reports between 1945-1946 that contained information on over 2,000 individuals who participated in art looting. The Final Report of May 1946 included an index of these so called “Red Flag” names and was distributed widely. Kieslinger was on this list.

shared love of one artist—Egon Schiele. *See* Exhibit 31A (Rudolf Leopold Kunstsammler) and 31B (English).

### **Schenker & Co., AG**

20. Schenker & Co., AG (“Schenker”), is an Austrian freight-forwarding, logistics, shipping, and railway company, founded in Vienna in 1872. In 1931, Schenker was acquired by the Reichsbahn, or the German Reich Railway. In 1933, Hitler placed multiple high-ranking Nazi officials, including the SS Officer Edmund Veessenmayer, on the board of directors. This ensured Nazi control of the company. In 1938, at the time of the Nazi annexation of Austria, Schenker’s Vienna Headquarters was located at Hoher Markt 12 in the central *Innere Stadt* [First District].

a. There is considerable evidence documenting Schenker’s facilitation of the Nazi’s plundering of Jewish property during the war. Much of this evidence was uncovered in 1945 by British art historian and soldier Douglas Cooper through his work with the Monuments Men.<sup>8</sup> Schenker’s internal records—commonly called the “*Schenker Papers*”—documented the company’s wartime activity trafficking stolen art to a wide network of buyers that included Paris dealers, Swiss collectors, and German Museums.<sup>9</sup>

b. The Schenker Papers revealed in stark detail how Schenker acted as an agent

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<sup>8</sup> The “*Monuments Men*” is the colloquial name given to the approximately 400 men and women who served in the Monuments, Fine Arts, and Archives (“MFAA”) section unit during World War II. This program was established by the Allies in 1943 to safeguard cultural and artistic treasures during the conflict, first in Europe and later in Japan. As Allied Forces made their way through Europe, liberating Nazi-occupied territories, they discovered hidden caches of artworks and other valuables, many of which proved to be the product of the Nazi’s systematic looting campaign. The Monuments Men were responsible for cataloguing the treasures and repatriating them to their lawful owners wherever possible.

<sup>9</sup> *See* HECTOR FELICIANO, *THE LOST MUSEUM: THE NAZI CONSPIRACY TO STEAL THE WORLD’S GREATEST WORKS OF ART* (1997) for additional background.

for Nazi authorities in the disposal of stored goods and art. As will be seen here, after a Jewish owner had his property confiscated and seized by the Nazis, the property was placed in a Schenker storage facility. Even though the property now belonged to the Reich, the former owner was required to pay for its storage. When a “customer” failed to pay these storage fees or when a Jewish individual's citizenship was rescinded, Schenker was authorized by the *Vogesta* [Gestapo Office for Sale of Jewish Goods] to sell the property—either privately or in public auction. The proceeds of these sales were then used to fund the Nazi-war effort.

### **Ludwig Rochlitzer & Alexander Bayer**

21. Ludwig Rochlitzer (1880-1945) was a Vienna-based self-employed lawyer and, prior to the war, composer of popular songs and operettas.<sup>10</sup> After the Nazi annexation of Austria in 1938, Rochlitzer and his co-conspirator Alexander Bayer (1898-1973)—a Munich-based lawyer—made profitable uses of their law degrees and contacts. Bayer had been a childhood friend and schoolmate of Heinrich Himmler who, as previously addressed, was not only the primary architect of the Holocaust, but also *Reichsführer* [Reich Leader] of *Schutzstaffel* [SS]. The notorious SS was Hitler's ruthlessly efficient paramilitary organization responsible for enforcing Nazi Germany's racial policy.

a. With Rochlitzer operating in Austria and Bayer in Germany, the two fed on the fears of wealthy German and Austrian Jewish residents. In exchange for a well-placed bribe (masquerading as a “legal fee”), they claimed they could provide their “clients” with

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<sup>10</sup> Since Fritz Grünbaum also circulated in the Viennese music scene, it has been speculated that he was friends, or at least acquainted, with Rochlitzer during the inter-war years. There is no evidence to support this conjecture. It is worth noting that if Rochlitzer and the Grünbaums did know each other prior to Fritz's arrest in 1938, then Rochlitzer was surely aware of Fritz's other passion beyond music: his valuable art collection.

direct access to the Nazi engines of power. Once the fee was paid, Bayer promised that he would contact *Reichsführer-SS* Himmler on the client's behalf to plead for either an immigration visa to flee the country or, at least, an official change of status from the dreaded "*Jewish*" to the still-pejorative, but less restrictive "*Mischling*" [Mixed] to denote those of mixed-Aryan ancestry.<sup>11</sup>

b. Both Rochlitzer and Bayer were caught before the end of the war. By 1940, Himmler's personal staff and other Nazi authorities in Germany uncovered Bayer's involvement in this scheme and he was investigated by the *Rechtsanwaltskammer* [Reich Bar Association]—an investigation that was protracted because of his relationship with Himmler. In Austria, meanwhile, Nazi authorities discovered in 1942 that Rochlitzer was in fact pocketing the money he received from these clients and not properly reporting the money to the Reichsbank for use in the war effort. For this offense against the Foreign Exchange Law, he was fined and forced to pay the costs incurred by the authorities for bringing this corruption case against him. *See Exhibit 32 (Ludwig Rochlitzer)*.

c. Rochlitzer died on March 12, 1945, when his home, office, and records were destroyed during an Allied air raid. Bayer survived the war, but in October 1958, he was disbarred by the Bavarian Law Tribunal for Lawyers for violation of professional obligations as a lawyer. Among other things, he was found to have engaged in a scheme with Rochlitzer from 1933-1938 to exploit the difficulties of wealthy Jewish residents for personal enrichment.

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<sup>11</sup> Under the 1935 Nuremberg laws, "*Aryan*" was defined as being "*German or related blood*," while a "*Jew*" was defined as "*non-Aryan*." There was a procedure in place, however, to contest a finding of "*Jew*," and one of the possible re-classifications was to be declared a *Mischling* [Mixed]—a legal designation that was believed to allow for more freedom of movement and opportunity for employment.



Bayer never practiced law again and died near Munich in 1973. *See* Exhibit 33 (*Alexander Bayer*).

### **Gutekunst & Klipstein**

22. Gutekunst & Klipstein (“G&K”) is a privately-owned Swiss auction house. Founded in 1864, it has been in continuous operation to the present day, although its name was changed to Galerie Kornfeld in the 1960’s. Prior to the war and in the immediate post-war years, G&K specialized in the sale of Old Master prints and drawings, as well as 19th-century Impressionist paintings. After taking over in 1951, Eberhard Kornfeld, the new director, ushered in a new specialization: the sale of 20th century European avant-garde and Expressionist art. As will be discussed in detail, G&K came into unexplained, unprecedented, and sudden possession of Grünbaum’s Schiele collection after the war. Kornfeld sold those Grünbaum Schieles in a series of sales in 1955 and 1956, thereby effectively laundering the Nazi-looted Grünbaum Schieles and enabling them to be brought into New York County. Among those laundered artworks was *Russian War Prisoner*, the drawing at issue in this motion.

### **Eberhard W. Kornfeld**

23. Eberhard W. Kornfeld (1923-2023) was born in Germany, moved to Switzerland at the age of one, and lived in Switzerland for the rest of his life. He was conscripted into the Swiss military and served from 1943-1945, achieving the rank of Lieutenant. After leaving the army, he joined G&K in 1945, steadily climbing the ranks to become a junior partner in 1948 and a managing/senior partner in 1951 upon the death of August Klipstein. *See* Exhibit 34 (*History of the House*). Under Kornfeld’s management, G&K was renamed Galerie Kornfeld and became a leading European auction house, particularly in the field of modern and expressionist art.

a. Although Kornfeld, who served as the president of the Swiss Art Trading Association from 1959-1996, held himself out as an honest businessman, the facts of record as set forth in this motion, paint a different picture. As will be seen, his decades-long business relationship with members of the Gurlitt family, particularly Cornelius Gurlitt—whose father was a long-time Nazi collaborator and Hitler-appointed curator—enabled Kornfeld to launder Holocaust-victims’ artworks.

b. Kornfeld remained actively involved in the business until the end of his life and even presided over the auction desk himself until 2017. He died on April 13, 2023, a few months shy of his 100th birthday.

### **The Gurlitt Family**

24. Hildebrand Gurlitt (1895-1956) was a German art historian and dealer who collaborated with the Nazis during World War II, eventually becoming one of Hitler’s hand-selected curators for his planned “*Führermuseum*.” It was Hitler’s dream to establish a museum near his hometown of Linz, Austria, that would contain all the world’s greatest artistic and cultural treasures. Public museums and private collection in territories that the Nazis invaded were pillaged to fulfill that dream.

25. At the same time, Hitler believed that much modern art, especially the style of Expressionist art practiced by Egon Schiele, was un-German, the result of the genetic inferiority of the artists and reflective of society’s moral decline. Art identified by the Nazis as “degenerate” was removed from state-owned museums and banned in Nazi Germany. And those artists identified as degenerate were subjected to sanctions that included being dismissed from teaching positions, being forbidden to exhibit or to sell their art, and in some cases being

forbidden to produce art at all.

a. The primary administrator of the degenerate art program was Joseph Goebbels, Hitler's *Reichsminister für Volksaufklärung und Propaganda* [Reich Minister for Public Enlightenment and Propaganda]. In September 1933, Goebbels established the *Reichskulturkammer* [Reich Culture Chamber] to carry out his policies. In 1937, he had 740 modern works put on display in Munich in the exhibition *Entartete Kunst* [Degenerate Art] to educate the public on the “*art of decay*.” See Exhibit 35 (Degenerate Art Catalog).

b. This show was carefully staged to encourage the public to mock the work. It did not have the effect that Hitler had planned. After one million visitors flocked to see the exhibit in only six weeks, Nazi authorities changed tack. Instead of destroying the art, they began selling many of the works internationally to finance the Nazi war machine.

26. Of relevance in this case, Hildebrand Gurlitt was one of a select few art dealers in Germany tasked by the Reich Chamber for Culture with selling degenerate art such as those produced by Egon Schiele. During the war, Hildebrand Gurlitt confiscated, sold, and destroyed thousands of works of art at the behest of the Nazis, while also taking the opportunity to expand his personal collection.

a. After the war ended, a portion of Hildebrand Gurlitt’s collection was confiscated by the Allied authorities, but he argued that he had been a victim of Nazi policies because of his Jewish heritage. Despite Gurlitt’s personal connection to Hitler, his argument was successful. One hundred and fifteen seized artworks were eventually returned to him. Then, in 1948, he was appointed the director of the *Kunstverein* [Art Association] in Düsseldorf. Founded in 1829, the *Kunstverein* in Düsseldorf was one of the largest such organizations in

Germany and functioned as a venue for the production, presentation, and communication of contemporary art.

b. Hildebrand Gurlitt died in a car crash in 1956, bequeathing his vast art collection to the control of his wife and children, including his son, Cornelius.

27. Cornelius Gurlitt (1932-2014), Hildebrand's only son, was a virtual recluse who lived off the proceeds from selling his father's art collection. In 2012, Cornelius Gurlitt's home was raided by German authorities. They discovered more than 1,500 works of art looted by his father during World War II. *See Exhibit 36 (1,500 Modern Artworks Found in Munich Flat).*

a. In a 2017 interview, Kornfeld finally admitted that Gurlitt was a regular client of his at the G&K auction house, making frequent trips across the border to deliver artworks and collect the proceeds of sales through Kornfeld. *See Exhibit 37 (2017 Kornfeld Interview).* In the same interview, Kornfeld also admitted that prior to the raid by German authorities, he made several visits to Gurlitt's home in Munich to inspect the collection in person—a collection that included hundreds of artworks that had been stolen during the war. *See Exhibit 38 (Gurlitt Taskforce Report).*

b. Cornelius Gurlitt died in 2014. Although Gurlitt's only connection to Bern was his long-standing business relationship with Kornfeld, Gurlitt's will left the remainder Hildebrand Gurlitt's collection to the small Museum of Fine Arts in Bern. Since their public display in Bern, many of the artworks in Gurlitt's collection have been proven to have been looted by the Nazis and have been returned to the original owners' heirs—whenever a living descendant could be found, of course.

28. But Cornelius was not the only member of the Gurlitt family who Kornfeld was

known to have dealt with personally. Wolfgang Gurlitt, Hildebrand's cousin, was also an art dealer, originally based in Berlin before moving to Austria during the war. Although less central to the enterprise than his cousin, Wolfgang was also involved in sourcing art for the *Führermuseum*. Indeed, one of Wolfgang's main sources—both for himself and the *Führer* [Hitler]—was sales of confiscated artworks at Vienna's Dorotheum auction house. And like his better-known cousin Hildebrand, Wolfgang used his access to Nazi-looted art to increase his personal collection, featuring “*degenerate art*” such as Schiele's.

a. After the war, and despite being added by the ALIU to their Red Flag List of Names in 1946 for his role in acquiring and selling looted art, Wolfgang continued his collecting practices.<sup>12</sup> Indeed, in July of 1946, he entered into an agreement with the city of Linz, Austria (the site of the planned *Führermuseum*), to start a modern-art gallery using works from his private collection. This museum, the *Neue Galerie der Stadt Linz*, opened in 1948. Between 1953 and 1956, the city purchased much of Wolfgang's collection. That decision did not turn out so well for the museum: in the last two decades, 13 artworks from the Wolfgang Gurlitt collection were determined to have been looted by the Nazis and were returned to the heirs of their lawful owners. Notably, among these 13 artworks was a Schiele painting that the Nazis had stolen, and Wolfgang Gurlitt had laundered. *See Exhibit 39 (Lentos Art Museum Provenance)*.

b. Nor was this the only Schiele work that mysteriously ended up in Wolfgang's collection between 1938 and the 1950's. And like his cousin Cornelius, Wolfgang also used the Bern-based dealer Kornfeld to discreetly make his sales. For example, in October 1959,

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<sup>12</sup> Both Hildebrand and Wolfgang Gurlitt were added to the Red Flag List in 1946.

Wolfgang sold a Schiele pencil drawing with no pre-war provenance to Kornfeld. *See* Exhibit 40 (October 28, 2005, Email).

29. Given the passage of time and the death or murder of the witnesses, the true source of Kornfeld's Grünbaum Schieles can never be known with absolute certainty, but the Gurlitts' connection to Hitler, their access to modern art collections seized from Jewish collectors, the Gurlitts' possession of other Schiele works, and the Gurlitts' longstanding use of Kornfeld as a front for selling these artworks provide a likely source.

### **Otto Kallir**

30. Otto Kallir was born Otto Nirenstein in 1894 in Vienna.<sup>13</sup> After serving as an officer in the Austro-Hungarian army during World War I, he returned to Vienna and, in 1919, he began to work at the Galerie Würthle. Finding success in the field, Kallir left Würthle in 1923 to establish his own gallery: the Neue Galerie. Kallir's Neue Galerie focused exclusively on work by Austrian Expressionist artists, including Oskar Kokoschka, Alfred Kubin, Gustav Klimt, and Egon Schiele.

a. During the 1920's and 1930's, Kallir became the established authority on Schiele in Vienna. Not only did he mount the artist's first major posthumous exhibition in 1928, but—as will be seen—he even visited Fritz Grünbaum's apartment to inspect and borrow some of Grünbaum's Schiele collection. Notably, in 1928, Otto Kallir received permission from Fritz Grünbaum to exhibit *Russian War Prisoner*. In other words, Otto Kallir knew that *Russian War Prisoner* belonged to Fritz Grünbaum before the Nazis murdered him

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<sup>13</sup> Otto Nirenstein legally changed his name to Otto Kallir-Nirenstein in 1933 and became known as Otto Kallir professionally in 1938 when he emigrated to the United States. For purposes of clarity and consistency, he will be referred to as "Kallir" throughout this motion.

in Dachau in 1941.<sup>14</sup> In 1930, Kallir also published the first *catalogue raisonné* of Schiele's oil paintings, which included three artworks that Kallir specifically acknowledged belonged to Grünbaum.<sup>15</sup>

b. After the Nazis annexed Austria in March of 1938, Kallir, who was Jewish, was compelled to turn over ownership of the Neue Galerie to his longtime secretary Vita Künstler under the new Aryanization laws. He then emigrated, first to Switzerland, then Paris, where he established Galerie St. Etienne. One year later in September 1939, Kallir emigrated to New York and relocated his Galerie St. Etienne to West 57th Street in New York County shortly after arriving in the city. Through his New York gallery, Kallir sought to introduce Austrian Expressionism to the United States, hosting many of the first American exhibitions of important artists from that movement. Among his achievements was that he hosted in 1941 the first Egon Schiele solo show in the United States. As will be seen, this proved profitable: exhibitions led to increased fame for Schiele works, which led to increased prices, which led to increased profit for Kallir. Fortuitously for Kallir, he had a supplier—none other than Eberhard Kornfeld. And, shortly after the war, Kallir purchased many of the Schieles the Nazis had stolen from Grünbaum, including *Russian War Prisoner*.

c. Upon Otto Kallir's death in 1978, Galerie St. Etienne was taken over by his granddaughter, Jane Kallir, who ran the gallery until it ceased operations in 2020. Jane Kallir is also an expert on the works of Egon Schiele, having published in 1990 a comprehensive

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<sup>14</sup> The legal consequence of this knowledge is addressed more fully in a later section of this motion. As will be seen, there is compelling evidence of an organized conspiracy to launder, import into the United States, and sell at profit Nazi-looted artworks stolen from Holocaust victims.

<sup>15</sup> A *catalogue raisonné* is a comprehensive annotated listing of all the known works of an artist, sometimes limited to only works in a specific medium, such as oil paintings.

*catalogue raisonné* for all of Schiele's works, titled *Egon Schiele: The Complete Works*.

### **Fritz Grünbaum's Egon Schiele Drawings**

31. As addressed previously, Grünbaum was a well-known art collector who had acquired many works from artists associated with the Austrian Expressionist movement. Among his most prized works were those by Egon Schiele. Indeed, Grünbaum was so proud of his Schiele collection that he lent his Schiele drawings and paintings to Viennese galleries multiple times in the 1920's and 1930's. And when he did, he insisted that he be listed as the lender of record in any exhibition catalogs or publications. For example, in 1928, when Grünbaum told Otto Kallir (then Nirenstein) that he was "*willing to lend pieces from my Schiele collection for your and the Hagenbund's memorial exhibition,*" Grünbaum insisted "*that the borrowed paintings will bear the note 'Fritz Grünbaum Collection' in the catalog.*" See Exhibit 41A (1928 Grünbaum Letter) and 41B (English). Two of the exhibitions to which Grünbaum loaned Schiele drawings—one in 1925 and one in 1928—are particularly relevant here because *Russian War Prisoner* was included in both exhibitions.

32. The first exhibition opened in December 1925. It was a solo exhibition held by the Galerie Würthle in Vienna featuring oil paintings, watercolors, and pencil drawings by Schiele. See Exhibit 42 (1925 Catalog). The exhibition lasted two months and displayed 150 works by Schiele. Of those 150 works, 22 came from Fritz Grünbaum's collection. The 22 Grünbaum works included 19 color drawings and 3 pencil drawings. Of the 11 Schiele drawings that were the subject of this criminal investigation, 5 appeared in the catalog of this exhibition. Those



five are *Prostitute*,<sup>16</sup> *Portrait of a Boy*,<sup>17</sup> *Portrait of a Man*,<sup>18</sup> *Girl with Black Hair*,<sup>19</sup> and *Russian War Prisoner*.<sup>20</sup> In what can only be characterized as speaking volumes about the quality and quantity of the evidence in this case, every one of the five Grünbaum works included in this investigation and listed in the 1925 catalog has been seized by this Office. And all have already been returned to the Grünbaum heirs—except *Russian War Prisoner*.

33. The 1925 catalog itself lists all 150 Schiele works in the exhibition but has reproductions for only 5 of them. See Exhibit 42 (1925 Catalog). After a brief introduction, the list of works begins on page 13, and is divided into 3 sections: *Bilder* [Paintings]; *Aquarelle* [Watercolors]; and *Zeichnungen* [Drawings]. Under each section, the works are further organized by year, from 1907-1918.<sup>21</sup> The works themselves are then listed by descriptive title.

a. Here, *Russian War Prisoner* is a) a pencil drawing; b) with some watercolor; c) created in 1916; d) signed “Egon Schiele;” and e) depicting the head and hand of Russian soldier whose name is written on the drawing itself. It is clear the soldier is Russian because the soldier’s name, written in Cyrillic (the Russian alphabet), is *Григорий Кладивили* [Grigori Kladjishuili]. The name is believed to have been written by the prisoner himself.

b. As for the artwork that is listed in the 1925 catalog, it is listed at page 20 of the catalog as number 117. Although the catalog does not contain a reproduction of artwork number 117, there can be no question it is the same *Russian War Prisoner*. Not only is it listed

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<sup>16</sup> Seized by the ATU from MoMA on July 21, 2023.

<sup>17</sup> Seized by the ATU from Michael Lesh on September 1, 2023.

<sup>18</sup> Seized by the ATU from Carnegie on September 12, 2023, pursuant to a warrant issued by this Court.

<sup>19</sup> Seized by the ATU from Oberlin on September 12, 2023, pursuant to a warrant issued by this Court.

<sup>20</sup> Seized by the ATU from AIC on September 12, 2023, pursuant to a warrant issued by this Court.

<sup>21</sup> Two of the three sections (paintings and drawings) also have a sub-section for *Undatiert* [Undated] works.

in the “*Zeichnungen*” [Pencil Drawings] section under the year “1916,” but it is described as “*Russe, Kopf und Hand, aquarelliert, sign. Egon Schiele 1916.*” [Russian, Head and Hand, watercolored, sign. Egon Schiele 1916]. In other words, of six different features—pencil drawing, with watercolor, of a Russian, showing his head and hand, signed with Egon Schiele’s full name, and the year 1916—every single one is identical. DNA could not provide a better match.

c. And there was one more fact. The entry in the catalog indicated who had loaned the work to the exhibition: “*Sammlung Fritz Grünbaum*” [Collection of Fritz Grünbaum].

d. Thus, of all the facts that might be in contention in this case, at least one stands apart as incontrovertible: in 1925, Fritz Grünbaum owned *Russian War Prisoner*. Whatever AIC might try to grasp to justify their continued possession of this artwork, they must concede that Fritz Grünbaum owned *Russian War Prisoner* in 1925.<sup>22</sup>

34. The second exhibition opened in October 1928. It was a joint exhibition held by the Hagenbund and Otto Kallir’s brand-new Neue Galerie in Vienna commemorating the tenth anniversary of Schiele’s death on October 31, 1918.<sup>23</sup> See Exhibit 44 (1928 Hagenbund Neue Galerie Catalog). The exhibition lasted two months and displayed 200 works by Schiele. Of the 200 Schiele works, 80 were paintings displayed at the Hagenbund’s exhibition venue, the *Zedlitzhalle*, in Vienna’s First District. Another 120 were watercolors and pencil drawings displayed at Neue Galerie, located around the corner at Grünangergasse. Of the 200 Schiele

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<sup>22</sup> AIC’s own website admits the *Russian War Prisoner* was from the Fritz Grünbaum collection. See Exhibit 43 (*AIC Website Provenance*).

<sup>23</sup> The Hagenbund was a Viennese artist association founded in 1900. By the 1920’s, it had become a leading group in the Austrian modern-art scene. It was dissolved shortly after the Nazi invasion in 1938.

works, 25 came from Fritz Grünbaum's collection: 4 oil paintings, 20 color drawings, and 1 pencil drawing.

a. As with the 1925 exhibition, the 1928 exhibition also had a catalog. But only the 80 oil paintings were listed individually; the 120 watercolors were listed collectively. *Id.* As in 1925, only some of the artworks were reproduced: 22 oil paintings and 3 watercolors. Of the 25 Schieles that Grünbaum loaned to Kallir in 1928, the 4 paintings were listed, but none of the 21 drawings were listed.<sup>24</sup> As will be seen, however, all 21 drawings were listed in a document agreed-to between Grünbaum and Kallir prior to the exhibition.

b. Of the 11 Schiele drawings that have been the subject of this investigation, five were loaned by Grünbaum to Kallir's Neue Galerie for this 1928 exhibition. Four of those five are *I Love Antithesis*,<sup>25</sup> *Prostitute*,<sup>26</sup> *Portrait of a Boy*,<sup>27</sup> *Girl with Black Hair*.<sup>28</sup> The fifth was *Russian War Prisoner*. And, as with the 1925 exhibition, every one of the five Grünbaum artworks included in this investigation and exhibited in 1928 has been seized by this Office. And all have already been returned to the Grünbaum heirs—except the *Russian War Prisoner*.

35. In preparing for the blockbuster 1928 exhibition, Kallir knew exactly where to solicit Schieles. After all, Kallir had previously worked at the Galerie Würthle (where Grünbaum Schieles had been exhibited in 1925). So, on September 7, 1928, Kallir sent Grünbaum a letter:

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<sup>24</sup> The following paintings were listed: #12 *Der Selbstseher I. 1910* [*The Self-Seers I. 1910*]; #14 *Mädchen in Schwarz 1911* [*Girl in Black 1911*]; #20 *Stadt am blauen Fluß I. 1911* [*City on the Blue River I.*]; and #57 *Kleine Landschaft Mit Straße 1914* [*Small Landscape with Road 1914*]. *Girl in Black* was reproduced as requested by Grünbaum in his 1928 letter to Kallir. See Exhibit 41A (1928 Grünbaum letter) and 41B (English).

<sup>25</sup> Seized by the ATU from Ronald Lauder on June 22, 2023.

<sup>26</sup> Seized by the ATU from MoMA on July 21, 2023.

<sup>27</sup> Seized by the ATU from Michael Lesh on September 1, 2023.

<sup>28</sup> Seized by the ATU from Oberlin on September 12, 2023, pursuant to a warrant issued by this Court.

*I have just telephoned your wife and hear from her that you are in Munich. So I have to write to you with the request to lend us your pictures by Schiele for the memorial exhibition in the Hagenbund. I certainly hope that I am not making a mistake, since this is the first and probably the last large exhibition of Schiele's works, in which the important paintings in your possession should not be missing.*

*Of course, I would also very much like to have some sheets from your collection for the exhibition of watercolors and hand drawings, and if you could make it possible for me to see the collection while your wife is still in Vienna and possibly select some sheets, I would be extremely grateful. Insurance, transport etc. will be at the expense of the exhibition and will be carried out under my supervision or under the supervision of a gentleman of the Hagenbund.*

See Exhibit 45A (1928 Kallir Letter) and 45B (English). On September 10, 1928, while

he was still in Munich, Grünbaum responded via letter to Kallir's request:

*According to your wish, I am willing to lend pieces from my Schiele collection for your and the Hagenbund's memorial exhibition. Please call my apartment, where my sister-in-law, Mrs. Koppel, currently lives, and arrange with her the hour of pick-up.*

*I ask you to leave a lapel note for my sister-in-law upon collection of the pictures, stating her and the Hagenbund's obligation to bear the insurance and the transport from nail to nail, and to assume the liability that the borrowed paintings will bear the note "Fritz Grünbaum Collection" in the catalog, and that, if the catalog contains any reproductions at all, some of these paintings will appear reproduced.*

See Exhibit 41A (1928 Grünbaum Letter) and 41B (English).

36. Kallir then visited Grünbaum's apartment to view his extensive collection of Schiele artworks, selecting 25: the previously mentioned 4 oil paintings for the Hagenbund location and 20 watercolors and 1 pencil drawing for his Neue Galerie location.

a. Kallir listed all 21 of the artworks he received on loan from Grünbaum. See Exhibit 46A (1928 Grünbaum Lending List) and 46B (English). This list, titled "*Liste der von Herrn Fritz Grünbaum übernommenen Handzeichnungen und Aquarellen von Egon Schiele*" [List of hand drawings and watercolors by Egon Schiele accepted from Mr. Fritz Grünbaum], includes descriptive titles and other identifying details for all 21 watercolor and pencil drawings.

b. Number 15 on this inventory list created by Kallir is descriptively titled “*Russe. –aquar. Zeichnung (2 russische wörter darauf) 1916.*” [Russian. Watercolored. Pencil. (2 Russian words on it) 1916]. As in the 1925 catalog, every feature in this description matches the drawing that is the subject of this motion. AIC’s *Russian War Prisoner* is a pencil drawing, with watercolor, of a Russian, with two Russian words on it [Грузопий Кладивили] and dated 1916. The inventory lists a pencil drawing [Zeichnung], with watercolor [aquar.], of a Russian [Russe.], with two Russian words on it [2 russische wörter darauf] [Грузопий Кладивили] and dated 1916.<sup>29</sup> Inarguably, then, *Russian War Prisoner* was exhibited in 1928 in Kallir’s Neue Galerie.

c. Thus, a second fact may now also be considered incontrovertible: in 1928, Fritz Grünbaum still owned *Russian War Prisoner*. As will be seen, Fritz Grünbaum was the last documented owner—that is until the Nazis entered Austria, taking everything—including Grünbaum’s life.

37. In summary, the 1925 exhibition at the Galerie Würthle displayed 22 Schiele drawings that Grünbaum had owned and lent. Three years later, the 1928 exhibition at Kallir’s Neue Galerie displayed 21 Schiele drawings that Grünbaum had owned and lent. The 43 loans, however, include 9 drawings that were displayed twice. Thus, these two exhibitions featured a total of 34 distinct Schiele drawings from Grünbaum’s collection. One of the nine that was displayed twice was *Russian War Prisoner*.

a. In other words, the first time *Russian War Prisoner* was displayed, it was

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<sup>29</sup> Even the dimensions match. The inventory lists the work as “13 x 48.” That the number 13 has been inverted by the typist and should be 31 can be shown by the fact that Schiele used a standard paper size of approximately 30 x 45 cm for all his drawings and watercolors. All 20 of the other drawings listed on this inventory are the standard. Properly written, this matches the 30.8 x 43.8 centimeters that AIC assigns *Russian War Prisoner* in its online catalog. See Exhibit 43 (AIC Website Provenance).

exhibited in a gallery that Kallir had worked in. The second time it was displayed, it was chosen by Kallir—who doubtless remembered it from three years earlier and who selected it from among all the other Schiele artworks that he saw in Grünbaum’s apartment at Rechte Wienzeile 29/III/11 in the 4th district.

b. To the already established list of incontrovertible facts—that Fritz Grünbaum owned *Russian War Prisoner* in 1925 and still owned it in 1928—therefore, we can now add one more. Of all the people connected to this case across decades and continents, one person beyond all others knew that the *Russian War Prisoner* displayed in Galerie St. Etienne in New York in 1957 was the same *Russian War Prisoner* that had once belonged to Fritz Grünbaum. He knew it because he had personally seen *Russian War Prisoner* in Fritz Grünbaum’s apartment. He then purchased *Russian War Prisoner* in post-war Switzerland for 700 Swiss Francs, brought it to New York, and launched it onto the American art market where it was purchased by AIC for \$5,500. This man was Otto Kallir.

### **The Nazi Theft**

38. But how did *Russian War Prisoner* go from Fritz Grünbaum’s Vienna apartment to Nazi control? Despite the opacity of the war-torn years, the tragic fate of Grünbaum’s art collection, including the Schiele drawings that he amassed prior to 1938, is documented.

a. In 1938, Fritz Grünbaum was a well-known artist and cabaret performer living in Vienna. He was also a well-known critic of the Nazi party. Finally, and to seal his fate, Fritz was also Jewish. Given Hitler’s campaign promises when he rose to power in 1933 and his fiery rhetoric about forming a Greater Germany by *Anschluss* (the unification of Germany and Austria), Hitler’s annexation of Austria was only a matter of time. On February

20, 1938, in a speech broadcast throughout Germany and Austria, Hitler declared that he could no longer tolerate the “*suppression*” of ten million Germans in Czechoslovakia and Austria. The time for “*liberation*” by annexation was near. And everyone in Vienna—including the Grünbaums—had to know it.

b. Thus, on March 10, 1938, Fritz and Elisabeth Grünbaum attempted to flee Austria. It was too late. They were turned away at the Czechoslovakian border. Two days later, the Nazis annexed Austria and *Anschluss* had come. As expected, Grünbaum was arrested on March 22, 1938. Initially held at the Rossauer Lände police prison in Vienna, Grünbaum was then transferred to the Dachau concentration camp on May 24, 1938. *See* Exhibit 47A (Elisabeth Grünbaum July Letter) and 47B (English). Grünbaum was murdered in Dachau on January 14, 1941. *See* Exhibit 48A (Grünbaum Registration of Death) and 48B (English).

39. Throughout Grünbaum’s internment, Elisabeth was required to comply with various laws decreed by the Nazi regime that targeted the Jewish population of Austria.

a. The first was the *Regulation on the Declaration of Assets of Jews* passed by the Nazi government on April 26, 1938. The law required “*every Jew*” in both Germany and Austria to individually register by June 30, 1938, any property or assets valued at more than 5,000 Reichsmarks.<sup>30</sup> *See* Exhibit 49A (*Regulation on the Declaration of Assets of Jews*) and 49B (English). Failure to properly register their assets was punishable by “*hard labor up to ten years.*” The law was signed by Reichsmarschall Hermann Göring, the second most powerful man in Nazi

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<sup>30</sup> In 1938, one Reichsmark was approximately \$2.50; and 5,000 Reichsmarks was approximately \$12,500.

Germany.<sup>31</sup> In accordance with this law, Elisabeth filed her *Declaration of Assets* on July 15, 1938. See Exhibit 50A (Elisabeth Grünbaum *Declaration of Assets*) and 50B (English).

b. But Elisabeth had a problem. Although she was able to file a list of her property—albeit two weeks late—she was not legally permitted to file a *Declaration of Assets* on behalf of her husband. That was because under the regulations, “[w]ho must submit the list of assets? Each individual subject to registration, i.e., each spouse and each child individually.” *Id.* In other words, Fritz had to fill out his own *Declaration*. But he was in Dachau concentration camp.

c. So, on July 15, 1938, Elisabeth wrote to the Property Transaction Office requesting that they extend the deadline for Fritz to submit his own Declaration of Assets until he was released from prison—and the Ministry for Economy and Labor stamped the letter as received on July 18, 1938. See Exhibit 47A (Elisabeth Grünbaum July Letter) and 47B (English). The Property Transaction Office denied the request to extend the deadline until Fritz’s release. On July 27, 1938, however, it granted Elisabeth an extension to August 20, 1938, during which time she was “requested to prompt the inmate to appoint an authorized representative.” *Id.* In other words, Elisabeth was told to get her husband to execute a power of attorney authorizing someone who was not imprisoned—presumably Elisabeth—to register Fritz’s property.

### **The Power of Attorney**

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<sup>31</sup> Upon Hitler’s rise to power in 1933, Göring was appointed commander-in-chief of the German *Luftwaffe* [air force], a position he held until the end of the war. In 1936, he was named Plenipotentiary of the Four-Year Plan and began mobilizing all sectors of the economy for war. In 1939, Hitler designated Göring as his successor. After the Fall of France in 1940, Hitler created the rank of *Reichsmarschall*, which gave Göring seniority over all officers in Germany’s armed forces. In 1946, Göring was convicted at the Nuremberg trials of crimes against humanity and sentenced to death by hanging. He committed suicide by taking cyanide the night before his execution.



40. I respectfully submit that a thorough examination of this power of attorney is crucial to this Court's ruling on this matter. In short, and as will be seen, it is the People's position that this alleged power of attorney has so many irregularities as to cause serious doubt as to whether it ever was executed by Grünbaum at all. More to the point, however, and even assuming *arguendo* that Fritz Grünbaum did execute a power of attorney in favor of his wife, it is the People's position that any power of attorney executed in 1938 by a Jewish individual imprisoned in the Dachau Concentration Camp for the crime of being Jewish is involuntary as a matter of law. I will, therefore, address the power of attorney in detail.

41. On July 26, 1938, Dr. Hans Wallner, a Notary Public in Vienna, executed a document affirming that "*this is a true copy of the unstamped original.*" Above Wallner's signature is what purports to be Fritz Grünbaum's unsigned power of attorney dated ten days prior: July 16, 1938. This "*July 16, 1938,*" typed—not handwritten—document purports to have Fritz authorize Elisabeth Grünbaum to "*submit the statutorily required registration of assets on my behalf and represent me in all my matters with legal effect.*" See Exhibit 51A (Power of Attorney) and 51B (English). The problems are legion.

a. First, the timing of the power of attorney is inconsistent with the contemporaneously recorded facts and developed record. Given other contemporaneously corroborated communication, the power of attorney could not have been executed by Fritz on the date it purports. On July 26, 1938, the Notary Public affirmed that the unstamped original power of attorney of Fritz Grünbaum was dated July 16, 1938. *Id.* But according to the Property Transaction Office's own document, it did not notify Elisabeth to get a power of attorney until July 27, 1938—11 days *after* Fritz allegedly already executed the power of

attorney and just 1 day after this power of attorney was affirmed by the Notary Public. *See* Exhibit 47A (Elisabeth Grünbaum July Letter) and 47B (English). And this July 27, 1938, letter has contemporaneous corroboration. As further confirmation that Elisabeth must have been first notified on July 27, 1938, to get a power of attorney, there is Elisabeth's August 1, 1938, letter to the Property Transaction Office: “[o]wing to the request of 27 July of this year, I am sending attached the list of assets of my husband, actor and author Franz Friedrich (Fritz) Grünbaum, who is in protective custody, and from whom I have meanwhile received power of attorney.” *See* Exhibit 52A (Elisabeth Grünbaum August Letter) and 52B (English). But if the power of attorney really was executed by Fritz on July 16, 1938—the date indicated on the document itself—how did the Grünbaums even know to execute such a document since Elisabeth was not told to do so until 11 days afterwards on July 27, 1938?

b. Second, the location of the power of attorney is inconsistent with the contemporaneously recorded facts and developed record. The power of attorney itself notes that at the time of its execution on July 16, 1938, Fritz Grünbaum was “*currently at Dachau.*” And the Notary Public was in Vienna. Yet, Dachau is more than 250 miles from Vienna. There is no record of Elisabeth leaving Vienna to go to Dachau to get that power of attorney.

1). Indeed, there is simply no record of anyone—let alone a Jewish wife of a Jewish man imprisoned by the Nazis—getting a power of attorney prepared, traveling more than 250 miles in 1938 Nazi Austria, crossing the border to the Dachau concentration camp in Nazi Germany, getting access to Fritz Grünbaum in Dachau, and getting approval for him to execute a power of attorney. To suggest that such a journey was even possible for a Jewish individual in Nazi-controlled territory is to deny Holocaust-era reality.

2). Moreover, since Elisabeth only made the request for extension on July 15, she had at most 24 hours to do all of that. Again, even if she were permitted to cross the border into Germany. And, if this fiction is to be maintained, she then traveled back to Vienna in time to have her husband's power of attorney notarized on July 26, 1938. Stating the obvious, both the journey and the timeline defy credulity.

c. Third, although the Notary Public claims to have had the original handwritten power of attorney in front of him, that original was not attached to the notarized stamped form. Nor has it ever been produced by any party or authority in more than two decades of litigation.

1). Moreover, the Notary Public for the power of attorney typed the letters "*m.p.*" after Fritz's name—standing for "*manu propria*," meaning "*one's own hand*." At the time, "*m.p.*" was an abbreviation used at the end of typewritten or printed documents when there was no handwritten signature on the document. Thus, not only does Fritz Grünbaum's signature appears nowhere on the extant document, but there is also a basis to believe it was not on the original either—hence "*m.p.*"

2). Interestingly, Elisabeth's signature does not appear anywhere on the document either. Just the Nazi-approved Notary Public's signature.

3). The only logical explanation for all these anomalies in the power of attorney would, of course, also solve the mystery of how Elisabeth got from Vienna to Dachau and had Fritz sign a power of attorney in 24 hours. The only logical answer to both the anomalies and the mystery of the impossibility of the journey, the incongruous dates, and the absence of any signatures are all the same: it never happened.

d. Finally, even assuming *arguendo* that the inconsistencies of date and time are immaterial,<sup>32</sup> a power of attorney executed by a Jew who was interned in the Dachau concentration camp awaiting a death order at any moment could not have been voluntary. That Fritz, along with at least 35,000 others, were murdered in Dachau after the “execution” of this power of attorney only serves to confirm the obvious. Any power of attorney executed in a Nazi concentration camp by a Jewish prisoner—by definition, an “enemy of the state”—who was then murdered in that very concentration camp, was executed under duress.

e. In sum, both the date and location of Fritz’s power of attorney are inconceivable given contemporaneously recorded facts and developed record. Even assuming *arguendo* that the power of attorney miraculously was executed days before it was requested and hundreds of miles away from where it was needed, it was done under duress. I respectfully submit, therefore, that there is no set of facts in any universe under which this power of attorney—if it ever existed at all—was valid.

### **Kieslinger & Schenker**

42. With this “power of attorney” now in hand, Elisabeth’s hopes that the Nazis would release her husband so he could file his own Declaration of Assets were dashed and the new deadline of August 20 looming. Before she could file, however, she needed to have her husband’s extensive art collection appraised and assigned a current market value by a Nazi-approved expert. Enter art historian, Dr. Franz Kieslinger.

a. As previously discussed, in the summer of 1938 Kieslinger was still working

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<sup>32</sup> To be clear, it is the People’s position that this alleged “*power of attorney*” is a Nazi-generated fabrication, a document designed to brush a thin veneer over its systemic and systematic pillaging of an entire people.

as an expert for the Dorotheum auction house in Vienna and was now using his credentials to provide appraisals of Jewish art collections for the new Property Transaction Office.<sup>33</sup> And after the passage of Goring's Regulation on the Declaration of Assets of Jews on April 26, 1938, his services were in high demand.

b. Whether Elisabeth chose Kieslinger as the expert to appraise her husband's collection or he was assigned the Grünbaum case by the Property Transaction Office is unclear. Logic suggests the latter; after all, as an expert on medieval art, Kieslinger was hardly well-equipped to appraise Fritz's primarily modern art collection. Regardless, Kieslinger visited the Grünbaum home to inspect the collection and conduct his appraisal, even noting with precision in which rooms he inspected Fritz's artworks. He then prepared and signed his Valuation Report on July 20, 1938. *See* Exhibit 53A (Kieslinger Inventory) and 53B (English).

43. Altogether, Kieslinger's inventory and appraisal contained 68 line-entries totaling 452 artworks in three rooms: 428 in the "*Study*," 22 in the "*Dining Room*," and 2 in the "*Bedroom*." Kieslinger valued the entire collection at 5,791 Reichsmarks. Of the 452 artworks, Kieslinger listed 81 Schiele works, all of which were in Fritz's study. These 81 works included five separately listed oil paintings and two line-entries for "*large hand drawings by Schiele, 55 sheets with colors*" [line 37] and "*20 pencil drawings, and 1 etching by Schiele*" [line 37a]. All five of the oil paintings were listed by title.<sup>34</sup> But none of the 75 drawings (55 color and 20 pencil) or 1 etching were described beyond watercolor or pencil.

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<sup>33</sup> The stamp on his appraisal indicated his qualifications: "Expert of Dorotheum Auction House for Medieval Art Member of The Institute for Austrian Historical Research Vienna." *See* Exhibit 53A (Kieslinger Inventory) and 53B (English).

<sup>34</sup> The following paintings were listed: #1 *der Selbstseher* [The Self-Seers]; #2 *Frauenportrait* [Woman's Portrait]; #3 *Stadt am Fluss* [City on the Blue River]; #4 *Kleine Landschaft mit Bäumen* [Small Landscape with Trees]; and #5 *Schiffe im Hafen* [Ships in the Harbor].

a. As has already been discussed, *Russian War Prisoner* was incontrovertibly part of Fritz Grünbaum's Schiele collection as recently as 1928. It has further been shown that Fritz valued his Schiele artworks a great deal—not only possessing more of Schiele than he did of any other artist, but also displaying them at two exhibitions and insisting on recognition for their ownership. It was doubtless a point of pride.

b. Not surprisingly, therefore, there is no record of Grünbaum ever selling, transferring, or donating a single Schiele between the last exhibition in 1928 and his arrest by the Nazis in 1938. In other words, in more than 95 years of research and decades of litigation, no one has ever produced any evidence whatsoever—even anecdotal—that Fritz Grünbaum did not still own his Schieles at the time of his arrest. Therefore, *a fortiori*, there is no record of *Russian War Prisoner* leaving Grünbaum's possession before his arrest by the Nazis in 1938.

c. Notably, and as will be addressed, in 2007, Kornfeld produced for the first time dozens of letters allegedly showing how he came into possession of 70 of Fritz Grünbaum's Schieles. Nowhere in any of those letters, records or his interviews or depositions does he or anyone ever even claim to have taken the Schieles from Grünbaum's apartment in the decade between the 1928 exhibition and the 1938 Kieslinger inventory.

d. On the uncontroverted evidence before this Court, therefore, it may reasonably be concluded that *Russian War Prisoner* was among the 55 Schiele sheets with colors enumerated in Kieslinger's July 20, 1938, inventory and appraisal. To suggest otherwise is unfounded conjecture.

44. On August 1, 1938, Elisabeth submitted Fritz's complete Declaration of Assets to the Property Transaction Office and attached the Kieslinger inventory. *See* Exhibit 54A (Fritz

Grünbaum August 1, 1938, *Declaration of Assets*) and 54B (English). Doubtless still holding out hope for Fritz's release, Elisabeth stayed behind while her other family members fled the Reich in the late summer of 1938—the timeline of those departures will be addressed later in this motion. While Elisabeth stayed put, however, Fritz's art collection was soon to be moved to the Nazi-controlled Schenker warehouse in Vienna.

45. On September 8, 1938, Schenker submitted a “*Request for Export Permit*” on behalf of Elisabeth Grünbaum to the *Zentralstelle für Denkmalschutz* [Central Office for Monument Protection]. See Exhibit 55A (Schenker Export Permit Application) and 55B (English). Neither Elisabeth's signature nor handwriting appear anywhere on the permit or on its attached inventory. It is impossible to know, therefore, whether she was involved in this application or whether—as with the power of attorney—some sleight-of-hand was at play to complete the state-sponsored theft of Fritz's property. But what is clear from a careful examination of the records, however, is that Fritz's art collection had been physically removed from the Grünbaum apartment and deposited in the Schenker warehouse by September 8, 1938, as part of the export application process.

a. First, Schenker was and is a freight-forwarding, shipping, and storage company in the business of retrieving property and either delivering it to a specified destination immediately or holding it in their warehouse pending further instructions from the property owner. Like any shipping and storage company, therefore, Schenker would take an inventory either 1) when it picked up the property to deliver it somewhere else; or 2) when it received the property for storage. Here, the name and address of the sender is filled out with Elisabeth Grünbaum's name and address. *Id.* But the “[n]ame of final recipient, place and country of destination”

does not have a name and address filled in. Instead, it has the words, “[e]migration goods.” *Id.* Inarguably, then, this was not picked up by Schenker to deliver anywhere—at least not until the export request was approved. It had to be picked up to be stored at Schenker. This much is clear.

b. Second, the request itself appears to have two parts: the top two-thirds is to be filled out by the applicant. Here, that part is signed and dated September 8, 1938, by a representative of Schenker and submitted, purportedly on Elizabeth’s behalf. The bottom third is for the appropriate authority to approve or deny the request. Here, the request was approved on September 8, 1938, by Otto Demus, an employee of the Central Office for Monument Protection. But that approval—which was only valid for three months until December 8, 1938—was only the first step in the bureaucratic process necessary for any goods to be permitted to leave the Reich. As will be seen, the next step was to get approval from customs officials before any goods could cross the border—an approval that was never given.

c. Third, the application included on its second page a handwritten inventory also signed by Otto Demus. *See* Exhibit 56A (Demus Inventory) and 56B (English).<sup>35</sup> That this inventory was signed and stamped by Demus is further proof that Fritz’s artworks were at Schenker’s physical premises in Vienna’s First District. It is inconceivable that either Schenker or Demus would have prepared such an inventory—and that Demus would have signed and stamped it—unless the goods were physically present at the Schenker facility.

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<sup>35</sup> By calling this the “*Demus inventory*,” the People are not suggesting that Demus prepared the list. Indeed, as a government functionary, it is more likely that someone at Schenker prepared the list and Demus checked it. By signing it, however, Demus verified its accuracy and adopted it as his own. Hence, the decision to call it the “*Demus inventory*.”



d. Fourth, on June 30, 1939, Elisabeth had to file a notification of change of assets. *See* Exhibit 57A (Elisabeth Grünbaum June 1939 Declaration of Assets) and 57B (English). On that form, Elisabeth listed a payment made to “*Spediteur* [freight forwarder]” for relocation costs. Although Elisabeth’s declaration does not mention the name of the freight-forwarder, there is only one freight-forwarder in the record—only one freight-forwarder that prepared an itemized list of Fritz Grünbaum’s property. That was, of course, Schenker.

e. Finally, in all Elisabeth’s forced moves within Vienna between September 1938 (when Schenker took Fritz’s artworks) and October 5, 1942, (when Elisabeth was deported to the Maly Trostinets Extermination Camp), there is no record of Elisabeth reporting the movement or transport of any of her goods. Nor could there be, course—they were all in Schenker.

f. On this evidence, therefore, the Court may conclude that all Fritz’s artworks listed in the Demus inventory were physically at Schenker’s storage facility under Nazi control as of September 8, 1938.

46. The Demus inventory is far less detailed than Kieslinger’s inventory. Whereas, as has already been seen, Kieslinger listed 452 artworks and provided some level of description for them, even when grouping them together, the Demus inventory listed 413 untitled artworks in one column and at least 7 in a second column—for a total of 420.

a. But the Demus inventory also listed an unknown number of “*various negro figures*” and “*various glass, china, silver & knick-knacks.*” It is obviously impossible, therefore, to know how many artworks were included among the various figures and among what the Demus inventory called various “*glass, china, silver & knick-knacks.*” Thus, it is equally

impossible—and inappropriate—to draw any conclusions between the two sets of numbers.

b. Similarly, whereas Kieslinger separated the Schieles from other artists and grouped those Schieles by medium—oil (5), watercolor (55), or pencil (20)—the Demus inventory did not distinguish by artist. Rather, the Demus inventory listed “*21 oil paintings,*” “*15 watercolors,*” “*10 drawings,*” and “*278 drawings—some in color.*” Indeed, that the Demus-approved inventory organized the same items somewhat differently than Kieslinger—for example, using medium instead of artist—is further proof that the Schenker employee personally examined Fritz Grünbaum’s artworks by September 8, 1938, before preparing and approving their list.

47. Ultimately, and based on numbers and available descriptions, as well as on the reality of life in 1938 Nazi-controlled Vienna for a Jewish woman whose husband was imprisoned in a concentration camp, only one conclusion is reasonable: that the Fritz Grünbaum collection inventoried by Kieslinger in Grünbaum’s apartment on July 20, 1938, is the exact same collection that was in the Schenker storage facility no later than September 8, 1938.

a. First, I respectfully submit that there are several facts that are so obvious and well-known as to brook no disagreement and, therefore, to warrant the equivalent of judicial notice. As already seen, it is inconceivable that Nazi authorities would have permitted Elisabeth Grünbaum to travel freely from Vienna to Dachau. And even if Elisabeth had been so reckless as to attempt such unapproved travel under the Nazis, there is no circumstance under which she would have succeeded. Just so it is inconceivable that Elisabeth would have removed anything from her husband’s collection after it had been inventoried by the Nazis.

Nor would she have allowed anyone else to do so while her husband was still alive. True, the Nazis ended both his life and hers in concentration camps for nothing more than the crime of being Jewish. But that was several years in the future. In 1938, she surely must have still had some hope that she—and maybe even her husband and their art collection—would be able to flee Austria for safety abroad, evidenced by her numerous attempts to wait for Fritz despite having the opportunity to flee to safety.

b. Second, there is no record or any evidence whatsoever of any artworks being removed from Fritz’s collection between the Kieslinger inventory on July 20, 1938, and the Demus inventory in the Schenker facility on September 8, 1938. As it was with the time between the 1928 exhibition and the 1938 Kieslinger inventory, this absence is significant. As has been mentioned in passing and will be addressed in detail, 62 years after the war, Kornfeld produced dozens of allegedly authentic letters pertaining to how he came into possession of 70 of Fritz Grünbaum’s Schieles. Nowhere in any of those records, interviews, or depositions does Kornfeld, Kallir, or anyone ever claim that any artworks were taken from Grünbaum’s apartment in the seven weeks between the July 20, 1938, Kieslinger inventory and the September 8, 1938, Demus inventory. To do so now, of course, without any evidence whatsoever, would be rank speculation at best.

c. Finally, the comparison of the two inventories shows that they list the same objects. The Demus inventory lists 21 oil paintings, 2 pastel paintings, and 2 oil miniatures for a total of 25 “paintings” of some kind. The Demus inventory separately lists 15 watercolors, 10 drawings, and 278 drawings—some with color. In other words, it lists a total of 303 drawings, some of which have color. *Russian War Prisoner* is a pencil drawing with

watercolor. Allowing for differences in quality of description by an art professional (Kieslinger) as compared to a storage handler (Schenker employee) and governmental functionary (Demus), it is clear the Kieslinger inventory matches the Demus inventory.

1). First, both list 25 artworks that are paintings of some kind. Again, the Demus inventory lists 25. So does the Kieslinger inventory when one includes all artworks labeled as oil, landscapes, and portraits.

2). Second, both list the same number of drawings. Again, the Demus inventory lists 303. So does the Kieslinger inventory when one includes all artworks labeled as drawings, sketches, watercolors, studies, woodcut, and copperplate engravings.<sup>36</sup>

d. On the uncontroverted evidence before this Court, therefore, it is clear the works examined by Kieslinger at Fritz's apartment were the same works deposited at a Schenker storage facility in Vienna. It is reasonable to conclude, therefore, that the *Russian War Prisoner* was among those works included in the Demus inventory at a Schenker storage facility in Vienna no later than September 8, 1938. Again, to suggest otherwise is conjecture.

48. In sum, then, the evidence is clear that Fritz Grünbaum was the last owner of *Russian War Prisoner* before the Nazis stole the work and deposited it at a Schenker storage facility. To break it down with the clarity of an Aristotelian syllogism:

a. Fritz Grünbaum owned *Russian War Prisoner* and publicly exhibited it in Vienna in both 1925 and 1928 after Otto Kallir personally selected the drawing from Grünbaum's apartment in 1928.

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<sup>36</sup> Both woodcuts and copperplate engravings are methods for printing—often used for book illustrations—in which a sheet of paper would be pressed against the inked surface. As works on paper, they would be categorized as drawings by a non-expert cataloguer.

b. After Fritz was imprisoned in 1938, Franz Kieslinger went to Fritz's apartment and inventoried Fritz's collection—including *Russian War Prisoner*—on behalf of the Nazi government, preparing an inventory and appraisal dated July 20, 1938.

c. Approximately one week later, on July 26, 1938, a Notary Public affirmed that Fritz Grünbaum had prepared a “*power of attorney*.” A power of attorney which cannot be valid based on the time, location, or conditions under which it was prepared.

d. Approximately six weeks later, by September 8, 1938, Fritz Grünbaum's entire collection—including *Russian War Prisoner*—was expropriated by the Nazis and deposited in the Nazi-controlled Schenker warehouse in Vienna.

e. The theft complete, the waters get murky and *Russian War Prisoner* vanishes from the record, disappearing into the fog of a war that was to claim tens of millions of innocent souls during the Holocaust.

### **The Nazis Complete the Arayanization of Austria**

49. As for Elisabeth, after her husband's property was taken by the Nazis, she was forced to move. Having spent more than a decade in their Rechte Wienzeile 29 apartment, Elisabeth was evicted on October 31, 1938. With Fritz's art collection in Schenker, Elisabeth moved with several others to a much smaller apartment at Hofzeile 27. As she did so, the situation for the Jewish residents of the Reich continued to deteriorate.

a. On November 9-10, 1938, Hitler's “Brown Shirts”—the *Sturmabteilung* (SA) and *Schutzstaffel* (SS) paramilitary forces—along with the Hitler Youth carried out *Kristallnacht*. Literally meaning “Crystal Night” from the shards of broken glass that littered the streets after the destruction, Hitler's *Kristallnacht* saw the burning, ransacking, and destruction of hundreds

of synagogues and thousands of Jewish-owned businesses throughout Germany and Austria, as well as the imprisonment of more than 30,000 Jewish men in a single night.

b. Two days later, on November 12, 1938, the Nazi government issued its infamous *Decree on the Elimination of the Jews from Economic Life*. See Exhibit 58A (November 1938 Decree) and 58B (English). Its purpose, perfectly captured in its title, was clear:

*From January 1, 1939, Jews...are forbidden to operate retail stores, mail-order houses, or sales agencies, or to carry on a trade [craft] independently...They are further forbidden, from the same day on, to offer for sale goods or services, to advertise these, or to accept orders at markets of all sorts, fairs or exhibitions.*

50. Then, on December 3, 1938, the Nazi government continued its onslaught, enacting its *Order Concerning the Utilization of Jewish Property*. See Exhibit 59A (Order Concerning the Utilization of Jewish Property) and 59B (English). Under this law, all property rights in Jewish-held property were soon to be extinguished, and previous owners replaced by Trustees—Nazi-commissioned administrators—to manage all Jewish-owned property on behalf of the Reich. The Order was sweeping. For example, under Article 7, “*Jews cannot legally acquire real estate and mortgages.*” And “*if there is reason to suspect that the bidder is a Jew,*” the sale must be halted unless the buyer “*proves that he is not a Jew.*” *Id.* The order was also immediate. Under Article 4,

*As soon as the owner of the enterprise is notified of the order through which a trustee is appointed according to Article 2, he loses the right to dispose of the property for the administration of which the trustee has been appointed.*

a. Indeed, so great were the powers of the trustee that Elisabeth need not have worried so much about getting Fritz’s power of attorney. Under Article 2,

*The trustee is empowered to undertake all judicial and extra-judicial actions and legal measures, which the business of the enterprise, its liquidation or sale require. His authority replaces any legally required power of attorney.*

b. Nor could there be any doubt as to whether the law applied to Fritz's art collection. In Chapter IV titled, Article 14, "*Jewels, Gems and Objects of Art*," decreed,

*Jews are forbidden to acquire, pawn or sell objects of gold, platinum or silver as well as precious stones and pearls. Such objects, except in the case of existence of attachments on behalf of a non-Jewish creditor at the time when this decree goes into effect may only be acquired by public purchasing offices, established by the Reich. The same applies to other jewels and objects of art insofar as the price of the individual objects exceeds one thousand Reichsmarks.*

51. Under the new law, therefore, the Nazi government needed to appoint an Aryan, i.e., non-Jewish, Trustee for the Grünbaums. By January 31, 1939, they had appointed Ludwig Rochlitzer. See Exhibit 60A (Ludwig Rochlitzer Letter) and 60B (English).<sup>37</sup> Under the 1938 *Order Concerning the Utilization of Jewish Property*, Rochlitzer was now the only person with the power to dispose of Grünbaum's property, including his art collection.

a. As previously noted, Rochlitzer was a Viennese lawyer who, with his Munich-based co-conspirator Alexander Bayer, enriched themselves by preying upon the persecuted Jewish residents of Austria and Germany. In this cruelest of schemes, Rochlitzer and Bayer's raised the hopes of their desperate Jewish "clients" by convincing them that for a "*legal fee*," Bayer would contact his childhood friend, Reichsführer-SS Himmler, on their behalf.

b. There is evidence than only a very few of their Jewish "clients," at most 16-18, ever actually benefitted from this scam by being released from protective custody by Himmler, far fewer than the 72 that Bayer claimed to have helped in his post-war denazification trial. Unfortunately for them, Fritz and Elisabeth were not among those to

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<sup>37</sup> Although the January 31, 1939, letter appears to be the first documented appearance of Rochlitzer in this case, the letter itself indicates he was responding to an "inquiry" from Elisabeth. Thus, there must be other letters and documents lost to history.

receive this promised clemency.

52. As for Rochlitzer's involvement in the Grünbaum case, careful examination of his January 31, 1939, letter to Elisabeth demonstrates just how thorough, comprehensive, and ruthless the Nazi machine was in pre-war Germany and Austria.

a. First, Rochlitzer appears to have been appointed Trustee by "*Devisenstelle* Vienna." The *Devisenstelle* [Foreign Exchange Office] played a significant role in the financial plunder of Jewish residents and their property in Nazi Germany and Austria both before and during the war. The Vienna office was authorized on March 19, 1938, by the *Ordinance on the Establishment of the Vienna Foreign Exchange Office*. See Exhibit 61 (March 19, 1938, Ordinance) As one of the instruments of the Nazi dream of "Aryanization,"<sup>38</sup> the Foreign Exchange Office was notorious for, among other things, restricting or revoking the ability of Jewish residents to dispose of individual assets and of having the belongings of Jewish residents wishing to emigrate inspected and confiscated.

b. Second, Elisabeth had nothing to do with Rochlitzer's appointment, and Rochlitzer even admits as much. After all, the letter appears to have been in response to Elisabeth's "*inquiry*" about the fees and how Rochlitzer had become the administrator of her and her husband's property. And he answered her: "[i]n response to your inquiry I would like to inform you, as the administrator commissioned by *Devisenstelle* Vienna for your and your husband's assets."

c. Third, Rochlitzer included a "*fee charged by Dr. Alexander Bayer, Munich.*"

Unless Elisabeth were one of the helpless victims conned into believing the Rochlitzer-Bayer-

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<sup>38</sup> "Aryanization" was the Nazi program that entailed the seizure of property from all Jewish residents and the elimination of all Jewish residents from economic life in Germany, Austria, and all Axis states. Its goal was the transfer of Jewish property into "Aryan" or non-Jewish hands.



Himmler scheme might really help her and Fritz get out of Austria alive, she must have wondered why she was forced to pay 3,000 Reichsmarks to this man named Bayer who resided in Munich—a man whom she almost certainly had never met.

d. Fourth, Rochlitzer's fees even included a charge of 238 Reichsmarks for "*the cemetery bill.*" Nothing if not thorough, Rochlitzer's charge for the cemetery—while Elisabeth and Fritz were still alive and hoping to leave the country before such a cemetery plot became necessary—must have been chilling to Elisabeth.

e. Finally, Rochlitzer included a fee of 2,500 Reichsmarks for his services and 600 Reichsmarks for "*expenses.*" Adding up the bill, it should total 6,338 Reichsmarks. Rochlitzer appears to have rounded up and charged her 6,500 Reichsmarks. Tellingly, the only fee or expense that was itemized was for the cemetery. The services rendered for the remaining 6,262 Reichsmarks is lost to history—although the false promise of a good word with Himmler seems the most reasonable explanation for all of it.

53. On June 30, 1939, after having paid Rochlitzer over the course of the year she had lived under Nazi control, Elisabeth filed an updated property declaration on behalf of Fritz. *See* Exhibit 62A (Fritz Grünbaum June 30, 1939, Declaration of Assets) and 62B (English). The updated Declaration was required because of the reduction in their assets since Fritz's 1938 Declaration. These reductions in their assets included—in addition to the Rochlitzer-Bayer shakedown fees—payment of the "*Reich Flight Tax in the amount of RM 17,250*" and the "*Jewish Property Levy of 8,800.*" *Id.*

a. Significantly, the 1939 Declaration continued to list the entire art collection's value as 5,791 Reichsmarks—the exact same valuation made by Kieslinger a year earlier. In

other words, no matter what else was taken from Grünbaum's assets in the intervening year by Rochlitzer, Bayer, and other scammers, every single piece of Fritz's art collection—including *Russian War Prisoner*—was still locked away in the Schenker warehouse.

b. And it was not going anywhere. When Fritz's updated 1939 Declaration was filed, it was stamped by Nazi officials, "*Gesperrt durch Vermögensanmeldung*" [Blocked by Asset Registration] and "*Erledigt*" [Completed]. Moreover, and as will be addressed in detail, before any goods could leave the Reich, their Export Permit Application required a stamp from the Austrian Customs Office. Neither Fritz's nor Elisabeth's forms have such a stamp. Whatever else may be said about Fritz's art collection—including *Russian War Prisoner*—one more fact is certain: it was still in Schenker in July of 1939 when Fritz's last *Declaration of Assets* was filed.

54. And the fate of the Grünbaums is equally certain. File No. 15 A 341/78 in the Nazi Annals is a *Registration of Death*, "[d]rawn up on June 9, 1941." See Exhibit 48A (Grünbaum Registration of Death) and 48B (English). The *Registration of Death* records that Fritz Grünbaum was "Jewish" and died in the Dachau concentration camp on January 14, 1941. The *Registration of Death* does not record a cause of death and notes, without any hint of irony, that no "*special report is required*" for any "*objects in the estate*" because "*there is no estate.*" *Id.* Fritz's beloved Elisabeth followed shortly thereafter, murdered in the Maly Trostinets Extermination Camp on October 5, 1942.

### **Grünbaum's Schiele Drawings are Laundered Through Switzerland**

55. After being stolen from Fritz Grünbaum by the Nazis in 1938, the *Russian War Prisoner* next surfaced in post-war Switzerland in 1956 in the hands of the ambitious dealer Eberhard Kornfeld. Kornfeld had recently taken over as managing partner of the G&K

auction house in Bern and was on a mission to make a name for himself in the post-war European art market. He would indeed make that mark in the coming decades. And he would do so as one of the pre-eminent European dealers of Egon Schiele's art. That Kornfeld's first infusion of Schieles in the 1950's came from one source—the murdered Fritz Grünbaum—seems not to have troubled Kornfeld.

56. Between 1938 and 1955, Kornfeld's G&K auction house sold a total of zero Schieles.<sup>39</sup> Then, in two sales in 1955 and 1956, G&K sold an unprecedented total of 63 Schiele paintings and drawings. Just how Kornfeld came into possession of such a valuable horde can never be proven with certainty. But many of the facts—and their reasonable inferences—are clear.

a. On November 24, 1955, G&K offered its first documented sale of Schiele works sold by Kornfeld since 1938. It was a group of 10 Schiele drawings included in G&K's fall auction, *Grafik und Handzeichnungen Moderner Meister* [Graphics and Hand Drawings by Modern Masters]. See Exhibit 64 (1955 G&K Catalog). The 10 drawings include one pencil drawing and nine tempera drawings.<sup>40</sup> They are listed on pages 35-36 of the auction catalog. But only two of these drawings—numbers 107 and 109—were illustrated in the catalog (on Plate 16); the other eight were not.

b. Then, from September 8 to October 6, 1956, G&K held its second post-war

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<sup>39</sup> On June 20, 1938, Dr. August Klipstein, Kornfeld's predecessor at G&K, sold 1341 works of art, including nine by Schiele, from the estate of the Cologne-based collector Heinrich Stinnes. Prior to his death in 1932, Stinnes has amassed a collection of 200,000 works. His son, Hans Heinz Stinnes, chose to sell these selections from his father's collection at G&K because many of the works were considered "*degenerate*" by the Nazis and therefore illegal to sell in Germany in 1938. See Exhibit 63 (Excerpt 1938 G&K Catalog).

<sup>40</sup> Tempera is a type of watercolor paint made by mixing pigments with water and egg yolk. Many catalogs and appraisals of Schiele's drawings do not make a distinction between tempera watercolors and other non-egg-based watercolors.

Schiele sale. See Exhibit 65A (1956 G&K Catalog) and 65B (English). This was G&K’s first-ever sale comprising entirely works by Egon Schiele. Fifty-three original Schiele paintings and drawings were exhibited for sale—3 oil paintings, 35 color drawings, and 15 pencil drawings.<sup>41</sup>

*Id.*

57. In other words, Kornfeld had just uncovered an incredible trove of art that had miraculously survived the war and landed at his doorstep, ripe for sale. Of the 63 total Schiele paintings and drawings—10 in November 1955 and 53 in September 1956—Kornfeld provided the prior ownership history for just one. It was the first oil painting listed in the 1956 catalog: “*Tote Stadt I* [Dead City]”. And that prior owner was Fritz Grünbaum.<sup>42</sup> *Id.*

a. The 1956 catalog does not list any prior owners for the other 52 Schiele artworks. Why in post-Nazi Europe would Kornfeld’s auction house not name the last owner of an artwork before the Nazi onslaught? The answer is as obvious as it seems: the last owner died in a concentration camp for the crime of being Jewish. To list the name was to admit in writing that Kornfeld was in the business of selling Nazi-looted art.

b. In his 1956 catalog, Kornfeld did list one other name—a name we have already seen—and he listed him five times. None other than Grünbaum’s old Vienna colleague Otto Nirenstein—who by 1956 was already going by the name Otto Kallir. *Id.* The first time “*Nirenstein*” was listed in the text was for the painting *Dead City*, a painting last owned

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<sup>41</sup> In addition, there were 12 editioned graphic Schiele works in this sale: 3 lithographs, 6 etchings, 2 woodblock prints, and 1 poster lithograph. Altogether, then, although the sale listed 65 Schieles in the catalog, only 53 were original Schiele paintings or drawings.

<sup>42</sup> As will be addressed in detail, Kornfeld later claimed that he had never heard of the name “Grünbaum” prior to 1998. Yet, not only does Kornfeld name Grünbaum directly in his 1956 catalog, but he also cites two other catalogs—Otto Kallir’s 1928 Hagenbund exhibition catalog and 1930 Schiele *catalogue raisonné*—in which Grünbaum is named as the owner of this same painting, *Dead City*.

by Grünbaum and published by Nirenstein in his 1930 *catalogue raisonné* while Grünbaum still owned the painting. The next three times Kornfeld lists “Nirenstein” in the text are for Kornfeld’s drawing numbers 7 (“*Knabenbildnis* [Portrait of a Boy]”), 14 (“*Halbakt «Schwarzes Mädchen»* [Girl with Black Hair]”), and 15 (“*Selbstbildnis als Büsser* [Self-Portrait as a Penitent]”). Kornfeld notes that those three drawings he was selling—at least two of which can demonstrably be shown to having been previously owned by Grünbaum—were studies, i.e., preliminary sketches, for three oil paintings that were published in Nirenstein’s 1930 *catalogue raisonné*. Interestingly, the oil painting for which Kornfeld’s drawing 14 (*Girl with Black Hair*) is a study is pictured on page 83, plate 48, in the 1930 *catalogue raisonné*. The owner of that oil painting? Fritz Grünbaum. See Exhibit 66 (Excerpt from 1930 Catalogue Raisonné).<sup>43</sup>

c. As will be seen, although only one owner is mentioned directly (Grünbaum) and one indirectly (also Grünbaum), the identity of the last owner of the other works can also be determined by critically and carefully examining the catalogs, appraisals, and inventories created between 1925 and 1938 that have been discussed earlier in this motion.

58. Of the 53 Schieles in Kornfeld’s 1956 sale, at least 21 are from Grünbaum’s pre-war collection: 3 oil paintings, 3 pencil drawings, 14 color drawings, and 1 etching.<sup>44</sup>

a. All three oil paintings included in the 1956 sale are specifically named in the Franz Kieslinger inventory created for Grünbaum’s July 1938 declaration of assets. They are: *Dead City*, “*Schiffe im Hafen* [Ships in the Harbor]”, and “*Kleine Landschaft mit Bäumen* [Small

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<sup>43</sup> The last mention of “Nirenstein” was for the lithograph poster, catalog number 54.

<sup>44</sup> This motion is limited in scope to *Russian War Prisoner* and is therefore focused only on those of Kornfeld’s Schieles that had published pre-war provenance—because *Russian War Prisoner* had pre-war Grünbaum provenance. But it is the People’s position—as will be set out in detail—that every Schiele Kornfeld received in 1955 and 1956 came from one source: Fritz Grünbaum.

Landscape with Trees].”<sup>45</sup>

b. Of the 15 pencil drawings included in the 1956 sale, 3 had previously been listed as part of Grünbaum’s art collection and exhibited in the 1925 Würthle exhibition.<sup>46</sup>

c. Of the 34 color drawings included in the 1956 auction, 14 had previously been listed as part of Grünbaum’s art collection and exhibited in either the 1925 or the 1928 exhibitions. One of those 14 was G&K sale catalog number 39, “*Bildnis eines gefangenen Russen* [Portrait of a captured Russian],” i.e., *Russian War Prisoner*, exhibited in 1925 (catalog number 117) and again in 1928 (lending list number 15).<sup>47</sup> See Exhibit 65A (1956 G&K Catalog) and 65B (English).

59. In sum, the first documented appearance of the *Russian War Prisoner* after the Nazis stole it from Grünbaum in 1938 is in the hands of Kornfeld, a dealer who delivered an entirely

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<sup>45</sup> The other two oil paintings listed by title in the 1938 Kieslinger inventory—“*Der Selbstseher* [The Self Seers]” and “*Frauenportrait* [Woman’s Portrait]”—have never been publicly seen since the Nazis confiscated them.

<sup>46</sup> G&K sale catalog number 37, “*Mutter und Kind* [Mother and Child],” exhibited in 1925 (1925 catalog number 112); G&K sale catalog number 42, “*Männliches Bildnis* [Portrait of a Man],” exhibited in 1925 (1925 catalog number 118); and G&K sale catalog number 46, “*Gebirgslandschaft* [Mountain Landscape],” exhibited in 1925 (1925 catalog number 119).

<sup>47</sup> The other 13 were G&K sale catalog number 7, “*Knabenbildnis* [Portrait of a Boy],” exhibited in 1925 (catalog number 52) and again in 1928 (lending list number 18); G&K sale catalog number 9, “*Skizze zur Stadt am blauen Fluss*» [Sketch for the “City on the Blue River],” exhibited in 1925 (catalog number 51) and 1928 (lending list number 7); G&K sale catalog number 14, “*Halbakt «Schwarzes Mädchen*» [Girl with Black Hair],” exhibited in 1925 (catalog number 63) and again in 1928 (lending list number 6); G&K sale catalog number 18, “*Zwei Proletarierkinder* [Two Proletarian Children],” exhibited in 1925 (catalog number 47) and again in 1928 (lending list number 2); G&K sale catalog number 19, “*Selbstbildnis im Gefängnis* [Self-Portrait in Prison],” exhibited in 1928 (lending list number 3); G&K sale catalog number 23, “*Stehende Frau* [Standing Woman],” exhibited in 1925 (catalog number 73) and again in 1928 (lending list number 16); G&K sale catalog number 26, “*Stehender Mann mit Feuerrotem Tuch* [Man Standing with fiery Red Drapery],” exhibited in 1925 (catalog number 78) and again in 1928 (lending list number 17); G&K sale catalog number 28, “*Rote Bluse* [Red Blouse],” exhibited in 1925 (catalog number 81); G&K sale catalog number 29, “*Knabenbildnis* [Boy Portrait],” exhibited in 1925 (catalog number 84) and again in 1928 (lending list number 11); G&K sale catalog number 33, “*Liegender weiblicher Akt auf oranger Unterlage* [Reclining Female Nude on an Orange Underlay],” exhibited in 1925 (catalog number 86) and again in 1928 (lending list number 4); G&K sale catalog number 41, “*Sonnenblume* [Sunflower],” exhibited in 1925 (catalog number 98) and again in 1928 (lending list number 13); G&K sale catalog number 43, “*Zentralinspektor Benesch* [Central Inspector Benesch],” exhibited in 1928 (lending list number 20); and G&K sale catalog number 44, “*Frauenbildnis* [Woman’s Portrait],” exhibited in 1928 (lending list number 19).

unexplained and unprecedented trove of Schiele works to the international art market shortly after the end of World War II. And a dealer who later acknowledged Fritz Grünbaum as the source for his freshly found Schiele works.

### **Otto Kallir Purchases Grünbaum's Schiele Drawings**

60. An ocean away, the proprietor of the Galerie St. Etienne in Midtown Manhattan—none other than Otto Kallir—had been struggling since 1939 to get his American audience as interested in Austrian Expressionist art as his Viennese audience had been. But the tide was about to turn for Schiele's reputation and, consequently, for Kallir's fortunes.

a. When Kallir left Vienna in 1938 for Paris and then New York, he had to transfer ownership of the Neue Galerie at Grünangergasse 1 in Vienna to his secretary Vita Künstler under the 1938 Aryanization laws. The Neue Galerie was, therefore, able to stay in business throughout the war. In 1948, Kallir reclaimed his old gallery from Künstler and subsequently renamed it Galerie St. Stephan. Kallir was thus able to operate out of two galleries: the old one in Vienna and the new one in New York. Not only were Kallir's two galleries connected by ownership history and name—Galerie St. Etienne (in New York) was the French name for Galerie St. Stephan (in Vienna)—but Kallir also had two bases of operation. And he continued to use the Vienna location as one of his work addresses.<sup>48</sup>

b. Thus, Kallir was in Vienna on September 5, 1956, when Kornfeld wrote to tell him that, “[u]nfortunately the Schiele catalog is not yet ready for me to send you prints.” See Exhibit 67A (September 5 Kornfeld Letter) and 67B (English). Kornfeld assured Kallir, however, that

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<sup>48</sup> Kallir had originally wanted his daughter Evamarie to run his Viennese location, but after a short stint as director between 1952-1954, she resigned. In 1954, St. Stephan's was being run by a painter named Gertie Fröhlich and a priest named Otto Mauer.

the catalog was of the highest quality and would be ready by “*next Saturday*” [September 15] and that he [Kornfeld] would immediately send Kallir a copy, as requested—presumably to the same address as Kornfeld listed in his letter: “*Neue Galerie, Grünangergasse 1.*” *Id.* In other words, not only was Kallir still using his old Viennese location to buy Schieles, but he was also still using his old gallery name. The irony will become clear in just a few moments.

61. The next few days saw a flurry of negotiations.<sup>49</sup> Ultimately, Kallir purchased 20 Schieles—1 oil painting, 13 watercolors, and 6 drawings—for 13,270 Swiss Francs. *See* Exhibit 73 (September 18, 1956, Invoice). Of those 20 artworks Kallir did purchase, he must have recognized at least 12 as having been owned by Fritz Grünbaum before the Nazis invaded Austria in 1938.<sup>50</sup> Kallir had two significant reasons for recognizing them.

a. First, as addressed previously, in 1928, Fritz had invited Kallir to Fritz’s Vienna apartment to inspect his Schieles and select those he wanted to include in his upcoming exhibition. Thus, Kallir would have seen and carefully chosen those he wished to show in his gallery. Of the 20 Kallir purchased in 1956, he had personally selected 9 from Fritz Grünbaum’s apartment for the 1928 exhibition. And the other three had been in the 1925

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<sup>49</sup> Kallir enquired about catalog numbers 5, 19, 8 and 4, but these were no longer available. *See* Exhibit 68A (September 9 Kornfeld Telegram) and 68B (English). Kallir then offered to buy 21 Schieles that were available, and asked about 4 others (catalog numbers 12, 16, 21, and 1). *See* Exhibit 69A (September 9 Kallir Letter) and 69B (English). Kornfeld replied to Kallir at his old Neue Galerie premises, *see* Exhibit 70A (September 11 Kornfeld Letter) and 70B (English), and then wrote again to confirm that Kallir had changed his mind about three (catalog numbers 25, 29, 40), but wanted two others (catalog numbers 1 and 16). *See* Exhibit 71A (September 14 Kornfeld Letter) and 71B (English). Kornfeld drew up a preliminary invoice, *see* Exhibit 72 (September 17, 1956, invoice), but on September 18, 1956, during Kallir’s visit to Kornfeld, they finalized the sale. Altogether then, although Kallir only purchased 20 artworks, Kallir had inquired about or tried to purchase an additional ten: Kornfeld catalog numbers 4, 5, 8, 12, 16, 19, 21, 25, 29, and 40.

<sup>50</sup> Of the additional ten that Kallir inquired about, he would have recognized two more as having belonged to Fritz: catalog number 19, “*Selbstbildnis im Gefängnis* [Self-portrait in Prison],” which Kallir had included as number 3 on his 1928 lending list; and catalog number 29, “*Knabenbildnis* [Boy Portrait],” exhibited in 1925 (catalog number 84) and number 11 on Kallir’s 1928 lending list.



exhibition at the Galerie Würthle where Kallir had worked before opening his Neue Galerie.

b. Second, the nine artworks that Kallir purchased from Kornfeld in 1956—including *Russian War Prisoner*—had been exhibited in the exact same building in 1928 that Kallir was operating out of in 1956 (even though he had technically transferred ownership of the gallery). As Kallir sat in his old gallery and selected each purchase from Kornfeld’s 1956 catalog, did Kallir look around and envision in his mind’s eye where he had placed each of Fritz’s Grünbaum’s cherished Schieles back in 1928? Those Schieles had eluded Kallir in 1928: he had to give them back to Fritz at the close of the exhibition. But now, the Schiele works were within Kallir’s grasp. Their lawful owner—the same owner who prized the works so much that he insisted they be displayed as coming from his collection—had been murdered in Dachau. And Kallir was at hand to take advantage.

62. As for the 12 Schieles of the 20 he purchased that Kallir had to have recognized as having belonged to Fritz Grünbaum, one is of relevance here: G&K sale catalog number 39, “*Bildnis eines gefangenen Russen* [Portrait of a captured Russian],” i.e., *Russian War Prisoner*, exhibited in 1925 (catalog number 117) and again in 1928 (lending list number 15).<sup>51</sup>

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<sup>51</sup>The other 11 were G&K sale catalog number 1, “*Tote Stadt I* [Dead City],” exhibited in 1925 (catalog number 11) and again in 1928 (catalog number 20); G&K sale catalog number 7, “*Knabenbildnis* [Portrait of a Boy],” exhibited in 1925 (catalog number 52) and again in 1928 (lending list number 18); G&K sale catalog number 9, “*Skizze zur «Stadt am blauen Fluss»* [Sketch for the “City on the Blue River],” exhibited in 1925 (catalog number 51) and again in 1928 (lending list number 7); G&K sale catalog number 14, “*Halbakt «Schwarzes Mädchen»* [Girl with Black Hair],” exhibited in 1925 (catalog number 63) and again in 1928 (lending list number 6); G&K sale catalog number 18, “*Zwei Proletarierkinder* [Two Proletarian Children],” exhibited in 1925 (catalog number 47) and in 1928 (lending list number 2); G&K sale catalog number 23, “*Stehende Frau* [Standing Woman],” exhibited in 1925 (catalog number 73) and again in 1928 (lending list number 16); G&K sale catalog number 26, “*Stehender Mann mit Feuerrotem Tuch* [Man Standing with fiery Red Drapery],” exhibited in 1925 (catalog number 78) and again in 1928 (lending list number 17); G&K sale catalog number 37, “*Mutter und Kind* [Mother and Child],” exhibited in 1925 (1925 catalog number 112); G&K sale catalog number 42, “*Männliches Bildnis* [Portrait of a Man],” exhibited in 1925 (1925 catalog number 118); G&K sale catalog number 44, “*Frauenbildnis* [Woman’s Portrait],” exhibited in 1928 (lending list number 19); and G&K sale catalog number 46, “*Gebirgslandschaft*

63. As was the case with Kornfeld, and despite the voluminous correspondence we do have between the two men, there is no record that Kallir was troubled by the history of the Schieles he had just purchased. Nor, in that correspondence, does Kallir ask or Kornfeld explain how these works came into Kornfeld's possession after he (Kallir) had last seen them in the hands of a Holocaust victim. The only discuss selection and, of course, price.

a. As will be addressed in detail in the next section, on May 25, 2007, Kornfeld was deposed in Bern, Switzerland, in connection with a different Schiele artwork that Kornfeld had sold to Kallir in the same 1956 sale that Kornfeld sold *Russian War Prisoner* to Kallir—*Sitzende mit angezogenem linkem Bein* [Seated Woman with Bent Left Leg].<sup>52</sup> As previously shown, Kornfeld's 1956 sale contained 53 original Schiele paintings and drawings. See Exhibit 65A (1956 G&K Catalog) and 65B (English). Although it was a different artwork, since Kornfeld claimed *Russian War Prisoner* (39 in the catalog) and *Seated Woman with Bent Left Leg* (51 in the catalog) had the same provenance and were sold to the same buyer (Otto Kallir), Kornfeld's sworn statements in that deposition are relevant here:

*Q: Good afternoon, Dr Kornfeld. I would like to show you this document that we have marked as exhibit 65. This is the 1956 stock catalogue, is that correct?*

*A: It is a stock and exhibition catalogue.*

*Q: Thank you. And all of the works in this catalogue have the same provenance?*

*A: All the originals, yes, not the prints.*

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[Mountain Landscape],” exhibited in 1925 (1925 catalog number 119).

<sup>52</sup> In March 2005, David Bakalar sued Grünbaum's heirs in the Southern District of New York for a declaratory judgment that he was the rightful owner of *Seated Woman with Bent Left Leg*. Bakalar brought the civil action after he had attempted to sell that drawing at an auction but was prevented from completing the sale when Grünbaum's heirs asserted their claim that the drawing belonged to Grünbaum and was looted by the Nazis. Ultimately, the heirs of Grünbaum lost that civil case, not on the merits, but on the issue of laches. See *Bakalar v. Vavra*, 619 F.3d 136, 147 (2d Cir. 2010) , *aff'd*, 500 F. Appx. 6 (2d Cir. 2012). The deposition itself was conducted in the offices of Kornfeld's lawyer, Peter Bratschi, in Bern, Switzerland. The questioning was conducted by James Janowitz of Pryor Cashman LLP for Bakalar and Raymond Dowd of Dunnington, Bartholow & Miller LLP for the Grünbaum heirs.

*Q: Which are the originals?*

*A: Watercolours and drawings.*

*Q: So everything up to page 30?*

*A: Up to 53. Not the last one; that's a print.*

*Q: But everything from 1 through 53 has the same provenance?*

*A: Yes.*<sup>53</sup>

See Exhibit 74 (2007 Kornfeld Deposition) at p. 121. As for the provenance, Kornfeld left no doubt that it was Fritz Grünbaum:

*Q: I would like to draw your attention to page 15 number 1?*

*A: Yes.*

*Q: That is a picture called Dead City, is that correct?*

*A: Yes.*

*Q: It says that it is from the collection of Fritz Grünbaum, is that correct?*

*A: Yes.*

*Q: So, in 1956, when you wrote this catalogue, you knew that this painting came from Fritz Grünbaum, didn't you?*

*A: Based on the information in the catalogue raisonné of Otto Nirenstein [Kallir].*

*Q: It's a yes or no question, sir?*

*A: (Through Interpreter) Based on the information of Otto Nirenstein [Kallir], I printed what you see here.*

*Id.* at p. 122. Thus, if every original Schiele had the same provenance, and the only stated provenance was Fritz Grünbaum, then Kornfeld had just admitted under oath that he knew that all 53—including *Russian War Prisoner*—had come from Fritz Grünbaum.

b. Surely, then, one may fairly opine that Kallir and Kornfeld must have had a conversation about the source of these Schieles. Or at the very least, that Kallir must have told Kornfeld—even in passing—that he recognized the Schieles from when he (Kallir) had seen them in Fritz's apartment or exhibited them in his (Kallir's) gallery in 1928. As reasonable as that assumption may be, it is misplaced.

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<sup>53</sup> All questions quoted from the deposition are by Bakalar's lawyer unless otherwise indicated, e.g., "By Dowd." All answers by Kornfeld are in English unless "Through Interpreter" is noted—in which case, Kornfeld's answers were in German.

*Q: Did Otto Nirenstein [Kallir] tell you that items 1 through 53 all came from Fritz Grünbaum?*

*A: (Through Interpreter) As far as the purchases of 1956 by Otto Kallir are concerned, he did not say where they were from. But Otto Kallir produced a catalogue in 1930 and what you see in this catalogue here is based upon the catalogue from 1930.*

*Q: Did you, Dr Kornfeld, ever have a conversation with Otto Kallir about the provenance of works numbers 1 through 53?*

*A: (Through Interpreter) No.*

*Q: You never asked him where they came from?*

*A: (Through Interpreter) We never spoke about it.*

*Id.* at pp. 122-123. As for provenance, there was none. As for pre-war history, they “*never spoke about it.*”

64. Over the last several decades, much ink has been spilled wondering how Nazi-looted art—or stolen art and antiquities more generally—can suddenly appear on the open market with no or, at best, dodgy provenance. Countless critics, commentators, academics, bloggers—“experts” all—opine on how such works can be openly and profitably bought and sold and, eventually, prominently displayed in gallery showrooms, Upper East Side townhouses, and even on museum walls. Despite all the time and energy spent trying to unravel this mystery, the rest of us are left wondering how these things begin.

a. In this case, at least, we have a glimpse into the past. Here, we know how and where it began. And the answer, as W.H. Auden sagely observed, “*is unspectacular and always human.*” It began in an elegant, storied auction house in post-war Switzerland, between two refined men of stature and taste who, in hushed tones, conducted their business. Doubtless exchanging knowing glances, they asked no questions about such unpleasanties as ownership history. Rather, they asked the only question that seemed to matter to either of them: the price.

b. In sum, it is difficult to draw any conclusion other than that these two

sophisticated, international, and savvy businessmen intentionally chose to ask no questions. They applied their willful blindness to the tragic history of Grünbaum's Schieles. And they decided it were better for all concerned—most of all for the two who stood to profit by the sale—not to inquire into provenance at all. No need to bring up such a disagreeable past, especially—as will be seen—at a time when the U.S. State Department and authorities around the world were sounding the alarm for Nazi looted art and property. To such men, broaching the topic of Nazi-looted art must have seemed ever so gauche and, even worse, risked triggering awkward legal and ethical questions. Plausible deniability is as *de rigueur* in art and antiquities trafficking as it is any other illicit trade.

65. Their business concluded, Kallir purchased 20 of Grünbaum's Schieles and had them shipped to his New York gallery. And this is how Fritz Grünbaum's Nazi-looted art came to our shores.

### **The Ledgers**

66. Kornfeld's September 18, 1956, invoice to Kallir listed *Russian War Prisoner* as number 39 and added "36765 *Bildnis eines gefangenen Russen* [Portrait of a captured Russian] Fr. 700." As was just seen, the "39" is the drawing's 1956 catalog number. But the "36765" purports to be some kind of inventory number. In 1998, Kornfeld first mentioned the existence of inventory ledgers that, he claimed, recorded the date, title, and price for each Schiele artwork he acquired. Kornfeld's claim and the records he eventually produced—like the alleged 1938 power of attorney—warrant careful examination. And like that fraudulent document, the 1955 and 1956 inventory ledger pages do not withstand scrutiny. Rather, like the power of attorney, they appear to have been altered to support a proffered narrative.

67. To begin with, it is essential to set out the background against which these records were first produced—or even mentioned.

a. To date, the first contemporaneously documented reference to the Kornfeld ledgers appeared in 1998—more than four decades following the critical sales in question. In 1998, a Swiss journalist named Thomas Buomberger published *Raubkunst, Kunstraub: Die Schweiz und der Handel mit gestohlenen Kulturgütern zur Zeit des Zweiten Weltkriegs* [Stolen Art—Art Theft: Switzerland and the Trade in Stolen Cultural Assets at the Time of the Second World War]. Initially commissioned by the Swiss government, the report and subsequent book—as the title suggests—was an exposé of Switzerland’s complicity in laundering Nazi-looted art.

b. Buomberger made several findings. In explaining the steep increase in the number of artworks exported from Switzerland starting in 1948 and continuing for decades, Buomberger noted that, “*a considerable amount arrived in Switzerland during the war years, most of it illegally, simply for temporary storage here. After the war, South America and the USA became attractive sales markets.*” See Exhibit 75A (Buomberger excerpts) at p. 47 and Exhibit 75B (English) at p.

2. In commenting on the decades after the war—a time when Kornfeld was particularly active—Buomberger concluded that,

*“Switzerland, being a neutral country — a fact of significance mainly for illegal markets during the war — used to be a safe haven for works of art. This was true for objects of art of both escaped Jews and the politically persecuted as well as works of Nazis and war profiteers.”*

*Id.* at p. 48 (German) and p. 3 (English). But there was more. He also determined why Swiss art markets were able to evade troublesome customs declarations—“*[w]orks of art were declarable by weight, which rendered customs a negligible issue*”—and why buyers were shielded by law from the owners of stolen property:

*A buyer's good faith used to be acknowledged even in cases involving stolen artifacts. Art. 934 ZGB (Civil Code of Switzerland), introduced in 1912 and still in effect today, prescribes an expiration period of five years for an owner to claim back stolen goods from a bona fide buyer. Art. 933 ZGB further indicates that the ownership rights of a bona fide buyer are to be protected even if the object was transferred without the seller's authorization.*

*Id.* If anyone ever dreamed of the perfect place to launder art that had been stolen by the Nazis, Switzerland was every war profiteer's dream come true.

c. Neither surprisingly nor coincidentally, Kornfeld thrived during the boom post-war, no-questions-asked years. During his deposition testimony, Kornfeld boastfully provided “*a compilation of our auction catalogues that we published in the years 1952 through 1957...to prove that the sales and the purchases with Mathilde Lukacs were only a very small part of our transactions in these years.*” See Exhibit 74 (Kornfeld deposition) at pp 68-69. According to the records provided by Kornfeld, his auction house had sold an astonishing 7,176 artworks in just those six years from 1952 to 1957 when Nazi-looted art flooded the market, when the illegal market was sheltered by safe-haven laws, and when Swiss dealers were unhindered by customs regulations. See Exhibit 76 (2-page compilation 1952-57).

68. In preparation for his report and subsequent book, Buomberger had interviewed Kornfeld and reviewed many of Kornfeld's records. To put it mildly, Kornfeld did not like the way he had been portrayed. He hired a Swiss lawyer, Peter Bratschi, in Bern, Switzerland, to deal with the journalist. On March 30, 1998, Kornfeld had his employee Christine Stauffer send Bratschi a package containing what he claimed was a typed list explaining exactly how he had received 70 of Fritz Grünbaum's Schieles for the 1955 and 1956 sales.<sup>54</sup> See Exhibit 77A

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<sup>54</sup> Christine Stauffer joined the auction house in 1967 and was not, therefore, present when Kornfeld suddenly and mysteriously came in possession of all the Grünbaum Schieles.

(March 30, 1998-Kornfeld correspondence to Bratschi) and 77B (English). On April 16, 1998, Kornfeld's lawyers then sent a copy of the package to Buomberger. *See* Exhibit 78A (April 16, 1998, Bratschi Letter to Buomberger) and 78B (English).

a. On their face, the typed pages sent to Buomberger appear to record Kornfeld's receipt of an extraordinary collection of 70 of Grünbaum's Schieles in four entries dated between August 1955 and May 1956. Specifically, Kornfeld claimed that these newly found typed pages accurately captured the following historical facts from forty years earlier:

- 1). On August 22, 1955, Kornfeld received 8 Schieles;
- 2). On November 11, 1955, Kornfeld received 16 Schieles—5 of which had been displayed in either 1925 or 1928 and listed as belonging to Fritz Grünbaum;
- 3). On January 30, 1956, Kornfeld received 20 Schieles—4 of which had been displayed in either 1925 or 1928 and listed as belonging to Fritz Grünbaum; and
- 4). On April 24, 1956, Kornfeld received 26 Schieles—14 of which had been displayed in either 1925 or 1928 and listed as belonging to Fritz Grünbaum, including *Russian War Prisoner*.

b. Of these 70 artworks that had suddenly appeared in Kornfeld's possession, then, 23 had previously been displayed in either the 1925 or 1928 exhibits and all 23 had been listed as belonging to Fritz Grünbaum—again, including *Russian War Prisoner*. The other 47—as expected from Kornfeld in the post-war years—had no published pre-war provenance whatsoever. As will be seen, according to Kornfeld, all the Schieles he purchased during this time had the same provenance—Fritz Grünbaum—and were received from the same person:



Mathilde Lukacs.<sup>55</sup> Thus, and as will be addressed in detail, by Kornfeld's own admission, all 70 had belonged to Fritz Grünbaum.

69. The telltale signs of reverse engineering in these four typed inventory lists are legion. All four bear the unmistakable signs of having been created at some later date to attempt to cover up what was becoming increasingly difficult to cover up, and to deny what today can no longer be denied.

a. First, the lists provided by Kornfeld are typewritten. In 1998, Kornfeld claimed that they were accurate summaries of original handwritten ledgers. If that were true—and we have only Kornfeld's word for that—then it is difficult to understand why he did not just photocopy the original ledgers in 1998 and provide those photocopies. As will be seen, Kornfeld never produced the original ledger pages for the two alleged 1955 deliveries. As for the original ledger pages for the two alleged 1956 deliveries, Kornfeld did produce them nine years later. But he was forced to admit in his 2007 deposition that he had altered both of those ledger pages after their creation. But more on that in a few moments.

b. Second, Kornfeld's typed summaries were provided for the first time on March 30, 1998. That was more than 40 years after the events they allegedly recorded. Were you to believe him, the original ledgers—if they existed—had been in his custody the entire time. To date, apart from Kornfeld's own self-serving statements, there has never been any evidence whatsoever that these ledger pages existed in 1955 and 1956. If these ledgers really were properly prepared business records and existed at the time of the events they purported

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<sup>55</sup> That Mathilde Lukacs cannot have been the source for Fritz Grünbaum's Schieles will be addressed in a subsequent section.

to record, and given the contemporaneous references to events and letters in other records, why did no one ever hint at their existence back in 1955 and 1956? To be clear, the doctored 1956 ledger pages exist now—we have copies of them. But no one has still ever produced copies of the 1955 ledger pages. And no one has ever produced evidence that those 1955 ledger pages (or the 1956 ledgers) existed prior to 2007.<sup>56</sup>

70. Ultimately, however, the most obvious signs of fraud are Kornfeld’s various statements about the ledgers and, specifically, how many shipments he received from Mathilde Lukacs. Critical examination reveals that Kornfeld never told the same story twice across depositions, interviews, and conversations. Instead, he continuously contradicted himself. According to Kornfeld, the number of deliveries he received—depending on when and by whom he was asked—were seven, six, three, and two. “*A liar,*” Shakespeare observed in *Troilus and Cressida*, “*should have a very good memory.*”<sup>57</sup> A review of Kornfeld’s statements will reveal how hard it is to maintain a lie over time.

a. As Kornfeld admitted in his deposition, Buomberger interviewed Kornfeld:

“*[W]e met in the course of a generalistic interview that he [Buomberger] conducted with me.*” See Exhibit 74, at p. 134. Buomberger appears to have also reviewed Kornfeld’s records:

*Q: You let Mr Buomberger look at your records, is that correct?*

*A: (Through Interpreter) I cannot recall in detail. He visited me once or twice.*

*Id.* at p. 133. Based on that information, Buomberger concluded that Kornfeld had received

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<sup>56</sup> To be clear, even if the 1955 ledger pages were to miraculously appear now, that would be no evidence that accurately reflect what existed in 1955. After all, the belatedly produced 1956 pages were admitted by Kornfeld to have been doctored by Kornfeld himself.

<sup>57</sup> The sentiment has a longer history. The Bard had borrowed the proverb from Quintilian’s *Institutio Oratorio* of the 1st century C.E. See QUINTILIAN, *INSTITUTO ORATORIO* bk. 4, ch. 2, at 101 (Donald A. Russell trans., Loeb Classical ed. 1920) (c. 95 C.E.).

seven deliveries of artworks from Fritz Grünbaum's estate totaling 110 artworks including, in other words, 40 other works in addition to 70 of Grünbaum's Schieles. When asked at the deposition about the seven deliveries, Kornfeld could not deny it:

*Q: In a book—the English translation of it is Robbed Art, Art Robbery—by Thomas Buomberger, he wrote that there were a total of seven deliveries totaling about 110 works equal to approximately 80 per cent of Fritz Grünbaum's artistic estate. Do you believe that Mr Buomberger's statement is accurate?*

*A: (Through Interpreter) I do not know whether this information by this gentleman is correct or not.*

*Id.* at p. 132. Thus, Kornfeld could not say seven was inaccurate. Hold that thought.

b. On March 30, 1998, Kornfeld had told his lawyer Bratschi that there were six deliveries altogether. See Exhibit 77A (Kornfeld letter to Bratschi) and 77B (English):

1. *Delivery to Bern by Mrs. M. Lukacs in August of 1952 for Auction Sale #70 — Graphic Arts and Hand Drawings Old Masters, November 6, 1952, [and] Auction Sale #71 – Graphic Arts and Hand Drawings Modern Masters, November 7, 1952 [containing 16 artworks];*

2. *Delivery by E. W. Kornfeld from Brussels to Bern in July of 1953, for Auction Sale #75 — Graphic Arts and Hand Drawings, Modern Masters, November 13- 14, 1953, [and] Auction Sale #76 – Graphic Arts and Hand Drawings Old Masters, March 11, 1954, [containing 19 artworks];*

3. *Delivery by mail (1 roll, 1 package) from Brussels to Bern on August 22, 1955, for Auction Sale #80 — Graphic Arts and Hand Drawings, Modern Masters, November 24, 1955, [containing 12 artworks];*

4. *Delivery by E.W. Kornfeld from Brussels to Bern on November 11, 1955, Acquisition for Stock (December 7, 1955); [but it also might have been from a] Delivery by H. Bolliger from Brussels to Berne, December 8, 1955, for (possibly just turned over money, or received sheets in return for cash from above), [containing 20 artworks];*<sup>58</sup>

5. *Delivery by Mail (1 roll, 2 packages) from Brussels to Berne on January 30, 1956, for Acquisition for Stock (7. Feb. 1956), [containing 20 artworks]; and*

6. *Delivery to Berne by Mrs. M. Lukacs on April 24, 1956, for Acquisition for Stock (May 22, 1956), [containing 26 artworks].*

*Id.* Thus, Kornfeld's typed summaries lists 117 artworks in six deliveries. Not seven.

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<sup>58</sup> This discrepancy of where this alleged delivery took place will be addressed in a few moments.

c. But then in his 2007 deposition, Kornfeld claimed to have only received three shipments from Mathilde Lukacs. Indeed, he repeated the number “three” more than once:

*A: Allow me to explain the different numbers as follows: the watercolour paintings from Mathilde Lukacs were purchased at three different points in time. These are three groups that are all recorded in the stock catalogue.*

See Exhibit 74 (2007 Deposition) at p. 27.

*Q: Dr Kornfeld, did Mathilde Lukacs give you the two lots at the same time?*

*A: (Through Interpreter) No. Three different purchases.*

*Id.* at pp. 37-38.

*Q: Other than what you have produced to us here and the documents that we have seen, did you take any other notes about your meetings with Mathilde Lukacs?*

*A: (Through Interpreter) All the material that relates to that period has been produced by us here.*

*Dr. Bratschi: All the material that we could find.*

*Q: How many deliveries of the works were there to you?*

*A: (Through Interpreter) I cannot produce that information in detail but according to the stock book you can see that the purchases were conducted in three phases.*

*Id.* at page 132. So, in 2007, Kornfeld was insistent that “[a]ll the material that relates to that period has been produced by us here,” and swore that there were three deliveries from Mathilde Lukacs. He did not explain why he told Buomberger it had been seven or why he had previously told his lawyer—the same lawyer present at the deposition—that it had been six.

d. Once again, however, the number seemed to change. As will be seen in a moment, when Kornfeld was asked at the 2007 deposition about payment for Grünbaum’s Schieles, Kornfeld indicated he only had one receipt that covered two purchases. Not seven, not six, not even three purchases. But two purchases on one receipt. Even worse, the signature that Kornfeld claimed to be that of Mathilde Lukacs was in pencil. The circumstance surrounding the creation—and bringing to light—of this receipt and this “signature” warrant examination.

71. At the deposition, Kornfeld and his lawyer brought in hand a tranche of documents. Those documents were collectively labeled Exhibit 64 for the deposition. They are attached in their entirety to this motion as Exhibit 79. *See* Exhibit 79 (Deposition Exhibit 64). The lawyers began describing each of the pages for the record—apparently, despite pre-deposition discovery, Kornfeld had never previously produced these documents. Neither Kornfeld’s lawyer nor Kornfeld himself offered any explanation (or apology) for producing records for the first time at the deposition itself.

a. Thus, the lawyers spent some time reviewing and identifying the newly produced records. At page 31 of the deposition, Bakalar’s lawyer asked Kornfeld to describe page 17 of Deposition Exhibit 64:

*Q: Page 16 is a notary stamp. Page 17, can you describe to me what that is?*

*A (Through Interpreter) Two purchases from Mathilde Lukacs were summarised, the first one, about 5,000 Swiss francs, the second one 10,000 Swiss francs.*

*See* Exhibit 74 (Deposition) at p. 31. Two purchases. Apparently, he had forgotten that he had already testified to three purchases. Later in the deposition, Kornfeld tried to correct his testimony,

*Q: Dr Kornfeld, did Mathilde Lukacs give you the two lots at the same time?*

*A: (Through Interpreter) No. Three different purchases.*

*Id.* at pp. 37-38.

b. But it was too late. Not only had he already testified that it was two purchases—not seven, six, four, or three purchases—but the only “proof” he had for the purchases was this single “receipt.”

72. This “receipt,” that was page 17 of Deposition Exhibit 64, is dated April 24, 1956, and attached to the instant motion as Exhibit 80 (Page 17 of Deposition Exhibit 64) in both

the German original and English translation. I respectfully submit it is worth having this alleged receipt at hand while reading this section. The questioning continued:

*Q: Returning now to page 17, the receipt, the name "Lukacs" appears at the top. What is the significance of that?*

*A: (Through Interpreter) Yes. This is a note made in pencil that gives of the name of the seller.*

*Q: Is that your handwriting?*

*A: (Through Interpreter) I assume so, yes.*

*Q: Do you have the original of this document?*

*A: Yes.*

*Q: May I see it? Thank you. Let the record reflect first of all that Lukacs on the top of the document is written in pencil. The rest of the document, except for the last two items towards the bottom, are written in ink and then the last two items are also written in pencil. Was the name Lukacs put on this document at the same time as the ink was put on the document?*

*A: (Through Interpreter) I presume not. This has to do with the filing of the documents. This document was to be filed under the name Lukacs which is why it carried that remark at the top.*

*Q: When, to the best of your knowledge, was the name Lukacs added in pencil?*

*A: (Through Interpreter) That I can no longer remember.*

See Exhibit 74 (Deposition) at pp. 32-33.

a. Thus, according to Kornfeld, this unnumbered document in Kornfeld's handwriting that he produced for the first time in 2007 purports to be a receipt dated April 24, 1956. But the only evidence—besides Kornfeld's self-serving statement—that this is a receipt between Kornfeld and Mathilde Lukacs is the name of "Lukacs" at the top of the page that Kornfeld admitted was *written by Kornfeld himself in pencil at some unknown date* after the receipt was prepared. There was more incredulous testimony to come.

b. Doubtless struggling to understand how this unnumbered "receipt" for 15,100 Swiss francs was filled out in ink and pencil by Kornfeld, the lawyer kept pressing:

*Q: The document which is on page 17, the last two lines are in pencil?*

*A: (Through Interpreter) Yes.*

*Q: Can you tell me what those last two lines say?*

*A: (Through Interpreter) It is the signature of Mathilde Lukacs.*

*Q: Whose handwriting is in ink?*

*A: The receipt is made out with my handwriting and it carries the signature of Mathilde Lukacs in*

*pencil.*

*Q: Where was Mathilde Lukacs when she signed this document, if you know?*

*A: (Through Interpreter) In Bern, at the gallery.*

*Q: In your presence?*

*A: (Through Interpreter) Yes.*

*Q: How many works were included as part of this payment that is reflected in the document?*

*A: (Through Interpreter) This is reflected in the books. Two sales were taken together. The first sale was in the order of magnitude of about 5,000 Swiss francs, the second one of about 10,000 Swiss francs and the 15,100 Swiss francs on the receipt is the combined value of the two.*

*Id.* at pp. 34-35. Still grappling with Kornfeld's difficult-to-countenance explanation about the use of pencil on the receipt, the lawyers just glossed over the minor point that Kornfeld's numbers did not add up: 5,000 plus 10,000 does not equal 15,100. They returned to the question of the signature on a receipt being in pencil:

*Q: Do you recall why Mathilde Lukacs signed the receipt in pencil rather than ink?*

*A: (Through Interpreter) Because she only had a pencil at hand.*

*Q: But you were with her. You could have given her your pen, correct?*

*A: (Through Interpreter) I do not remember that.*

*Id.* at p. 39. But just a few minutes earlier in the deposition, Kornfeld said that Lukacs signed the document “[i]n Bern, at the gallery.” If this is to be believed, then not only did Kornfeld not just hand Lukacs the pen that he was obviously holding in his hand when he prepared the receipt, but Lukacs happened to have only a pencil. And she signed a receipt for 15,100 Swiss francs in an established 100-year-old Swiss auction house in pencil. Crucially, the use of pencil rather than pen effectively precluded any future forensic analysis of the date the marking could have been added. Whereas a true ink signature's saturation would change over the course of forty or fifty years, a pencil “signature” would conveniently lack such markers.

c. Furthermore, as will be seen in the next section, there is one person in this case who doctored all the ledger pages—and he always did so in pencil. Eberhard Kornfeld.

73. Finally, it is worth noting in passing one more problem with the signature on the

receipt: its authenticity. Before addressing the signature itself—and whether it is a forgery, I note two limitations. First, I respectfully submit that it is well-established that handwriting experts require the original documents to render a conclusive opinion as to a handwriting comparison among different documents.<sup>59</sup> And, for reasons that appear to have been based on pure gamesmanship, the originals were never examined by handwriting experts. *See, e.g.,* Exhibit 81 (May 16, 2007, Transcript from *Bakalar v. Vavra*).<sup>60</sup> Thus, any observations must be based on copies. Second, it is conceded that there are several reasons why individual signatures from the same person may differ slightly over time. Nonetheless, the differences in this case are so dramatic as to raise significant concern about the specter of forgery.

a. When other documents produced by Kornfeld that he claimed were from Mathilde Lukacs and contain her signature are compared to the penciled signature on this “receipt,” even a lay person may reasonably conclude that they were not written by the same hand. For example, Kornfeld produced two documents for the deposition numbered EK00061 and EK00083 that he claimed were from Mathilde Lukacs. Both were signed. *See* Exhibit 82 (EK00061 and EK00083 in German). I respectfully draw the Court’s attention on both pages to the “k” and the “s.” Despite being a signature, one can easily distinguish those two letters.

b. On the receipt of April 24, 1956, however, there is no circumstance under which the penciled “signature” contains either a “k” or an “s.” Indeed, the “s” on the alleged signature on the receipt looks suspiciously like the “s” on the handwritten “*Lukacs*” at the top

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<sup>59</sup> This is not to suggest that the People are requesting the Court to take judicial notice of this fact. Merely that it is well-established that handwriting experts require originals.

<sup>60</sup> This proceeding was held in the case of *Bakalar v. Vavra*. *See* footnote 45, *supra*.



of the page that Kornfeld admitted he had written.

c. Nor does the heavy-handed attempt on the receipt to trace over what purports to be the “*a*” in the “*Lukacs*” at the bottom of the page inspire confidence in its authenticity. If that really were Mathilde Lukacs’s signature at the bottom, then it is difficult to understand why she retraced over her own name. Someone not familiar with a signature they are forging might have to do that, but not a person who is signing her own name.

d. To be clear, the People are not positing this admittedly non-expert analysis as dispositive. The receipt is not worthy of belief regardless of whether Kornfeld forged the signature or not. But its difference is so startling as to warrant skepticism.

74. It was not just the circumstances surrounding the first appearance of the ledgers and other documents that renders Kornfeld not credible in his version of how he acquired Grünbaum’s Schieles after the Nazis had stolen them. On the contrary, each document—typed summary, receipt, or ledger page—carries its own unique tell-tale signs of fraud. According to one version of Kornfeld’s testimony, and the one he seems to have landed on the longest, the first alleged delivery of Grünbaum Schieles is reflected in the August 22, 1955, typed summary he produced in 1998.

75. In that August 22, 1955, typed summary, Kornfeld recorded that he had received eight Schiele drawings. *See* Exhibit 83 (August 1955 Ledger). As will be seen, Kornfeld’s practice at the time was to assign a 5-character inventory number beginning with “36” to each artwork when it was received. But in the August 1955 typed summary of the ledger page, Kornfeld did not use these 5-character inventory numbers. Rather, he typed in the numbers 102-109. Those were the numbers assigned to these artworks in the November 24, 1955,

auction catalog. See Exhibit 64 (1955 G&K Catalog) at pp. 35-36. But on August 22, 1955, when Kornfeld claimed to have received these artworks, the November 24, 1955, catalog was still more than three months in the future.

a. In other words, the catalog—and hence the numbers 102-109—did not yet exist. So, if this typed list really was a typed summary of the original ledger as Kornfeld claimed, then how did Kornfeld know in August 1955 which as-yet-non-existent numbers to use? If this were truly a typed summary of the ledger page, he would have just entered the inventory numbers as they were listed on the original ledger page. Kornfeld had to have created this summary 40 years after he had sold the Schieles, using the November 1955 catalog to fabricate his typed summary because there was—in fact—no contemporaneously prepared ledger page for him to review.

b. That this was the only possible explanation became clear in the deposition. When the parties were talking about the February 1956 delivery, it emerged that Kornfeld's lawyer had possession of what Kornfeld claimed was the *original* ledger for all acquisitions between 1955 and 1957. But when the lawyers asked to see it, the following ensued:

*Q: Dr Kornfeld, the original book from which the document that we have been looking at on page 21 was copied, is it here in Dr. Bratschi's office?<sup>61</sup>*

*A: (By Dr. Bratschi) Yes.*

*Q: Could I see it?*

*A: (By Dr. Bratschi) No.*

*Q: Could you tell me why?*

*A: (By Dr. Bratschi) Because there are other names. That's why we have copied what is relevant to this case.*

*Q: If I agree on the record and swear that I would not disclose any of those other names to anyone else, could I see it under those circumstances?*

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<sup>61</sup> The “page 21” referred to in the deposition was page 21 of Deposition Exhibit 64. As will be addressed in detail in the next section, page 21 was a photocopy of ledger page 108, which Kornfeld claimed was the page that recorded a February 7, 1956, delivery of 20 Schieles. It will be attached as an exhibit in the next section.

*A: (By Dr. Bratschi) You can see it but we will not get a copy of the whole book.*

*Q: I understand. That would be acceptable to me.*

See Exhibit 74 (2007 Deposition) at pp. 47-48. Bratschi then left the room and returned with the book,

*Q: (By Dr. Bratschi) Can we have your statement and your statement as well for the record?*

*A: (By Janowitz) For the record, Dr. Bratschi has just brought in a book which I believe is the inventory book from which page 21 has been copied. I would like to state for the record that I will not reveal to anyone any names or any contents of the book other than that which pertains directly to the Lukacs acquisitions, and that goes for any other pages we may see, and I affirm that under penalties of perjury.*

*A: (By Dowd) And I make the same pledge subject to the penalties of perjury.*

*Id.* at pp. 48-49. In other words, the binder they all had in front of them was the original ledger for the years 1955 to 1957. And they were allowed to look at every page “*which pertains directly to the Lukacs acquisitions.*” But neither Kornfeld nor his lawyer ever offered to show the other lawyers (or anyone) the page for the alleged August 1955 delivery. If Kornfeld were really telling the truth about receiving some of the Grünbaum Schieles from Mathilde Lukacs in 1955, then that page certainly pertained “*directly to the Lukacs acquisitions.*”

c. But only if Kornfeld was telling the truth. Only if a page in the ledger really did show acquisitions from Lukacs. Based on this turn of events in the deposition and the numerous inconsistencies noted above, this Court may reasonably conclude that the August 1955 ledger page would not have supported Kornfeld’s story. As will be seen, there are many more reasons to discredit Kornfeld’s fiction.<sup>62</sup>

76. Staying with the four-delivery version of Kornfeld’s testimony, the second alleged

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<sup>62</sup> Kornfeld’s sleight-of-hand appears to have been successful in some prior cases—mostly in Austria and Switzerland. Doubtless a reflection of the desire of some courts to close that ugly chapter of European history, this fraud also speaks volumes about this Court’s capacity to trust anything offered or produced by Kornfeld or by any of his willing colleagues at Galerie Kornfeld

delivery of Grünbaum Schieles is—according to Kornfeld—reflected in the November 11, 1955, typed summary that Kornfeld prepared in 1998. This document was also allegedly based on a hand-written original ledger page and displays similar signs of fraud as addressed above. *See* Exhibit 84 (November 1955 Ledger). According to this 1998 typed summary, Kornfeld received another 16 Schiele artworks in 1955: 1 oil painting, 10 color drawings, and 5 pencil drawings.

a. First, and as was the case for the August 1955 delivery, the page from the original ledger for any November 1955 delivery, has never been seen—even though all the parties had the ledger in their hands in 2007. Again, despite decades of litigation in multiple countries, no one—except Kornfeld of course—has ever indicated that the November 1955 ledger page ever existed. All we have, therefore, is Kornfeld’s word that his typed summary accurately transcribed the alleged November 1955 ledger page.<sup>63</sup> Moreover, in his 2007 deposition, Kornfeld claimed that inventory numbers were assigned sequentially—one artwork, one number—for all the artworks received together in one shipment. Yet, the November typed summary, which purports to list each artwork’s 5-character inventory number for the delivery, is missing inventory number 36229. As usual, without explanation.

b. Second, on this November 11, 1955, typed summary, 12 of the 16 Schiele artworks listed contain the words “*Austellung* [Exhibition] 1956” followed by a number. These are the catalog numbers for Kornfeld’s September 1956 sale—the one at which Kallir had made all his purchases. But on November 11, 1955, when Kornfeld claimed to have received

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<sup>63</sup> To be clear, and as was the case with the August 1955 page, it could be produced tomorrow and that would be no proof that it existed in 1955.

these artworks, the September 1956 catalog did not yet exist. So, if this typed list really was a typed summary of the original ledger as Kornfeld claimed, then how did Kornfeld know in November 1955 which as-yet-non-existent numbers to use? As with the alleged August 1955 delivery, there is only one possible answer: this summary that he created 40 years after he had sold the Schieles was not an accurate summary of any ledger page—even assuming, what is becoming increasingly difficult to assume, such a page existed in 1955.

c. Third, in a March 30, 1998, letter from Kornfeld’s assistant, Christine Stauffer, Stauffer admitted to Kornfeld’s own lawyer that no one at Galerie Kornfeld had any memory (or record) of how (or even in what country) they received the Grünbaum Schieles in the alleged November 11, 1955, delivery:

*Second visit of EWK [Kornfeld] in Brussels on November 11, 1955. Here we are not clear if EWK [Kornfeld] took the 20 sheets with him and Mr. [Hans] Bolliger only had to deliver the money in cash (list of bills...), or if Mr. Bolliger brought the money and then was allowed to take the sheets.<sup>64</sup>*

See Exhibit 77A (March 30, 1998-Kornfeld Letter to Bratschi) and 77B (English). In other words, in 1998, Kornfeld admitted that he could not remember how these 20 of Grünbaum’s Schieles came into his possession. Did Kornfeld pick them up? Did Bolliger pick them up? Did they come into his hands in a different way? If these ledgers were contemporaneously prepared at or near the time of the events they purported to record, how is it possible that Kornfeld (or anyone at Galerie Kornfeld) did not know how these 20 Schieles came into his possession and when they arrived in Switzerland?

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<sup>64</sup> Hans Bolliger joined Kornfeld in 1955 and became a member of the Management Board before leaving the auction house in 1970. Like Kornfeld, he was a significant collector in his own right, with Kornfeld holding two special auctions of Bolliger’s collection in the 1980’s.

d. Ultimately, and according to the typed summary of November 11, 1955, *see* Exhibit 84 (November 1955 Ledger), the best they could do was to claim that they acquired these stolen Schieles in one of two ways by one of two people. And for this, Kornfeld provided two documents that are probative—but only to the extent they show the lengths to which Kornfeld would go to maintain his fiction. Through these documents, Kornfeld offered two options for when and how he received these Schieles.

1). *Option 1.* According to Kornfeld, he acquired these Schieles by “*delivery by E.W. Kornfeld from Brussels to Bern on November 11, 1955, acquisition for stock (December 7, 1955).*” *Id.* As proof, Kornfeld provided in 2007 a handwritten document with the date “11-11-55” that appears to be some kind of list of 22 numbers of things (“VI/6,” II/9,” “IV/5,” etc.) divided into four groups or categories, but without describing the 22 “things.” *See* Exhibit 85 (Unlabeled List Dated November 11, 1955). There is no indication what this document is, why there are two different handwritings on it, when it was prepared, why it was prepared, who prepared it, or where it came from. Nowhere does the name Lukacs appear anywhere on the page. Thus, there is no link to Mathilde Lukacs. The November 11, 1955, typed summary listed—as we have seen—20 artworks. This handwritten list is for 22 artworks that appear to be made up of an oil painting, drawings (“*Zeichnungen*”), and watercolors (“*Aquarellé*”). The name “*Schiele*” appears for the first entry, then never again. But there are six other artists on the page that are named. Finally, one of the two “annotations” reads,

*Offered: Residual Schiele*  
*13 Watercolors*  
*7 Drawings*  
*5050.—*

*Id.* Yet, the November 11, 1955, typed summary only listed 16 Schieles—of which only 9 were

labeled watercolors and 5 labeled drawings. Thus, the 20 Schieles listed on this page dated November 11, 1955, do not match the number of Schieles on the typed November 11, 1955, delivery. But they do match the numbers of Schieles and payment amount (5,050 Swiss francs) for the third alleged delivery—that of February 1956 delivery. More on that in a moment.

2). *Option 2.* According to Kornfeld, he acquired these Schieles by “(?) *Delivery by H. Bolliger from Brussels to Berne, December 8, 1955, for (possibly just turned over money, or received sheets in return for cash from above).*” See Exhibit 77A (March 30, 1998-Kornfeld Letter to Bratschi) and 77B (English). For this option, Kornfeld provided in 2007 another unknown handwritten document, this one dated December 8, 1955, that appears to be some kind of list of 21 numbers of things (“500-IT 084534,” etc.) with the name “*Hans Bollinger*” written at the bottom. See Exhibit 86 (Unlabeled List Dated December 8, 1955). But there is no indication what this document is, why there are also two different handwritings on it, when it was prepared, why it was prepared, who prepared it, or where it came from. Although it does have the name “*Lukas*” scribbled on the side of the page, it is in a different hand and ink from the rest of the page. But that is not to say that we have not seen this handwriting before—from the same man in whose custody these documents were allegedly held and who produced them for the first time in 2007: Eberhard Kornfeld.

3). At the risk of stating the obvious, the truth should not have options. Shakespeare again, “*a liar should have a very good memory.*”

77. Perhaps recognizing the many holes in the November 1955 delivery story, Kornfeld produced a second *Quittung* [Receipt] in 2007. See Exhibit 87 (Receipt dated December 7, 1955). This “receipt” was, if possible, even more suspect than the first one produced by

Kornfeld at the deposition. Produced by Kornfeld for the first time in 2007, this unnumbered typed form purports to be a receipt for 9,300 Swiss francs dated December 7, 1955. This form claims that this payment is “*in full payment of account balance as of the end of 1955.*” *Id.* As with the earlier “receipt,” I respectfully submit it is worth having this one at hand for this section.

a. First, there is no indication on the form itself who made the payment or what it is for. The only evidence that it is a receipt between Kornfeld and Mathilde Lukacs is an illegible “signature” at the bottom that is written on a downward 45-degree angle. *Id.*

b. Second, this “signature” is even worse than the April 24, 1956, signature that Kornfeld attempted to palm off as Mathilde’s. Not only does this December 7, 1955, signature not remotely resemble the signatures that are present on Kornfeld-produced letters labeled EK00061 and EK00083 (that Kornfeld claimed were from Mathilde Lukacs), but it also does not resemble the signature from April 24, 1956. *Compare* Exhibit 82 (EK00061 and EK00083 in German) *with* Exhibit 87 (Receipt dated December 7, 1955). Indeed, if this “*receipt*” were really signed by Mathilde Lukacs, she seems to have misspelled her own name.

c. Again, I respectfully submit that this Court does not need an expert to conclude that Mathilde Lukacs never signed this document. As earlier, to be clear, the People are not positing this admittedly non-expert analysis as dispositive. The receipt is not worthy of belief regardless of whether Kornfeld forged the signature. But its differences from the other alleged signatures are so startling as to render all unworthy of belief.

d. For all these reasons, Kornfeld’s testimony about the alleged November 1955 delivery and source for all those Schieles must be considered as suspect as his testimony about the August 1955 delivery and source.



78. The third alleged delivery of Grünbaum Schieles is, according to Kornfeld, reflected in the February 7, 1956, typed summary that Kornfeld prepared in 1998. For this delivery, unlike for the alleged 1955 deliveries, Kornfeld had also produced in 2007 a photocopy of the original ledger page (page 108) that he claimed represented the February 7, 1956, delivery from Mathilde Lukacs. *See* Exhibit 79 (Kornfeld Deposition Exhibit 64). The photocopy was redacted. As will be seen, it was also doctored.

a. In both the typed summary and the photocopied ledger page that Kornfeld had originally provided, Kornfeld recorded receiving 20 more Schiele artworks. *See* Exhibit 88A (February 1956 Photocopy) and 88B (English).<sup>65</sup> And once again, as with the November typed summary, the typed summary for the February 7, 1956, delivery of Schiele artworks—that Kornfeld claimed was an accurate summary of the February 7, 1956, ledger page—listed catalog numbers from Kornfeld’s September 1956 sale. Again, since the September 1956 catalog did not yet exist, this typed February list Kornfeld provided in 1998 had to have been reverse engineered from the catalog and not copied from the ledger.

b. As for the ledger itself, although the original ledger was produced at the 2007 deposition, all that production did was expose that the ledger itself had been doctored after it had been originally prepared. Notably, the original ledger containing the years 1955 and 1956 had been in Kornfeld’s custody—his dominion and control—since they were created:

*Q: Now, let me ask you about the document from which this page [page 108] has been copied. Is it a book?*

*A: (Through Interpreter) Yes.*

*Q: Does it exist today?*

*A: (Through Interpreter) Yes.*

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<sup>65</sup> An unredacted copy of the February 7, 1956, ledger page is also attached. *See* Exhibit 89 (Unredacted Photocopy of Feb 7, 1956, Ledger).

*Q: Where is it maintained?*

*A: (Through Interpreter) In our archive in the grouping of our inventory lists and books.*

See Exhibit 74 (Deposition) at p. 43.

c. The ledger page initially provided by Kornfeld for the February 7, 1956, delivery showed five columns. The first column recorded 20 Schieles—comprising 13 watercolors and 7 pencil drawings—each artwork had a sequential inventory number from 36508 to 36527. The second column had an “x” for some but not all the works—according to Kornfeld, they represented a later inventory check. The third column had a brief description in German of each artwork. The fourth and fifth columns listed prices—unclear whether they were purchase price, sale price, or something else.

79. Once Kornfeld produced the original ledger in the deposition, however, the lawyers compared the photocopy Kornfeld had provided (as page 21 of Deposition Exhibit 64) with the original page 108 and found significant discrepancies.

80. First, even putting aside the redactions, the photocopy of page 108 of the original ledger that Kornfeld had initially produced was not a fair and accurate copy of the actual page.<sup>66</sup> In leafing through the original ledger, one of the lawyers made a startling discovery:

*Q: I thought I saw on an earlier page the dates of the columns identified, is that correct, if we could take a look at that just so we could see that? Let the record reflect that, on the earlier pages, the three columns -- and, actually, you only see two of them on the photocopy -- on the right have headers of the year. One is 1955, the next is 1956, the next is 1957.*

See Exhibit 74 (Deposition) at pp. 51-52. In other words, the “true” photocopy hid one of the columns.

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<sup>66</sup> The photocopy of page 108 of the ledger appears to have redacted several entries at the bottom of the page that appear to be other non-Grünbaum artworks.

a. Thus, although the original page had six columns—inventory number, x, description, and three columns for the years 1955, 1956, and 1957—the “*true and accurate*” copy originally provided by Kornfeld only had five columns: inventory number, x, description, and *two* columns for the years. Why would Kornfeld hide one of the columns indicating the year? Not only that, but as is clear from the deposition, the three columns on the right-hand side of the page “*have headers of the year. One is 1955, the next is 1956, the next is 1957.*” *Id.* Yet, the photocopy Kornfeld provided before the deposition has no headers for the years. *See* Exhibit 88A (February 1956 Ledger Photocopy).

b. Even more disturbing, the original ledger page did not have any years at the top of the columns either. The lawyers had to go to earlier pages to see years in the headings: “*Let the record reflect that, on the earlier pages, the three columns...have headers of the year. One is 1955, the next is 1956, the next is 1957.*” *Id.* In other words, ledger page 108 that Kornfeld claimed proved a February 1956 delivery of Schieles had no headings for the years at all. That can be seen on the unredacted photocopy of page 108 that was later produced. *See* Exhibit 88A (February 1956 Ledger Photocopy). No years listed anywhere on the columns. If the other pages in the ledger each had a column labeled by year—1955, 1956, and 1957—why were there no years on the ledger page that contained a delivery of Schieles? Thus, to the question, “What was he hiding?” we must now add, “When was page 108 really created?”

c. Indeed, on the very same page of the deposition, Kornfeld made clear how elastic a concept “*fair and accurate business record*” was for him. When Kornfeld was asked about why the numbers in the first (unlabeled) “*year*” column of page 108 were filled in darkly in pencil and the second (unlabeled) “*year*” column was filled in with lighter pencil, his answer

sheds light on why he hid the columns and the headers in the first place:

*Q: Can I ask you, Dr Kornfeld, why there are two columns of pencil notations, one darker and one lighter, if you know?*

*A: (Through Interpreter) Those were put down at two different points in time. It also refers to the next year and what I just pointed out are the years, the columns.*

*Q: The first column of numbers beginning with the number 325 [Swiss francs], does that refer to a particular year?*

*A: (Through Interpreter) The inventory book is from 55 to 57. The first column [1955] should actually have belonged to the second column [1956] and it was later corrected: 1955, 1956 and 1957.*

*Q: So the first column of numbers actually pertains to 1955 and so you are telling me they were mistakenly put in the 1955 column?*

*A: (Through Interpreter) It might have been a minor mistake.*

See Exhibit 74 (Deposition) at p. 50. In other words, Kornfeld considered recording the year he had an artwork in his possession as a minor detail and any error in that regard as a “*minor mistake.*” Minor or not, these discrepancies surely explain why Kornfeld doctored the photocopies by hiding so much and why he made the lawyers swear under penalty of perjury that they would reveal so little.

d. Put differently, everything Kornfeld hid had to do with the year he received the Schieles. As a corollary, everything relating to the year Kornfeld received the Schieles was obscured. That would, of course, conceal how and when Kornfeld bought or sold these Schieles. And that appears to have been the whole point behind this thinly-veiled chicanery. Indeed, the only indication of the year on Kornfeld’s photocopy of ledger page 108 is a handwritten “1956 Feb 7” near the upper left-hand corner of the page. There is no record of when this single entry was written. Nor is there any indication in the deposition that this page 108 is in the proper order in the binder. No one seems to have checked, for example, whether the date on page 107 was chronologically before, or the date on page 109 chronologically after, the date on page 108.

e. Moreover, even the date “Feb 7” on the page is suspect. The typed summary Kornfeld provided for this alleged delivery reads “[d]elivery by Mail (1 roll, 2 packages) from Brussels to Berne on January 30, 1956, for acquisition for stock (7. Feb. 1956).” But if this ledger page were the only proof of when they received the Schieles, then where did Kornfeld get the date “January 30” in the first place? No document supporting January 30 has ever been produced. And the only document that does match the February 7, 1956, ledger page is the handwritten list seen earlier that recorded a November 11, 1955, delivery. *See* Exhibit 85 (Unlabeled List Dated November 11, 1955). On this record, then these stolen Schieles may have been received on November 11, 1955; January 30, 1956; or February 7, 1956. <sup>67</sup>

f. Ultimately, in the absence of any independent corroboration of any of these conflicting records, it is difficult to accept any single document provided by Kornfeld as accurately supporting Kornfeld’s story of how and when he received these Schieles.

81. But doctoring the photocopy and hiding portions of the ledger were not the only discrepancies in Kornfeld’s story about his alleged February 1956 source for 20 Schieles. Kornfeld also altered the February 7, 1956, page by adding what he euphemistically called “annotations.”

a. When a photocopy of page 108 of the ledger was first introduced in the deposition, Kornfeld was clear that he made three such annotations:

*Q: Dr Kornfeld, can you tell us what this document is. So that the record is clear, it begins with the number 108 at the top of the column of figures on the left.*

*A: (Through Interpreter) This is a photocopy of our inventory, it is page 108, and it testifies to a*

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<sup>67</sup> The November 11, 1955, handwritten list offers one possible explanation for the obviously hastily created receipt of December 7, 1955, for 9,300 Swiss francs with the crude attempt at Mathilde Lukacs’s signature. *See* Exhibit 87 (receipt). Kornfeld found a document dated “11-11-55” that had the name “Schiele” on it all in the same hand. He then created a receipt to match it. But he failed to notice that the number and type of artworks on the November 11 handwritten list did not match his November 11 typed summary.

*purchase of 7 February 1956. It was paid in cash to the tune of 5,050 Swiss francs, and the seller was Lukacs. Above that, there are some annotations that were put to the document later on.*

*Q: Which are those?*

*A: (Through Interpreter) There are three instances, two towards the left and one to the right. There are three annotations.*

*Q: Just so we are clear on the record as to the annotations you are referring to, I believe there is a word and then there is the number 36762, et cetera, then 36228, et cetera, and to the right there is again the word and it is 36762, et cetera. Is that what you are referring to?*

*A: (Through Interpreter) Yes. It is my handwriting and it says "see as well" or "refer to."*

*Q: What is the significance of that?*

*A: (Through Interpreter) That you can find the purchases of Lukacs under the three references.*

*Id.* at pp. 41-42. In other words, Kornfeld made three additions to this page of the ledger after it was created. As will be seen in a moment, Kornfeld was again caught in his own web. Just two pages later in the deposition, "three" annotations changed:

*Q: The handwriting on this document which begins at page 21 of the exhibit, do you recognise that handwriting?*

*A: (Through Interpreter) Yes. It is my own handwriting.*

*Q: The name Lukacs which is on the document, was that put on at the same time as the description of the works?*

*A: (Through Interpreter) I cannot recall.*

*Q: Who wrote the number 108?*

*A: (Through Interpreter) That is the following page number. Each book has a page number.*

*Q: Preprinted?*

*A: (Through Interpreter) No. Handwritten.*

*Q: And did you write that?*

*A: Yes.*

*Q: And did you write 1956?*

*A: Yes.*

*Q: And did you write February 7?*

*A: Yes.*

*Q: Next to February 7 it says "Bar"?*

*A: "Cash."*

*Q: That is your handwriting too?*

*A: Yes.*

*Q: Did you put "Bar" there at the time that you made these other notations?*

*A: (Through Interpreter) It is the amount in cash according to the receipt that we have been looking at before. The first part referred to an amount of approximately 5,050 and the second refers to an amount of about 10,000 francs. The whole entry that you see on page 108 was established at the very same time except maybe the name Lukacs. I cannot recall if I put that down at the same time or not. And, of course, as I mentioned before, the three annotations on top were put to the paper later on.*

*Q: The word “Bar,” was that put on at the same time as the other notation?*

*A: (Through Interpreter) Yes.*

*Q: How about the amount 5,050, was that put down at the same time?*

*A: (Through Interpreter) I assume so.*

*Id.* at pp. 44-45. Now, it is four annotations. And that fourth is the name “*Lukacs*” added by Kornfeld. But when did he add the name?

b. Kornfeld had just testified, *id.* at pp. 34-35, that *Lukacs* did not pay until April 24, 1956. Yet here, ten pages later, Kornfeld claimed that “[t]he whole entry that you see on page 108 was established at the very same time except maybe the name *Lukacs*.” But the “whole entry” included an entry for how he was paid [“bar” cash] and how much [“5,050”]. Thus, if Mathilde *Lukacs* only paid on April 24, 1956—according to his receipt—then this ledger page cannot have been prepared on February 7, 1956 (or January 30, 1956). She had not been paid yet. Conversely, if Kornfeld was telling the truth about ledger page 108 being created on February 7, 1956, (or January 30), then he had to have been lying about when he added those additional annotations of “bar [cash]” and “5050” because that did not happen until April 24, 1956.

c. Regardless of which version one chooses to believe, Kornfeld added the name “*Lukacs*” at some unknown date. The lawyer continued:

*Q: And the name Lukacs in between the word “Bar” and the number 5050, you are not sure when that was put on?*

*A: (Through Interpreter) No.*

*Q: Do you have a specific recollection of writing Lukacs on this at a later date?*

*A: (Through Interpreter) Maybe it was in the course of research or precision that we added to the document because at the time a lot of things were added after the purchase to the document.*

*Q: If it was added later, is it something that was added in the last five years?*

*A: (Through Interpreter) I don't think so.*

*Q: Is it something that could have been added at the time that you sold the other, the later Lukacs works?*

*A: (Through Interpreter) Maybe with regard to this entry of 7 February 1956 it has to be seen in the context of the exhibition which was held in fall, in September 1956, and it's possible that the annotation was added to the document between [February] and fall, to make a more precise*

*annotation.*<sup>68</sup>

*Id.* pp. 46-47. In other words, Kornfeld admitted that he had no idea *when* he added the name “*Lukacs*”—a name that appears nowhere else on the page—other than to say he added it after the events that he claimed were recorded on that page. Again, the ledger had been in Kornfeld’s control since at least 1955; and it was only produced after Kornfeld had ample opportunity to alter them to fit his narrative. He also had incentive. He had been accused, however obliquely, of being a war profiteer by selling Nazi-looted art. Such facts can hardly inspire any confidence in the veracity or authenticity of the ledger pages Kornfeld produced.

82. The fourth alleged delivery of Grünbaum Schieles is, according to Kornfeld, reflected in the May 22, 1956, typed summary that Kornfeld prepared in 1998. For this delivery, as for the alleged February 1956 delivery, Kornfeld had also given the lawyers in 2007 a photocopy of the original ledger—pages 118-119—that Kornfeld claimed represented the May 22, 1956, delivery from Mathilde Lukacs. *See* Exhibit 90A (May 1956 Ledger Photocopy) and 90B (English).<sup>69</sup>

a. In both the typed summary and the photocopies of the ledger pages, Kornfeld recorded receiving 26 more Schiele artworks. As was the case for the February 1956 ledger, Kornfeld also produced—and the lawyers inspected—the original ledger pages at the 2007 deposition. Again, production and comparison to the photocopies exposed that the ledger pages themselves had been doctored after they had been originally prepared.

b. At the outset, and as with the earlier typed summaries, the typed summary

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<sup>68</sup> The transcript reads “September” not “February,” but the parties all agreed Kornfeld said “February.”

<sup>69</sup> An unredacted copy of the May 1956 ledger page is also attached. *See* Exhibit 91 (Unredacted Photocopy of May 1956 Ledger).



for the May 2, 1956, delivery of Schiele artworks—that Kornfeld claimed was an accurate summary of the May 2, 1956, ledger page—listed catalog numbers from Kornfeld’s September 1956 sale. Again, since the September 1956 catalog did not yet exist, this typed list Kornfeld provided in 1998 had to have been reverse engineered from the catalog and not copied from the ledger.

c. But at least the photocopies of pages 118-119, showed all six columns. The first column recorded 26 Schieles—comprising 17 watercolors, 6 pencil drawings, 2 oil paintings, and 1 etching—each artwork had a sequential inventory number from 36762 to 36787.<sup>70</sup> The second column had an “x” for some but not all the works—again, presumably indicating some type of inventory system. The third column had a brief description in German of each artwork. And columns four through six showed all three sale years, although 1955 is omitted. *See Exhibit 90A (May 1956 Ledger Photocopy).*

83. But as was the case with February’s page 108, May’s pages 118-119 showed signs of post-event doctoring. And, once again, it was the name “*Lukacs*” that was added by Kornfeld. The lawyers asked to see the original page 118—apparently, they did not inspect original page 119—and they were allowed to see it subject to the same oath as earlier:

*Q: So I am now going to direct your attention to the photocopy of page 118. It is on page 28 [it was page 29] of the exhibit and it is page 118 of the inventory book. Could we see the actual page of the inventory book? Dr Bratschi, is that OK?*

*A: (Through Interpreter) I have page 118.*

*Q: Great. Could we see it?*

*A: Yes, of course.*

*Q: We will see it subject to the same agreement as before?*

*A: (by Dowd) Yes.*

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<sup>70</sup> Inventory number 36787 appears on page 119.

See Exhibit 74 (Deposition) at pp. 57-58. Then the lawyers addressed the “annotations.”

a. But the annotations are markedly different this time. First, there was no reference at the top of the page to other pages—remember that the February page had three references in pencil to other pages. Second, the year headings for 1956 and 1957 were added. Third, the words “*Bar/Check*” [cash/check] were written in pen. Finally, and most significantly, there were three more entries. In pencil. The only pencil entries on the entire page. How and when they were entered warrants close examination:

*Q: I would also like to note that next to the words “Bar” and “check” there are pencil notations. Can you tell me what those are, Dr Kornfeld?*

*A: (Through Interpreter) The amount is 10,050 Swiss francs.*

*Q: And next to that can you tell me what it says?*

*A: (Through Interpreter) “Purchase Lukacs.”*

*Q: What is your recollection as to when the number 10,050 was put on the page?*

*A: (Through Interpreter) Most certainly at that very moment.*

*Q: If it was at the same time, why did you write it in pencil?*

*A (Through Interpreter) I don't have any recollection of that.*

*Id.* at 60-61. Bakalar’s lawyer attempted—unsuccessfully—to throw Kornfeld a lifeline:

*Q: Let me ask you to suggest, is it possible that it was your custom to write the amounts in pencil and write the descriptions in ink?*

*A: (Through Interpreter) No.*

*Id.* It was about to get worse:

*Q: And the notation “purchase Lukacs” when did that get put on the page?*

*A: (Through Interpreter) Most certainly at a later stage.*

*Q: Can you give me an estimate of when it was put on?*

*A: (Through Interpreter) No, I cannot.*

*Q: Was it within a few years or could it have been more than ten years?*

*A: (Through Interpreter) I really don't know.*

*Q: Whose handwriting is it on the page in ink?*

*A: (Through Interpreter) Everything that you referred to is my handwriting.*

*Q: Including the numbers?*

*A: Including the numbers, including the purchase price and also including “purchase Lukacs.”*

*Id.* at pp. 62. In five sentences, then, Kornfeld had just admitted that he added to an alleged

1956 business record the name “*Lukas*” in pencil at some later date that he could not even estimate. In other words, Kornfeld had just admitted that he doctored page 118, and that he could have done so more than ten years after the events it purports to record.

b. Even worse, Kornfeld admitted doctoring the very page where he recorded having received *Russian War Prisoner*. Under number 36765, Kornfeld described it in the ledger as “*Gefangener Kosak, Aqu. Zeichn [Captured Cossack, watercolor. pencil];*” he published it in his catalog as number 39; and, as has already been seen, he sold it to Otto Kallir.<sup>71</sup>

84. Based on all the above, and given the state of the record, there are only certain facts that can be known with any confidence about Kornfeld’s ledgers. But those facts are incontrovertible and sufficient to completely discredit both Kornfeld and the ledgers.

85. In sum, those facts concerning Kornfeld and the ledgers are as follows:

a. In 1998, Thomas Buomberger wrote an exposé of the post-war Swiss art market accusing many auction houses, galleries, and dealers, such as Eberhard Kornfeld, of war-profiteering;

b. Following the exposé, in 1998, Kornfeld had his lawyer Peter Bratschi sent Buomberger a series of documents Kornfeld had created to protest his innocence;

c. Almost ten years later, on May 25, 2007, Kornfeld was deposed in connection with a civil case in the Southern District of New York concerning Kornfeld’s sale of a Schiele artwork that was claimed to have been stolen from Fritz Grünbaum by the Nazis in 1938;

d. At the deposition, Kornfeld produced for the first time ever, what he claimed

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<sup>71</sup> Cossack is a term for a nomadic steppe people from southern Russia and Ukraine famed for their ruthless military prowess.

were original ledger pages dating to February and May of 1956;

e. To date, Kornfeld has never produced any original ledger pages from 1955;

f. The ledger itself had been under Kornfeld's dominion and control since at least 1955;

g. Both ledger pages Kornfeld claimed were from 1956 showed unmistakable signs of having been altered after the events of 1956 that they purported to record;

h. The name "*Lukacs*" was not entered anywhere on those ledger pages at the time of the events those pages purported to record;

i. Kornfeld admitted one of the "annotations" he had made to both ledger pages in pencil after those ledger pages were created was the name "*Lukacs*;" and

j. Kornfeld himself added the name "*Lukacs*" in pencil at some unknown point in time in the 51 years between 1956 and 2007.

86. On this record and Kornfeld's demonstrated willingness to alter business records, then, any attempt to claim that Kornfeld received *Russian War Prisoner* from Mathilde Lukacs must be rejected.

### **Kallir Brings *Russian War Prisoner* to New York**

87. Kallir's reunion with these drawings that he had last seen in Grünbaum's possession was short lived. He received the Schieles in New York on October 23, 1956. *See* Exhibit 92 (October 23, 1956, Shipping Invoices). He immediately began planning a Schiele exhibition. Running from January to February of 1957 at his Galerie St. Etienne, the show featured *Russian War Prisoner* as number 25 in his sale catalog. *See* Exhibit 93 (1957 St. Etienne Catalog). At that sale, Kallir sold *Russian War Prisoner* to the Connecticut-based collector David Kimball

who sold it to Louisiana-based gallery-owner Leo Askew who sold it to Chicago-based gallery B.C. Holland who, on July 28, 1966, sold it to AIC. *See* Exhibit 94 (B.C. Holland Invoice). *Russian War Prisoner* has not been on public view at the AIC since 2011.

### **Mathilde Lukacs**

88. As just seen, in 1998, when questions arose about the source of Grünbaum's 70 Schieles in Kornfeld's 1955 and 1956 sales, Kornfeld publicly stated, for the first time, that he had acquired all those works from Elisabeth Grünbaum's sister Mathilde Lukacs. But as detailed previously in the Mathilde and Sigmund Lukacs section of this motion, after the Nazi invasion of Austria in 1938, Mathilde and her husband Sigmund successfully fled Austria for Belgium, taking all their possessions with them. This included their small art collection. The path that the Lukacs couple and their property took out of Austria is well documented and warrants critical examination here. That is because a comparison of their (and their artworks') timeline with the Grünbaums' (and their artworks') timeline will prove that—unless the concept of Newtonian space and time is wrong—Sigmund and Mathilde could not possibly have come into possession of Grünbaum's Schieles.

a. On June 23, 1938, the Lukacs couple deposited their property at Schenker with a detailed itemized list of all the household and personal goods they intended to export. *See* Exhibit 95A (Lukacs Moving Certificate) and 95B (English). Under "*pictures and paintings*," they listed—without titles or artist names—"23 diverse framed pictures" as part of their household

inventory.<sup>72</sup> No other artworks were listed.

b. On June 27, 1938, Sigmund Lukacs applied for an export permit from the Central Office for Landmark Preservation for the goods he and Mathilde had previously deposited in Schenker. *See* Exhibit 96A (Lukacs' Export Permit) and 96B (English). This application listed 25 artworks with more specificity than did their Schenker inventory. In this more detailed application, they listed 11 oil paintings, 3 watercolor paintings, 3 drawings, and 8 graphic art pieces. Presumably, only 23 of these 25 artworks were framed—hence, the discrepancy with the prior list of “23 diverse framed pictures.” Again, these objects were listed without titles or artist names. Apart from these 25 artworks, there were no others listed.

c. On August 5, 1938, the Lukacs's export permit application for the 25 unnamed artworks was approved and stamped by the Customs Office in Vienna. *Id.*

d. On August 12, 1938, Mathilde and Sigmund left Vienna, Austria via train to Antwerp, Belgium.

e. On August 14, 1938, the export application for their possessions—the ones that had been stored at Schenker since June 23, 1938—was stamped a second time by the Austrian Customs Office at Passau, Germany, when the goods crossed the Austrian border into Germany. *Id.* Notably, the Lukacs couple's property application received two customs stamps: one when the application was approved and a second when the goods crossed the border out of Austria. As will be seen, Fritz and Elisabeth Grünbaum's property application

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<sup>72</sup> At the end of their list of household and personal goods provided to Schenker for export, Mathilde and Sigmund “hereby declare under oath that the items stated in this list were in my possession before January 1, 1933. Acquired after January 1, 1933, were: Radio, 2 spherical floor lamps, 1 bath water heater, 1 space heater, 1 washing machine, 1 sink, clothes as needed.” In other words, all the artworks Mathilde and Sigmund listed as their property for Schenker had been owned by them for more than 5 years.

only received one stamp (approval). But never received a second stamp (export) because Fritz's artworks never left Austria.

89. The path that both the Grünbaum's and their property took inside Austria is also well documented and has been thoroughly covered previously. It will be very briefly summarized here in chronological order with the relevant dates and actions. This summary will prove that neither Sigmund nor Mathilde Lukacs could possibly have taken possession of Fritz's Schieles before the war. The facts as known and proven:

a. In 1928, Fritz Grünbaum owned *Russian War Prisoner*, having publicly exhibited it in Vienna in both 1925 and 1928 after the drawing was selected from his apartment by Otto Kallir.

b. On March 22, 1938, Fritz Grünbaum was arrested by Nazis in Vienna and deported to the Dachau concentration camp. Fritz never saw freedom again and was murdered in Dachau on January 14, 1941.

c. On June 23, 1938, the Lukacs couple deposited all their property and artworks at Nazi-controlled Schenker. See Exhibit 95A (Lukacs Moving Certificate) and 95B (English). They could not have had access to their property again until they arrived in Belgium in August 1938.

d. On July 20, 1938, Kieslinger dated his appraisal of the Schieles he had inventoried in Grünbaum's apartment. He listed 81 Schieles, of which 55 were watercolors—including *Russian War Prisoner*—and 20 were pencil drawings. See Exhibit 53A (Kieslinger Inventory) and 53B (English). By this time, the Lukacs's 25 artworks had been sealed in storage for four weeks and Grünbaum's Schieles were still in their apartment.

e. On August 12, 1938, Mathilde and Sigmund Lukacs left Vienna via train to Antwerp. Two days later, their property that had been sealed at Schenker since June 23, 1938, crossed the Austrian border. Although they survived the war (and internment in Belgium), they did not return to Vienna until years after the war and never saw the Grünbaums again.

f. By September 8, 1938, Fritz Grünbaum's entire collection—including *Russian War Prisoner*—was stored in the Nazi-controlled Schenker warehouse in Vienna. By this time, Sigmund and Mathilde had left Austria 27 days earlier and their property had left Vienna 25 days earlier. *Russian War Prisoner*—and all of Fritz's other artworks—were still in Vienna.

g. After Grünbaum's 5 oil paintings, 1 etching, and “*large hand drawings by Schiele, 55 sheets with colors*” and “*20 pencil drawings,*” were taken by the Nazis in September 1938, they were never seen again until 70 of them suddenly appeared in the possession of Kornfeld for his 1955 and 1956 auctions.

### **The Letters**

90. Kornfeld likely did not realize the overwhelming evidence precluding Mathilde Lukacs from ever legally possessing any of Fritz Grünbaum's Schieles when he hastily identified her as his source. Rather, it is likely to the verge of certainty that neither Kornfeld, nor Kallir, nor anyone else connected with these sales bothered to search pre-war records to determine lawful ownership. On the record before this Court, it is equally certain Kornfeld would not have cared. He simply would have reverse engineered a different source.

91. Thus, and as has been seen, Kornfeld began claiming in 1998 that he received all 70 Schieles from Mathilde Lukacs. As proof, in addition to the doctored ledger pages that have already been addressed, Kornfeld also produced at his 2007 deposition a set of 42 letters,



telegrams, and other correspondence that he claimed were exchanged between himself and Mathilde Lukacs from May 3, 1952, until April 24, 1956. *See* Exhibit 97 (Kornfeld Lukacs Correspondence provided at 2007 Deposition). A careful reading of the letters indicates that at least 9 are missing. Thus, it appears that there were originally 51 letters, telegrams, and cards between the two—assuming they are all authentic.

a. There has been significant controversy over the years concerning the authenticity of some or all these letters. For example, the letters that Kornfeld claims came from Mathilde Lukacs appear to have been written by at least two individuals. And in one letter, Mathilde's name is misspelled. At pp. 74-75 of Kornfeld's deposition, the following exchange takes place concerning the letters:

*Q: Dr Kornfeld, could I direct your attention to page 70, which looks like the copy of a handwritten letter, and it is dated Brussels, it looks like May 24, 1952. perhaps. That is the best I can make out of it. Whose handwriting is this, if you know?*

*A: (Through Interpreter) I do not know whose handwriting this is. It is not Mathilde Lukacs' handwriting.*

*Q: How about the signature; is that her signature?*

*A: (Through Interpreter) I assume that the signature is not Mathilde Lukacs, either. If it is, her first name is misspelt.*

b. This motion will not attempt to resolve these inconsistencies. That is not only because without the original letters—all still in Galerie Kornfeld's possession—the truth appears to have died with Mathilde Lukacs and Eberhard Kornfeld. But it is primarily because the resolution of that decades-old controversy is not necessary to the resolution of this case. It is not necessary because *Russian War Prisoner* is not described in any of the correspondence between Kornfeld and Lukacs. Thus, whether one concludes that these letters—like everything else Kornfeld produced concerning this case—had been doctored and fabricated, or whether one concludes that these letters are authentic, is immaterial. There is no

evidence—in these letters or elsewhere—that Mathilde Lukacs ever possessed, let alone legally owned, *Russian War Prisoner*.

92. This section will nonetheless briefly address the letters. Not surprisingly, it is the People's position that these letters—like the power of attorney and Kornfeld ledgers—may be rejected as not probative of any matter of relevance here—even if authentic. To begin, according to Kornfeld, Mathilde first wrote Kornfeld's gallery after seeing “*an ad in the newspaper*” in 1952. And Mathilde's first letter of May 3, 1952, does ask for an upcoming catalog.

93. From May 3, 1952, to March 24, 1954, they appear to have corresponded at least 23 times with letters, receipts, and lists of works. *See* Exhibit 98A (Letters Pre-March 1954) and 98B (English). Although Kornfeld only produced 22 separate documents totaling 23 pages, a reading of the letters indicates at least one page is missing. But from what is produced, it appears that Mathilde offered about two dozen artworks. This number is consistent with the 25 works she had sealed in storage and approved for export by the Customs Office in Vienna on August 5, 1938—notably while Fritz's collection remained at his apartment.

a. On May 29, 1952—which was Mathilde's first offer—she named Cezanne, Rembrandt, Degas, Rodin, Harpignies, Géricault, Constable, Kollwitz, and three illegible artist names in her letter. No Schieles are listed. *See* Exhibit 99A (May 29, 1952, letter) and 99B (English). In his 1998 letter to Bratschi, Kornfeld claimed that on August 15, 1952, Mathilde “*personally delivered material for the 1952 fall auction sale.*” *See* Exhibit 77A (March 30, 1998, Kornfeld Letter to Bratschi) and 77B (English). But there is no record that Kornfeld accepted any of these on consignment. In fact, in a letter of September 3, 1952, in which Kornfeld

wrote to Mathilde that he regretted missing her during her “*recent visit*,” he only mentioned her “*special interest*” in certain artworks, e.g., Chagall and Goya. *See* Exhibit 100A (September 3, 1952, letter) and 100B (English). In 1952, there was no mention of Mathilde having delivered any material for sale. Nor is there any ledger page, receipt, or list of material that she allegedly delivered. In other words, based on the record, it appears Mathilde had visited Bern in August 1952 as a buyer, not a seller.

b. On May 11, 1953, Mathilde offered 20 paintings, drawing, and etchings—although many appear to have been the same as she had offered to Kornfeld in May 1952. Again, she named them all—Rembrandt, Van Dyke, Lucas van Leyden, and others. Once again, however, no Schieles. And once again, there is no record Kornfeld accepting any of these works on consignment. *See* Exhibit 101A (May 11, 1953, letter) and 101B (English).

c. Finally, for Kornfeld’s “*1953 Fall Auction Sale*,” Mathilde appears to have consigned artworks. Kornfeld accepted a total of 23 watercolors, drawings, etchings, and sketches from Mathilde. *See* Exhibit 102A (Undated Lukacs Property for 1953 Fall Auction Sale) and 102B (English). The list contains a description of each artwork and the respective artist. These include Corot, Kollwitz, Chagall, Corinth, Duerer, and Klimt. All but two Duerer works—an etching and a woodcut—sold. Once again, however, there were no Schieles among the artworks ever listed by Mathilde.

d. After March 24, 1954, there was no more documented contact between Mathilde and Kornfeld for almost a year and a half. Thus, in the first three years of their business relationship, the only clearly documented consignment to Kornfeld of artworks received from Mathilde are the 23 non-Schieles that were listed in the 1953 fall auction sale.

Of course, we can never know at this point how Mathilde acquired those 23 artworks. But this number dovetails nicely with the 25 unnamed artworks that she and Sigmund had been authorized to export from Vienna on August 5, 1938.

94. The correspondence between the two appears to have resumed on August 3, 1955, after a hiatus of more than 16 months. From August 3, 1955, to October 25, 1957, they appear to have corresponded at least 28 times with letters, receipts, and lists of works. Although Kornfeld only produced 21 separate documents totaling 23 pages, a reading of the letters indicates at least 7 are missing. *See* Exhibit 103A (Letters Post-August 1955) and 103B (English). But from what is produced—again assuming the letters are authentic—it appears that Mathilde mentions Schiele in five letters and mentions specific works by name only in two lists allegedly sent in January 1956. None of these letters or lists mentions *Russian War Prisoner*. It is, therefore, worth repeating that there is no documentary evidence—in the letters or elsewhere—indicating Mathilde Lukacs ever possessed *Russian War Prisoner*.<sup>73</sup>

95. One other aspect to their correspondence bears noting. Just as Otto Kallir appears from the documented record never to have enquired of Kornfeld how he came into possession of Fritz Grünbaum's Schieles, just so it appears from the documented record that Eberhard Kornfeld never inquired how Mathilde could have come into possession of Fritz Grünbaum's Schieles. The Lukacs-Kornfeld correspondence spanned more than five years, while the Kallir-Kornfeld spanned at least a year. Yet, in all that time, not one of them ever appears to have been the least bit interested in how their predecessor came into possession of these

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<sup>73</sup> There is no evidence Mathilde Lukacs ever legally owned a single Schiele that had been owned by Fritz Grünbaum before the war. But her legal ownership of any other artwork is not a question before this Court.

artworks in post-Nazi Europe. They all shared two common features: they asked no questions about legality or ownership history, and they came to quick agreement about the price.

96. The term “conspiracy of silence” has long been used to describe group behavior where that group, by unspoken agreement, never discusses or even acknowledges a given subject. Over the years, a “conspiracy of silence” has been identified in group behavioral dynamics ranging from domestic violence and child sex abuse to corruption and censorship. As the facts of this case have proven—and exposed—it aptly describes how Nazi-looted art pried from the hands of their murdered owners slipped into New York galleries. Not unlike the banality of evil, a conspiracy of silence relies on the willing participation of those who eschew the rule of law in favor of myopic, self-interested defenses. And in this fashion, it reflects precisely how *Russian War Prisoner* came to reside at the Art Institute of Chicago.

### **Legal Framework**

97. Provided this Office possesses the requisite jurisdiction and a founded basis to believe there is a violation of New York State criminal law, the ATU investigates the trade in stolen antiquities, artifacts, and other artworks and prosecutes the offenders. Within this framework, this motion will set forth the legal authority for the following seven legal propositions necessary to the just resolution of this case:

- a. *First*, *Russian War Prisoner* constitutes stolen property under New York law.
- b. *Second*, AIC’s possession and display of the stolen *Russian War Prisoner* is the culmination of a multinational conspiracy that has been in continuous operation since at least the 1950s and involves numerous conspirators and many distinct overt and criminal acts.
- c. *Third*, New York County has jurisdiction over the Kornfeld-Kallir Conspiracy

and its co-conspirators;

d. *Fourth*, each of the co-conspirators “*knowingly possess[ed] stolen property*,” —in this case, *Russian War Prisoner*—in violation of Penal Law § 165.54 *et. seq.*

e. *Fifth*, even if AIC claims their possession of *Russian War Prisoner* was not knowing, they are presumed to have known *Russian War Prisoner* was stolen for their failure engage in the required “*reasonable inquiry*.”<sup>74</sup>

f. *Sixth*, *Russian War Prisoner* can be seized and returned to the Grünbaum Heirs under Criminal Procedure Law § 690.10 and Penal Law § 450.10 regardless of whether this Court finds that an actionable criminal charge exists against AIC or any member of the Kornfeld-Kallir Conspiracy; and

g. Finally, although not bound by international law, the ATU’s ongoing investigation into Nazi-looted artwork is consistent with agreements and declarations concerning the law of war and its effect on cultural property.

### ***Russian War Prisoner* Constitutes Stolen Property Under New York Law**

98. Under New York law, any object (artwork or otherwise) constitutes stolen property whenever anyone “*wrongfully takes, obtains, or withholds such property from an owner thereof*.” Penal Law § 155.05(1). I respectfully submit that this motion has painstakingly laid out the facts from which it is clear the Nazis wrongfully took, obtained, and withheld *Russian War Prisoner* from its lawful owner, Fritz Grünbaum, before they murdered him in Dachau. Although those facts will not be repeated, the following five sets of facts are dispositive on the question of whether the Nazis stole *Russian War Prisoner* from Fritz Grünbaum.

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<sup>74</sup> See N.Y. Penal L. § 165.55.

a. Fritz Grünbaum owned *Russian War Prisoner* prior to World War II. He publicly exhibited *Russian War Prisoner* among his other Schieles in Vienna in both 1925 and 1928. *Russian War Prisoner* was among the artworks Otto Kallir selected from Fritz's apartment in 1928 for Kallir's exhibition.

b. There is no evidence between the 1928 exhibition and the Nazi annexation of Austria in March 1938 that Fritz Grünbaum sold, transferred, or otherwise freely divested himself of *Russian War Prisoner*.

c. Fritz was imprisoned in Dachau concentration camp in March 1938 shortly after the Nazi annexation of Austria. He remained incarcerated until he was murdered in Dachau concentration camp in January 1941.

d. As part of Hitler's October 1936 Four-Year Plan to seize and Aryanize all Jewish-held property, the Reich passed its April 1938 *Regulation on the Declaration of Assets of Jews*. Pursuant to this Decree, Franz Kieslinger inventoried Fritz's collection—including *Russian War Prisoner*—on behalf of the Nazi government in Fritz's apartment and prepared an inventory and appraisal on July 20, 1938. Under the Decree, all Jewish property owners were required to report “*every change of said individual's total property*” after the date of the Decree. Once the Regulation was passed and Kieslinger inventoried Fritz's artworks, Fritz no longer exercised “*dominion and control*” over what was previously his—the Nazi government did.

e. Seven weeks later, by September 8, 1938, Fritz Grünbaum's entire collection—including *Russian War Prisoner*—was stolen by Nazi authorities and stored in the Nazi-controlled Schenker warehouse in Vienna. The theft was now complete. That this theft was committed by a government acting under the color of law during war time—in this case,

the Nazi government—is no defense to the theft. *See, e.g., Matter of Flamenbaum*, 22 N.Y.3d 962, 966 (2013) (“*we decline to adopt any doctrine that would establish good title based upon the looting and removal of cultural objects during wartime by a conquering military force*”).

99. On these facts alone, it is proven that the Nazis “*wrongfully t[ook], obtain[ed], or with[eld] such property from an owner thereof.*” Penal Law § 155.05(1).

a. The Nazis wrongfully took *Russian War Prisoner* by September 8, 1938, by expropriating Fritz Grünbaum’s entire collection and moving it from his apartment to the Nazi-controlled Schenker warehouse in Vienna.

b. The Nazis wrongfully obtained *Russian War Prisoner* by utilizing the 1938 *Regulation on the Declaration of Assets of Jews* as a predicate for expropriating Fritz Grünbaum’s entire collection, thereby “*looting and remov[ing]*” cultural objects during wartime. *Matter of Flamenbaum*, 22 N.Y.3d 962, 966 (2013).

c. The Nazis wrongfully withheld *Russian War Prisoner* by denying Fritz Grünbaum and his wife access to their property as they were both imprisoned, and ultimately murdered, in concentration camps.

100. Thus, on the record before this Court, Fritz Grünbaum was the lawful owner of the *Russian War Prisoner* prior to September 8, 1938. And regardless of what happened after September 8, 1938, Fritz Grünbaum did not cease to be the lawful owner of *Russian War Prisoner*. That is because an “owner” of property is “*any person who has a right to possession thereof superior to that of the taker, obtainer, or withholder.*” Penal Law § 155.00(5). And this right is sacrosanct: “*New York case law has long protected the right of the owner whose property has been stolen to recover that property, even if it’s in the possession of a good-faith purchaser for value.*” *Solomon R. Guggenheim*



*Found. v. Lubell*, 77 N.Y.2d 311, 317 (1991). See also *Bakalar v. Vavra*, 619 F.3d 136, 140 (2d Cir. 2010), *aff'd*, 500 F. Appx. 6 (2d Cir. 2012) (“*in New York, a thief cannot pass good title*”).

a. In other words, a bedrock principle of our law is that a thief can never lawfully acquire good title in New York or pass on good title to anyone else. This applies whether the property in question is embezzled funds, stolen cars, stolen jewelry, looted antiquities, or stolen artwork. See generally *Candela v Port Motors*, 208 A.D. 2d 486 (2d Dept 1994) (holding a thief may never pass good title for a stolen car); *Richard Buonomo Ltd. v Geibel*, 2020 NY Slip Op 328817 (Sup Ct, NY Cnty 2020) (holding a thief may never pass good title for a stolen diamond). To hold otherwise is to reward the thief for successfully covering up (laundering) the theft and its proceeds. See *Angiolillo v Christie's, Inc.*, 64 Misc. 3d 500, 519 (Sup Ct, NY Cnty 2019) (“*[t]he defendants’ attempt to immunize an otherwise unlawful conversion by, essentially, passing the allegedly converted item through Switzerland is inappropriate*”).

b. Thus, although a *true* good-faith purchaser may lack the necessary intent to be criminally liable for the possession of the stolen property, a good-faith purchase does not render a stolen artwork legal. Once an artwork is proven to have been stolen, no matter how many times it has changed hands, it can be legally seized and returned to the legal owner.<sup>75</sup>

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<sup>75</sup> The facts of *Depetris v. Warnock*, 2000 N.Y. Misc. LEXIS 428 (Just. Ct. Mar. 21, 2000) are particularly illustrative here. Warnock’s watch was stolen and sold to a pawnbroker who resold it to Depetris, a collector of fine watches. *Id.* at \*1. After the original thief was convicted, the Assistant District Attorney had the watch returned to the original owner (Warnock); but the collector (Depetris) sued to have it back, claiming he had acquired title under the Uniform Commercial Code. The court held that “[*t*]he first transaction was the theft of the watch and obviously no title passed to the thief.” *Id.* at \*2. Therefore, “[*w*]hen the thief sold the watch to the pawnbroker, the thief did not have title to sell. The pawnbroker did not acquire title.” *Id.* Here, when Otto Kallir of Galerie St. Etienne acquired *Russian War Prisoner* from Eberhard Kornfeld, neither Kallir nor Kornfeld ever had lawful title to the piece because *Russian War Prisoner* was stolen. And when AIC purchased the drawing, therefore, B.C. Holland Gallery had no title to pass to AIC because “*obviously no title passed to the thief.*” *Id.*; See also *Candela v. Port Motors*, 208 A.D.2d 486, 487 (2d Dept. 1994) (neither a thief, nor a successor of a thief, can convey good title to a subsequent purchaser).

c. Here, the theft was complete in 1938 in Austria. Even when both Kornfeld and Kallir hid its illegal past, it remained “*stolen*” while in Switzerland. When it arrived in New York in 1956, therefore, it constituted “*stolen property*.” And even though Kallir sold it here in New York, again without revealing its illegal past, it remained “*stolen property*.” As will be seen in a subsequent section, while the prosecution of an individual may be barred by the statute of limitations, that statute of limitations only applies to people, not things. Statutes of limitations do not miraculously cleanse stolen property of its taint. No passage of time does. “*Once stolen, always stolen*” is not just a catchy phrase, but a bedrock of our criminal law.

101. Thus, *Russian War Prisoner* did not stop being “*stolen property*” simply because Kieslinger, Rochlitzer, Kornfeld, and Kallir are dead. It is no defense to criminal possession of stolen property that “*the person who stole the property has not been convicted, apprehended, or identified*.” Penal Law § 165.60(1). In other words, even if—as here—the original thieves were to die before being apprehended or never were identified in the first place, the property would still be “*stolen*.” To argue otherwise would, again, be to reward good thieves. They may have evaded capture during their lifetimes, but the property they stole remains stolen.

102. Nor is it a defense to the crime of possession of stolen property that the theft of “*the property did not occur in this State*.” Penal Law § 165.60(3). Thus, it is irrelevant whether there were, are, or ever will be any criminal charges in New York concerning the *theft* of the stolen property to properly 1) investigate whether property has been stolen; 2) seize that property if it was stolen; and 2) prosecute any offenders for their complicity in any crimes involving the possession of that property. To argue otherwise would be to reward traffickers who steal the property in one jurisdiction and sell it in another.

103. But just because property constitutes stolen property does not mean New York County authorities may seize that property after it has left the jurisdiction. The circumstances under which this Office may seize such property and prosecute criminally culpable offenders will be addressed in detail. But to preview the unsurprising answer, provided New York County has jurisdiction over a crime connected to the property—whether that crime is theft, criminal possession, or a conspiracy to commit either—and there is probable cause that the property is stolen, prosecutorial action may proceed. That is true even when the property or offender has left New York. The law does not reward flight—of people or proceeds.

### *The Kornfeld-Kallir Conspiracy*

#### *Objectives*

104. As has been demonstrated in detail, AIC's possession and display of the stolen *Russian War Prisoner* is the culmination of a multinational conspiracy that has been in continuous operation since at least the 1950's and involves numerous conspirators and many dozens of distinct overt and criminal acts. And each conspirator played a vital role. It was the Nazis who first stole Fritz Grünbaum's Schiele collection, but it was Eberhard Kornfeld and Otto Kallir who sanitized and laundered the drawings so effectively that they could be displayed in well-heeled American museums and collections. And it was Kornfeld's supply of Schieles that fed Kallir's desire to make a name for his gallery in the United States by establishing a profitable market for Austrian Expressionist Art—his specialty—in his newly adopted country.

105. The roles are thus self-evident. But to fully understand the objectives of the conspiracy, a key detail of the art market must be appreciated. For an artwork to have real

and lasting value, it must be openly displayable and eventually salable—which, in turn, requires that the artwork have at least the veneer of having been lawfully obtained.<sup>76</sup> The goal of most art-trafficking conspiracies, therefore, is not simply to obtain a work of art. A necessary concomitant must also be to ensure that the stolen artwork's true owner remains forever concealed. And that takes deliberate action—as was on full display here.

a. Every criminal conspiracy attempts to operate in the shadows. But art-trafficking conspiracies in general—and the Kornfeld-Kallir Conspiracy in particular—are different from other trafficking conspiracies. And it is this difference that proves that this Kornfeld-Kallir Conspiracy is still ongoing and, therefore, not time-barred from prosecution.

b. In most conspiracies, the proceeds of the crime—guns, drugs, embezzled funds—are concealed. Thus, a conspiracy to distribute narcotics might end when the narcotics have been sold; a conspiracy to murder a person might end at the time the murder is carried out (or the murder weapon is disposed of). But in art-trafficking conspiracies such as this one, the proceeds of the crime, i.e., the looted artwork, must be hidden in plain sight. Indeed, it is the display of the artwork—ideally in a prominent museum—that most effectively increases its value. That is one reason so many high-end collectors loan their pieces to prominent museums for display—usually accompanied by a conspicuously displayed object label lavishly extolling the selfless largesse of the donor.<sup>77</sup> Just as a celebrity donning a particular article of

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<sup>76</sup> This is not to suggest that all museums, institutions, and collectors place a value on whether on artwork or antiquity was lawfully obtained. Indeed, the ATU's very existence was made necessary because so many museums, institutions, and collectors simply did not care. And history has shown that some have even boasted of that indifference.

<sup>77</sup> There are other reasons of benefit to the owner, such as tax deductions and self-aggrandizement. But also, refreshingly, if occasionally, altruistic reasons such as wanting to promote an appreciation for the arts in their community or to enhance the collection of a particularly favored museum or institution.

clothing helps inflate the value of that clothing, so too does the exhibition of an artwork at a museum—the more prominent, the better—improve the value of the owner’s next sale of that artwork. In other words, bolstering the legitimacy of an artwork is precisely what gives it value in the art market. The moment the veil is lifted, the artwork is exposed as stolen. Whoever is left holding the stolen artwork once it has been exposed is now holding a toxic, worthless asset.<sup>78</sup>

106. Thus, a conspiracy to traffic and distribute art is, by definition, ongoing as long as the art that is being trafficked is still being displayed and sold at prices that are only possible if the artwork is legal. That is exactly the case here.

a. Last year, this Office seized nine other Schiele drawings—six from prominent art museums and three from private collectors—all had been sold by Eberhard Kornfeld, six of them going through Otto Kallir, including *Russian War Prisoner*.<sup>79</sup> Although these drawings are all relatively fragile and therefore cannot be permanently exhibited, the museums—AIC included—advertised their possession of them on their websites to attract visitors, thus serving the reputational and pecuniary interests of the museum and its board. And those pecuniary interests are staggering.

b. In 1956, Kallir bought 20 Schieles from Kornfeld for a total of 13,270 Swiss

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<sup>78</sup> That phenomenon was recently seen in this investigation. Another of Egon Schiele’s drawings that belonged to Fritz Grünbaum, *Sitzender weiblicher Akt von vorn* (Seated Nude Woman, Front View), was recently consigned to Sotheby’s auction house in London. In April 2023, after learning of the Grünbaum heirs’ claim to the drawing, a representative from Sotheby’s contacted counsel for the Grünbaum heirs. Members of this investigation also contacted Sotheby’s London to investigate the artwork’s connection to the conspiracy proven here. Unfortunately, since both Sotheby’s London and the consignor—as well as the artwork itself—lie outside the United States, we have not been able to proceed. Nonetheless, the drawing remains unsold.

<sup>79</sup> A tenth drawing was also returned to the Grünbaum heirs by a private collector without having first been seized by this Office.

francs—roughly the equivalent of \$3,093 according to Kallir’s own calculations at the time. *See* Exhibit 73 (September 18, 1956, Kallir invoice). In 2023, after this Office returned the seven stolen Schieles to the heirs of Fritz Grünbaum, the heirs sold six of them at auction for a total of \$19.8 million—including \$10.99 million for *Ich Liebe Gegensätze*—to finance their charitable organization, the Grünbaum Fischer Foundation, which supports scholarships for underrepresented performing artists.<sup>80</sup> *See* Exhibit 104 (2023 Christie’s Auction Results). In other words, just 6 of the 20 stolen Schieles that Kornfeld sold Kallir in 1956 sold at a return of investment of 640,000%.<sup>81</sup> Even factoring in inflation, the Kornfeld-Kallir Conspiracy has proven remarkably profitable. And as long as Grünbaum’s stolen Schieles remain on the market, the conspiracy is still ongoing.

### ***Modus Operandi***

107. The evidence of this conspiracy, like the conspiracy itself, is vast. And the details of how it operated have already been set forth in this motion at length. Those facts are ever-so briefly summarized here for the purpose of establishing they are consistent with the crime of Conspiracy in the Fourth Degree: “*with intent that conduct constituting [Criminal Possession of Stolen Property in the First Degree] be performed, [Otto Kallir and Eberhard Kornfeld] agree[d] with one or more persons to engage in or cause the performance of such conduct.*” Penal Law § 105.10.

a. In the 1920’s and 1930’s, Otto Kallir and Fritz Grünbaum both lived in Vienna, Austria. Grünbaum was a well-known art collector who owned many works from

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<sup>80</sup> The seventh Schiele drawing returned to the heirs in 2023 was sold in a private sale prior to the public auction.

<sup>81</sup> This calculation was derived using the generally accepted return on investment formula of (Return-Investment)/Investment. Thus, \$19.8 million minus \$3093, divided by \$3093, equals 6,400 or 640,000%.

Austrian expressionists such as Egon Schiele. Kallir (then Nirenstein) worked for several years at the Galerie Würthle before leaving to establish his own Neue Galerie that focused exclusively on Austrian expressionist artists. On his journey to becoming the foremost expert on the works of Egon Schiele, Kallir mounted an exhibition in 1928 featuring many of Schiele's works—Kallir would have previously seen Grünbaum's Schieles in the Galerie Würthle in its 1925 exhibition and knew, therefore, where to look for Schieles for his own exhibition. Thus, while preparing for the 1928 exhibition, Kallir contacted Grünbaum directly to request that Grünbaum lend works from his collection to Kallir's exhibition. Kallir then personally visited Grünbaum's apartment and selected the works he wanted to borrow and exhibit in 1928, including *Russian War Prisoner*.

b. After Hitler came to power in 1933 and annexed Austria in 1938, personal property of value was systematically stripped away from Jewish residents within the Reich and often placed within the custody of Nazi-controlled shipping companies such as Schenker. In a dark attempt to legitimize their theft of Jewish property, the Nazi regime forced its Jewish prisoners in concentration camps to sign powers of attorney purporting to authorize others to dispose of their property as needed.<sup>82</sup> In Grünbaum's case, even though his actual signature does not appear on the power of attorney and the power of attorney was supposedly executed while he was held in the notorious Dachau concentration camp, this document was used as legal cover for the expropriation of his property.

c. In addition to the systematic seizure and sale of property in the care of

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<sup>82</sup> As will be seen, this practice of laundering Nazi-looted property via sham legal proceedings was so widespread that in 1943, two dozen nations issued a declaration that voided all transfers of property in occupied countries even where those transactions appear supported by legal documents.

companies like Schenker, the Nazis also had a program whereby designated curators would confiscate art throughout the Reich. Some of this art was destined for Hitler's dreamed-of *Führermuseum*, while other works which were considered "*degenerate*" or un-German had a different fate. Initially, these works were destroyed, but eventually they came to be sold to fund Nazi Germany's war machine.

108. The conspiracy continued after the war:

a. One of the Nazi-approved curators who was authorized to deal in "*degenerate*" art—like the works of Egon Schiele—was Hildebrand Gurlitt. Gurlitt survived the war and, although a portion of his collection was confiscated by the Allies—and inexplicably returned at one point—he secretly retained a vast trove of artworks. Following his death in 1956, he left them all to his son, Cornelius Gurlitt. Needing some way to profit from the stolen hoard, Cornelius Gurlitt became a regular client and source of artwork for Swiss dealer Eberhard Kornfeld, making frequent trips to collect the proceeds of sales of his stolen art. In 2017, Kornfeld finally admitted that not only had he sold (i.e., laundered) Gurlitt's art, but he had even visited Gurlitt's apartment and seen the vast horde himself. But Gurlitt did not sell all of it: in 2012, authorities found more 1,500 works of art that had been stolen by Hildebrand and were still in Cornelius's apartment.

b. By the time Kornfeld took over G&K, Kallir had long-since fled Europe and had established both himself and Galerie St. Etienne in New York City. Through his gallery, Kallir worked to introduce Austrian Expressionist art to the United States, increasing the market demand for artists such as Oskar Kokoschka, Alfred Kubin, Gustav Klimt, and Egon Schiele. In 1956, Kallir purchased 20 Schiele works from Kornfeld, all of which originally



belonged to Fritz Grünbaum—including *Russian War Prisoner*.

c. Of those 20 artworks, Kallir purchased in 1956, he had personally selected 9 for his 1928 exhibition—including *Russian War Prisoner*. And three others had been in the 1925 exhibition at the Galerie Würthle where Kallir had worked before opening his Neue Galerie. Thus, Kallir had personally seen 12 drawings—including *Russian War Prisoner*—when he visited Grünbaum's apartment. Despite this knowledge, and his knowledge of Grünbaum's fate, Kallir bought those drawings from Kornfeld—including *Russian War Prisoner*—and sold them at his Galerie St. Etienne. On the record, therefore, Kallir was a buyer with knowledge that *Russian War Prisoner*, among other Schieles purchased from Kornfeld, had to have been stolen from Grünbaum by the Nazis. Like Kornfeld before him, however, Kallir sold Grünbaum's Schieles at profit without ever disclosing his knowledge of their true owner.

d. AIC's subsequent purchase and display of *Russian War Prisoner* further increased the value of the drawing and served AIC well by bolstering their collection's reputation in the art world.

109. As for proof of complicity, the law recognizes that transnational conspiracies such as this one play out on a vast stage where the conspirators have their exits and entrances as they play their part. In this case, there were five acts: 1) the theft by the Nazis; 2) the clandestine delivery to Kornfeld in Switzerland; 3) the laundering sale by Kornfeld to Kallir; 4) the introduction of these works by Kallir to the U.S. collecting community; and 5) the dénouement: the open display of these artworks to the public's view cured of all their defects.

a. Thus, there is no requirement under New York law that a conspirator know the identity of every other co-conspirator, nor is there a requirement that a conspirator be

aware of every individual act taken in furtherance of the conspiracy. *See People v. Winter*, 288 NY 418, 421 (1942) (“To sustain a conviction for conspiracy, we do not require evidence that a defendant took part in every act done in furtherance of the conspiracy, or that he was cognizant of every such act.” (citing *People v. Miles*, 123 App. Div. 862 (2d Dept. 1908); *affid.* 192 N.Y. 541 (1908))).

b. Nor is there a requirement that there be direct evidence of an explicit agreement to enter the conspiracy or to perform the criminal object of the conspiracy. Our law requires only that there be a “community of purpose” among the defendants. *People v. Viera*, 172 A.D.3d 762, 763 (2d Dept. 2019) (quoting *People v. Scott*, 25 N.Y.3d 1107 (2015)).

c. As this motion has demonstrated, if two individuals ever shared such “community of purpose,” it was Eberhard Kornfeld and Otto Kallir. And that purpose? To sell Nazi-looted art *without* encumbrances but *with* profit.

### ***Jurisdiction and Timeliness***

110. New York County has jurisdiction over the Kornfeld-Kallir Conspiracy regardless of whether AIC is a chargeable conspirator. The most obvious jurisdictional basis is that *Russian War Prisoner* was imported into and sold in New York County. But Penal Law § 105.25 provides three additional jurisdictional bases.

a. First, under Penal Law § 105.25(1), “a person may be prosecuted for conspiracy in the county in which he entered into such conspiracy or *in any county in which an overt act in furtherance thereof was committed.*” Kallir’s possession, exhibition, and sale of *Russian War Prisoner* were overt acts in furtherance of the conspiracy operated out of his gallery in New York County.

b. Second, under Penal Law §105.25(2),

*An agreement made within this state to engage in or cause the performance of conduct in another jurisdiction is punishable herein as a conspiracy only when such conduct would constitute a crime both under the laws of this state if performed herein and under the laws of the other jurisdiction if performed therein.*

As will be explained *infra*, possessing *Russian War Prisoner* is just as illegal in Chicago as it is in New York.

c. Finally, Penal Law §105.25(3) states that,

*An agreement made in another jurisdiction to engage in or cause the performance of conduct within this state, which would constitute a crime herein, is punishable herein only when an overt act in furtherance of such conspiracy is committed within this state.*

Again, such classic overt acts as the purchase and sale of the drawing occurred in New York and were crimes in New York.

111. As for timeliness of this criminal proceeding, just as criminal possession of stolen property is a continuing crime, so too is a conspiracy to possess stolen property. A conspiracy ends when “*the objectives of the conspiracy ‘either [fail] or [are] achieved.’*” *People v. Canales*, 927 N.Y.S.2d 289, 293 (Sup. Ct. Kings Cnty 2011) (quoting *Krulewitch v. United States*, 336 U.S. 440, 442 (1949)). But as has been seen, the objective of the Kornfeld-Kallir Conspiracy is to possess stolen property, and to do so in a fashion where the artwork can be openly displayed and profitably sold on the open market. That objective, plainly, is ongoing. Thus, the statute has not even begun to run.

112. But Criminal Procedure Law § 30.10 offers an additional basis for the timeliness of this criminal proceeding.

a. Criminal Procedure Law § 30.10 requires that the People establish that at least one overt act in furtherance of the conspiracy be committed within the last five years. *See People v. Leisner*, 73 N.Y.2d 140, 146 (1989). The Court of Appeals has held that “*the crime of*

*conspiracy is an offense separate from the crime that is the object of the conspiracy. Once an illicit agreement is shown, the overt act of any conspirator may be attributed to other conspirators to establish the offense of conspiracy and that act may be the object crime.”* *People v. McGee*, 49 N.Y.2d 48, 57 (1979).

b. Whether an overt act has been committed within the applicable statute of limitations is a matter for a jury or fact-finder to determine in light of all the evidence. *See Leisner*, 73 N.Y.2d at 147-48. Here, multiple overt acts occurred during the last five years, including the museum’s continuous possession of *Russian War Prisoner* up until the date of the search warrant. But it is not just AIC’s continued possession of the fruits of the conspiracy that has extended the statute of limitations. The continued possession of stolen property by all the other museums, universities, institutions, and collectors from whom this Court in 2023 ordered the property seized also constituted overt acts extending the conspiracy and, hence, the tolling of statute.

### **Criminal Possession of Stolen Property**

#### ***Kornfeld-Kallir***

113. Penal Law § 165.54, *Criminal Possession of Stolen Property in the First Degree*, provides that it is a class B felony for a person or corporation to knowingly possess stolen property worth more than one million dollars with intent to benefit itself or a person other than an owner thereof, or to impede the recovery of the property by the lawful owner. The People would be required to prove, therefore, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements: 1) that an individual or institution knowingly possessed stolen property; 2) that they did so with the intent to benefit themselves or to impede the recovery of such property by its owner; and 3) that the value of *Russian War Prisoner*

exceeds one million dollars. All but knowledge are easily dispensed with.

a. First, there is no question that the value of the drawing is greater than one million dollars. As already seen, similar Schiele drawings from the Grünbaum collection sold at auction in November 2023 for between two and eleven million dollars each. *See* Exhibit 104 (2023 Auction Results).

b. Nor can there be any question that the members of the Kornfeld-Kallir Conspiracy possessed the drawing with the intent to benefit themselves.

1). Eberhard Kornfeld possessed *Russian War Prisoner* for the purpose of selling it at profit. Not only did Kornfeld reap the obvious pecuniary benefit of selling the stolen work, but these sales—only a few years after he took control of G&K auction house—also helped establish him as a preeminent dealer in the sale of 20th century European avant-garde and expressionist art—as he repeatedly boasted in his 2007 deposition.

2). Otto Kallir possessed *Russian War Prisoner* for the purpose of selling it at his New York gallery, Galerie St. Etienne. Along with the same pecuniary benefit enjoyed by Kornfeld, Kallir's supply of Austrian Expressionist work, including *Russian War Prisoner*, helped him establish his professional niche in the New York art scene, bringing his gallery increased acclaim and, with it, increased profits.

3). AIC possessed *Russian War Prisoner* for the purpose of including it in its collection. Indeed, for over a half century, *Russian War Prisoner* has been an integral part of AIC's vaunted European Art collection and is one of only three original artworks by the influential artist Egon Schiele in that collection. *See* Exhibit 105 (AIC Schiele Collection). According to AIC's website, their collection attracts more than 1.5 million visitors a year.

Charging \$32 for standard admission and \$26 for seniors, students, and teens, there can be no denying that AIC possesses *Russian War Prisoner* with the intent to benefit itself.

4). Finally, and as has been detailed throughout this motion, there can be no question that the drawing was stolen from Fritz Grünbaum and trafficked through New York County by Kornfeld and Kallir. By virtue of the theft and trafficking conspiracy that brought *Russian War Prisoner* into the New York art market, it constitutes stolen property under New York law.

114. The only question, then, is whether the three members listed above—Kornfeld, Kallir, and AIC—“*knowingly* possessed stolen property,” i.e., did they know it was stolen at any point while they possessed it. In this regard, it is, of course, black-letter law in New York that knowledge that property is stolen—like any element of a crime—can be inferred from circumstantial evidence. *See, e.g., People v. Tanner*, 114 A.D.2d 866 (2d Dept. 1985).

115. As for Kornfeld, and without repeating any of the facts laid out in this motion, the evidence of his *knowingly* possessing stolen property may be seen in two independent and sufficient ways.

a. First, Kornfeld’s doctoring of the ledgers and other documents and his extraordinarily convenient memory lapses during his 2007 deposition can only be seen for what they were: false exculpatory statements as overwhelming circumstantial evidence of consciousness of guilt.

b. Second, as an experienced dealer, he had to know that the sudden appearance of previously unprovenanced Schieles at his doorstep—along more than 7,000 artworks in just the six post-war years of 1952 to 1957 alone (as he boasted in his deposition)—had to have

been stolen during the war. He admitted as much at his deposition:

*Q: Are you aware of any Swiss Government declarations of 1944 and 1945 warning art dealers to be careful when they purchased art works that came from territories occupied by the Nazis?*

*A: (Through Interpreter) Yes.*

See Exhibit 74 (Deposition) at p. 127. Thus, Kornfeld knew to be “careful” when buying art from, for example, Austria. He knew that was because of the likelihood that those were Nazi-looted art. And he knew all these Schieles came from a “Viennese family” in Austria. *Id.* at p. 111. All the facts were there before him; he just did not care.

c. As for his other post-war acquisitions, whether he ever asked the question or just hid behind his feigned and profitable ignorance, Kornfeld had to have known that any suddenly appearing unprovenanced artworks could have only come from one source: the art-owners among the six million murdered Jewish souls. To put it as clearly as possible, had Eberhard Kornfeld not passed away in April of 2023, this Office would have filed criminal charges against him and sought to extradite him to finally face those charges.

116. As for Otto Kallir, there is no set of facts, no clever argument, no passage of time that can refute the simple fact that he had to know *Russian War Prisoner*—along with all the other Schieles he had seen in Grünbaum’s apartment—was stolen.

a. First, not only was Kallir active in the Austrian art scene in the 1920’s and 1930’s, but he also created a niche for himself as one of the preeminent experts on the work of Egon Schiele. It is indisputable, therefore, that he knew of Grünbaum’s collection of Schieles which is, after all, why he visited the Grünbaum’s apartment in 1928 when he was preparing his exhibition. After browsing Grünbaum’s collection of Schieles, Kallir specifically identified *Russian War Prisoner* to include in his show.

b. Second, Kallir never documented or publicly disclosed that he had personal knowledge that these drawings had once belonged to Grünbaum or that Kallir had seen them in Grünbaum's apartment before the war. Even the *catalogue raisonné* published by his granddaughter omits any pre-war provenance, listing Kornfeld's auction house as the earliest known provenance for *Russian War Prisoner*. Why did Kallir not publicly disclose provenance of which he had personal knowledge? If he had nothing to hide, why hide anything?

c. Of course, one can easily rationalize Kallir's behavior. Grünbaum was already dead. And all Europe—and the world—wanted to put the horrors of World War II behind them. What good would it do now rake up all that muck? Moreover, if Kallir did not buy the Schieles, someone else would. This way at least, Kallir could bring the works to the United States and introduce his beloved Schiele to a new world that did not yet know or appreciate him. These make for compelling reasons to list on one side of the ledger. No doubt, more reasons can be conjured up. On the other side, there is just one entry. But it is big one: it was illegal. What is honored in a society, Plato once observed, will be cultivated there and reflected in its laws. In our society, rationalizations, excuses, and any other hallmarks of relative ethics, are not enough to abrogate the law or render legal a criminal act—no matter how “pure” or “noble” the motives. *Russian War Prisoner* was stolen and Kallir had to know it.

117. But what about AIC? Did they ever *knowingly* possess stolen property?

### **AIC's Knowledge *Russian War Prisoner* Was Stolen**

#### ***1966 Purchase***

118. To properly answer this question, it is important to start by recreating what was known in 1966. This will partly answer the question of what AIC knew or reasonably should



have known when it bought *Russian War Prisoner*. To begin, long before AIC bought *Russian War Prisoner* in 1966, a broad consensus had developed that American museums should help the U.S. Government investigate art whose origin may have been obscure or suspicious and that may have been looted in Nazi-controlled Europe and which, therefore, lacked clear title. The warning began during the war.

a. As early as January 9, 1943, the United States and almost two dozen other countries made clear their position on theft and plunder committed during the war.<sup>83</sup> The Department of State issued a Bulletin appropriately titled, “*Declaration Regarding Forced Transfers of Property in Enemy-Controlled Territory*” summarizing this position. See Exhibit 106 (Dept. of State Bulletin, January 9, 1943). It was,

*[A] formal warning to all concerned, and in particular to persons in neutral countries, that they intend to do their utmost to defeat the methods of dispossession practiced by the governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled. Accordingly the governments making this declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the governments with which they are at war or which belong or have belonged, to persons, including juridical persons, resident in such territories.*

*Id.* Then, with almost prescient application to this case, the Bulletin continued,

*This warning applies whether such transfers or dealings have taken the form of open looting or plunder or of transactions apparently legal in form, even when they purport to be voluntarily effected.*

*Id.* In other words, even if there is a “*legal*” power of attorney. Not surprisingly, Switzerland was not one of the country signatories—although it is hard to believe Kornfeld would have

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<sup>83</sup> These included the Union of South Africa, the United States of America, Australia, Belgium, Canada, China, the Czechoslovak Republic, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Yugoslavia, and the French National Committee. Conspicuously absent? Switzerland.

complied even if Switzerland had adopted the Declaration.

b. Then, in 1945, American museums were told in a letter from the United States government-appointed commission known as the “*Roberts Commission*,” that “[i]t is, of course, obvious that no clear title can pass on objects that have been looted from public or private collections abroad.” See Exhibit 107 (Roberts Commission letter). The letter also requested that museums and other institutions report to the Roberts Commission any cases “[w]here the source or origin of these objects may be obscure or suspicious and where the objects may be of special artistic importance.”

119. The warnings continued after the war and were even more dire.

a. On January 28, 1947, a Coordinating Committee made up of representatives of the Departments of State, War, and Navy approved a Department of State memorandum entitled “*Return of Looted Objects of Art to Countries of Origin*.” See Exhibit 108 (1947 Coordinating Committee memo). This memorandum could not have been clearer:

*The introduction of looted objects of art is contrary to the general policy of the United States and to the commitments of the United States under the Hague Convention of 1907 and in case of objects of a value of \$5,000 or more is a contravention of Federal law.*<sup>84</sup>

*Id.* Toward this end, the memorandum advised museums and others to “*be vigilant to note objects*” that “*have been wrongfully taken and brought to the United States during and after the war*,” and “*to notify the Department of State immediately of any obtainable information concerning such objects*.” The memorandum even specified the countries for which museums should be especially vigilant: “*Germany or Austria or Japan or Korea*.” Copies of the 1947 memorandum were distributed directly to 58 “*Dealers handling European Works of Art*” and to 64 museums. See Exhibit 109

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<sup>84</sup> In 1947, the value of *Russian War Prisoner* did not exceed \$5000. That part of the conspiracy—inflating the value of looted art—had not yet begun. But in 1966 AIC did purchase *Russian War Prisoner* for \$5,500.

(1947 Distribution List). AIC was number 18 on the list of museums that received the 1947 memorandum.<sup>85</sup> And both Egon Schiele and Fritz Grünbaum were, of course, from Austria.

b. Then, in 1948, the United States Supreme Allied Commander's Law No. 52 governing Germany announced that all transfers of property from previously Nazi-occupied zones had to be treated as suspect, unless and until shown to be legitimate. *See* Exhibit 110 (April 1948 Military Law No. 52). The law provided that “*any transfer, contract or other arrangement made, whether before or after the effective date of this law, with the intent to defeat or evade ... the restitution of any property to its rightful owner, is null and void.*”

120. Despite all these warnings, however, the influx of Nazi-looted art must have been so great as to cause the Department of State to issue yet another warning.

a. Thus, on December 11, 1950, the United States government issued a letter informing more than 550 museums, universities, and organizations that “[*t*]he continued vigilance of American institutions and individuals in identifying cultural objects improperly disbursed during World War II is needed.” *See* Exhibit 111 (1950 State Department Letter).<sup>86</sup> This letter again requested “*cooperation in notifying the Secretary of State*” about “*objects without a clear title.*” Once again, AIC was on the list.

b. The letter was reprinted and widely distributed to museum curators in the

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<sup>85</sup> Even if AIC were to attempt to evade responsibility by claiming that they have no current record of having received this warning, that argument would be unavailing. Surely AIC did not need a letter from the State Department to have been on notice that the Nazis dispossessed all Jewish residents of their property during the war. Moreover, given the extraordinarily large list of recipients, it would be difficult to have been in the museum community and not have known of the warning itself—whether the actual letter still resides in the AIC files or not.

<sup>86</sup> The list of recipients is truly impressive. There were 7 United States Government Agencies, 18 American Missions Abroad, 18 Foreign diplomatic posts in Washington, 103 Universities and colleges, 72 Museums, 188 Libraries, 13 Art societies, 12 Art journals, 59 Art dealers, and 38 Booksellers.

*Magazine of Art* (Feb. 1951), and in the *College Art Journal* (Winter 1950). The Department of State issued a further pair of circulars in 1951 and 1954, stressing that all transfers made in Nazi-occupied countries were to be viewed as suspect. *See* Exhibit 112 (State Department Circulars)

121. In other words, by the end of 1950, AIC had been warned no fewer than four times—and that does not include any warnings they would have received by simply following the news. All those who bought, sold, or otherwise dealt in art from Europe was on continual—and almost continuous—notice. No museum, institution, dealer, or collector could safely buy any work of art that anyone had transferred from anywhere in the German Reich before or after the war without first exercising the proper due diligence to ascertain the work's provenance. A decade of warnings did not stop either Eberhard Kornfeld or Otto Kallir. As will be seen, they did not stop AIC either.

122. Thus, to the question of whether AIC knew or reasonably should have known *Russian War Prisoner* had to have been stolen, I respectfully offer the closing argument of Supreme Court Justice Robert H. Jackson, Chief American Prosecutor at the Nuremberg trials. There, the defendants—at least one of whose names we recognize from this case—denied knowledge of any crimes. Here, AIC—and doubtless Kornfeld and Kallir were they still alive—would do the same, denying knowledge that the Nazis stole all Grünbaum's Schieles, including *Russian War Prisoner*. But to do so, in Justice Jackson's words, would be to "*protest too much. [To] deny knowing what was common knowledge.*" *See* Exhibit 113 (Robert H. Jackson Closing Argument).

a. In that case, of course, the defendants had caused and benefitted from the

deaths of millions. Their actions justified Justice Jackson’s final chilling dramatic words.

*They stand before the record of this trial as blood-stained Gloucester stood by the body of his slain King. He begged of the widow, as they beg of you: “Say I slew them not.” And the Queen replied, “Then say they were not slain. But dead they are.” If you were to say of these men that they are not guilty, it would be as true to say there has been no war, there are no slain, there has been no crime.*

*Id.* at p. 23. It may seem inapposite to consider Justice Jackson’s words regarding genocide in a case involving stolen art. But Kornfeld, Kallir, and AIC have each benefited from this genocide—albeit from a mass-murder they did not personally commit. Nonetheless, the fact remains that Grünbaum’s stolen property—property stolen by the Nazis—is now in the hands of AIC.

b. As harsh as it may seem at first blush to draw into the fray the concept of Nazi war crimes, *Russian War Prisoner* would not be in Chicago but for those crimes. Thus, although Justice Jackson’s words were meant for a case involving wholesale murder and theft, they remain true here as well. It is, I respectfully submit, just a matter of scale.

### ***AIC Was Required to Engage in Reasonable Inquiry***

123. Even if—despite all that was common knowledge—one were to engage in Coleridge’s famed “*willing suspension of disbelief*” and accept for a moment that AIC should not have known that *Russian War Prisoner* was stolen at the time they acquired it, AIC is still not off the hook. That is because New York law captures and codifies a common-sense analysis of AIC’s actions and does not, therefore, shield the museum from culpability merely because it chose to avoid inconvenient questions. AIC is a highly sophisticated player in the art market that employs many dozens of professionals with art historical experience, curatorial experience, conservation experience, and legal experience. Consequently, AIC knew what questions to ask. When they did not ask those questions, the law draws conclusions. To put

it another way, AIC's lack of reasonable inquiry carries its own legal consequences.

124. Penal Law § 165.55(2) provides that one in the business of buying, selling or “otherwise dealing in property” is “presumed to know that such property was stolen if [they] obtained it without having ascertained by reasonable inquiry that the person from whom [they] obtained it had a legal right to possess it.” Notably, the statute does not limit the presumption to “businesses” but applies to all those “otherwise dealing in property.”

a. Not surprisingly, the presumption has been applied across a broad spectrum. See, e.g., *People v. Ornstein*, 91 A.D.2d 788, 788 (3d Dept 1982) (silver and other antiques) (reversed because jury was not instructed presumption was rebuttable); *Barnes v. United States*, 412 U.S. 837, 845 (1973) (“unexplained possession of recently stolen property” supports inference that possessor was aware that property was stolen). Because a defendant’s knowledge of whether the property was stolen may be proven circumstantially, a defendant may be convicted solely on the presumption. *People v. Agnello*, 178 A.D.2d 414, 416-17 (2d Dept 1991); *People v. Barrie*, 74 A.D.2d 576, 576 (2d Dept 1980).

b. According to its own website, AIC has been dealing in artworks since 1879 and boasts that “[s]ince then, the permanent collection has grown from plaster casts to nearly 300,000 works of art in fields ranging from Chinese bronzes to contemporary design, from textiles to installation art.”

125. On this record, the rebuttable presumption under Penal Law § 165.55(2) applies to AIC. They were, therefore, presumed to know that *Russian War Prisoner* was stolen when they obtained unless they “ascertained by reasonable inquiry that the person from whom [they] obtained it had a legal right to possess it.”

126. Penal Law §165.55 does not define “reasonable inquiry,” and no New York courts

have specifically addressed it in the context of artworks.

a. But case law finding the absence of Penal Law §165.55's "*reasonable inquiry*" in other contexts is instructive. *People v. Agnello*, 178 A.D.2d 414, 416 (2d Dept 1991) (auto-parts business made no inquiry as to the ownership of the parts purchased and prepared "*no internal documentation of the purchase*"); *People v. Grossfeld*, 216 A.D.2d 319 (2d Dept 1995) (acquiring the goods under suspicious circumstances and failing to turn over business records during the criminal investigation); *People v. Landfair*, 191 A.D.2d 825, 827 (3d Dept 1993) (horse dealer did not "*ask for registration papers...obtain a receipt for the purchase [or] record the names of the...sellers*"); *People v. Reichbach*, 131 A.D.2d 515, 516 (2d Dept 1987) (jewelry dealer "*failed to take any steps to reasonably ascertain that the person from whom he obtained the stolen jewelry...had legal title to it*").

b. Similarly instructive is case law addressing the analogous issue of "*due diligence*." In *Porter v. Wertz*, the court held that when artwork comes to a gallery under suspicious circumstances, it necessarily demands a higher level of inquiry to ensure that purchase of that artwork is lawful. 68 A.D.2d 141, 145-147 (1st Dept. 1979). The court took aim at the fact that "*commercial indifference to ownership or the right to sell facilitates traffic in stolen works of art. Commercial indifference diminishes the integrity and increases the culpability of the apathetic merchant*." *Id.* at 149. This expression of the obligations of purchasers of artworks has been favorably cited and adopted. *See, e.g., Davis v. Carroll*, 937 F.Supp.2d 390, 425 (S.D.N.Y. 2013) ("*Porter also mandates an escalating duty of inquiry when the purchaser faces warning signs of foul play—often described as red flags*." (citation omitted); *Dorothy G. Bender Found., Inc. v. Carroll*, 40 Misc.3d 1231(A) (Sup. Ct. N. Y. Cnty 2012) ("*Hence, New York courts have held that under the UCC, a merchant purchaser may have a duty to inquire into the provenance or ownership of the merchandise where there are*

*'warning signs' or 'red flags' indicating problems with the sale.*"); *Kozar v. Christie's*, 31 Misc.3d 1228(A), 7-8 (Sup. Ct. Westchester Cnty 2011) (“*While the precise parameters of the obligation owed by a dealer in art have not been fully defined, it appears to be generally accepted that, as a minimum requirement, a merchant dealing in artwork would be under a duty to make a further inquiry as to a painting's ownership in the event there are suspicious circumstances underlying the transaction.*”).

c. Federal law’s “*due diligence*” also mirrors New York’s “*reasonable inquiry*,” noting that certain events will heighten judicial scrutiny of a collector’s “*due diligence*.” These include civil unrest in the country of origin; wide-spread looting in the source area; opaque or murky histories; and false, inconsistent, or misleading provenance (ownership history). Thus, in *Autocephalus Greek-Orthodox Church of Cyprus v. Goldberg*, the court awarded stolen Byzantine mosaics to Cyprus, stressing that anyone buying art work, especially from war- or strife-torn countries of origin “*can (and probably should) take steps such as a formal [International Foundation for Art Research] search; a documented authenticity check by disinterested experts; a full background search of the seller and his claim of title...and the like.*” 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278, 294 (7th Cir. 1990). Similarly, in *United States v. 10th Century Cambodian Sandstone Sculpture*, the court was disturbed that Sotheby’s, an antiquities auction house claiming to have “*unparalleled experience in the field of Indian and Southeast Asian Art*,” authorized the sale of a Cambodian statue even though it had come from an area of widely publicized looting and the statue showed unmistakable signs of looting. 2013 U.S. Dist. LEXIS 45903 (S.D.N.Y. 2013).

### ***Did AIC Engage in Reasonable Inquiry?***

127. In 1966, AIC was presented with an artwork that had necessarily come from an Austrian artist who died in Austria in 1918—a country occupied by the Nazis during the war—



and which artwork had no pre-war provenance. AIC did not ask a single question at the time of acquisition to ascertain whether, “*the person [B.C. Holland Gallery] from whom [they] obtained [Russian War Prisoner] had a legal right to possess [it].*” Penal Law § 165.55(2)

a. In the minutes from the July 21, 1966, Committee on Prints and Drawings Meeting where the AIC Chairman, Director, and other Board Members approved the purchase of *Russian War Prisoner*, there is not a single documented question as the drawing’s legality. See Exhibit 114 (1966 Committee Minutes). The minutes blandly note,

*Upon motion made, seconded and duly carried, it was voted to recommend the following purchases to the Committee on Buckingham Fund and Acquisitions...Egon Schiele Austrian, 1890-1918 “Russian War Prisoner,” pencil with watercolor B. C. Holland \$ 5,500.*

b. There is no record that anyone present raised the drawing’s likely Nazi-looted origins, despite AIC having been the recipient of warnings about artworks that come from Nazi-occupied countries—such as Austria. There is no record that anyone at AIC ever inquired how B. C. Holland Gallery acquired *Russian War Prisoner*. Pursuant to this investigation, AIC voluntarily complied with a subpoena issued by this Office requesting “*any and all documents*” related to AIC’s acquisition and possession of *Russian War Prisoner*.<sup>87</sup> Their compliance totalled 905 pages. Nowhere in those 905 pages is there recorded a single question at the time of purchase from anyone at AIC related to whether the artwork was legal. That bears repeating. Not a single question in 1966 other than price. At the very least, this failure undercuts any arguments that AIC were truly good-faith purchasers.

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<sup>87</sup> AIC voluntarily complied with this Office’s subpoena for “*ANY AND ALL UNREDACTED documents, photographs, financial records, and correspondence in any medium (letters, memos, emails, faxes, texts, chats, messages, and recorded conversations) related to the following object, identified by its AIC Reference Number: 1966.172r – Egon Schiele, Russian War Prisoner, 1916, watercolor and pencil on paper, and measuring 43.8 × 30.8 cm (17 1/4 × 12 3/16 in.)*.”

128. It is about to get even more obvious. Apparently, whenever an artwork comes into AIC's possession, the staff fills out an intake report. The report itself has various pre-printed headings, the careful examination of which speaks volumes about what is and is not important to AIC as an institution. The pre-printed form starts the normal descriptors: title, date of work, medium, dimensions, the type of paper, if there is a watermark, if it is signed by the artist, it's condition, etc. It also has prominently displayed in the middle of the page what clearly must have been one of the most important descriptors. Featured as #6 on the form: "*Price and Source.*" See Exhibit 115 (1966 AIC Intake Report).

a. Most telling, however, as it speaks to AIC's interest in an artwork's provenance or prior ownership history is what is *not* on the form. Nowhere does the form even have a heading for "Provenance" or "Prior Ownership History." The absence of such headings at least partly explains why no one ever asked about *Russian War Prisoner's* provenance. It is not on their form and, hence, of no import to AIC.

b. There is a section labelled "*Remarks.*" Perhaps that is where AIC staff put the miscellaneous details like legality and provenance. But that is only a guess, because here the only "*Remarks*" concern when Schiele drew *Russian War Prisoner*: "*done during Schiele's military duty in a prison camp.*" *Id.* There are also sections labelled "*Collections*" and "*Publications.*" Those sections are blank. *Id.*

c. Ultimately, the intake report reflects the same lack of interest in *Russian War Prisoner's* history as was seen in the other 905 pages of their records. It also continued the conspiracy of silence begun by Kornfeld and Kallir.

129. To put it another way, after *Russian War Prisoner* was documented as part of the

Fritz Grünbaum collection in the 1920's, there is no record of *Russian War Prisoner's* whereabouts after Grünbaum's well-publicized arrest and death in a concentration camp in 1941 until its sudden reemergence on the market in 1956.

a. If AIC ever requested documentation for how *Russian War Prisoner* left Grünbaum's possession after it was documented to be in his collection—and there is no record they did—they certainly did not receive any. Because none existed.

b. If AIC ever requested documentation that that *Russian War Prisoner* had been sold or otherwise legally transferred by Grünbaum prior to his 1938 arrest—and there is no record they ever did—they certainly did not receive any. Because none existed.

c. If AIC ever requested records of a lawful export of *Russian War Prisoner* from Nazi-occupied Austria or how it left Schenker at all—and there is no record they ever did—they certainly did not receive any. Because none existed.

d. If AIC ever requested the names of anyone who owned *Russian War Prisoner* prior to 1956 besides Fritz Grünbaum—and there is no record they ever did—they certainly did not receive any. Because none existed.

130. And so, the silence remained undisturbed for more than three decades. It was only broken in 1998, after media scrutiny exposed Kornfeld's 1956 sale of Grünbaum's Schiele collection, that AIC appears to have asked its first questions—besides the 1966 question about price, of course.

a. In 2002, AIC appears to have asked for the first time about *Russian War Prisoner's* ownership history and how it left Nazi-occupied Austria. To be more precise, AIC had an intern fax Kornfeld as part of AIC's project to research art "*with wartime provenance gaps.*"

*I am an intern in the Department of Prints and Drawings researching the provenance of several works in our permanent collection. As you might know, the Art Institute is currently engaged in a museum-wide research project for works of art with wartime provenance gaps. I was hoping that you might be able to shed some light on a piece sold by Gutekunst & Klipstein in the Egon Schiele exhibition of September-October 1956. The drawing was catalogued as number 39. It is: Russian Prisoner of War, 1916 Watercolor and graphite 438 x 308 mm.*

See Exhibit 116 (2002 AIC Fax to Kornfeld). In other words, despite all the warnings of Nazi-looted artworks, AIC had so many “works of art with wartime provenance gaps” that they had to establish a project to attempt to fill those gaps. On September 28, 2002, Eberhard Kornfeld responded.

*With thanks for your fax. I can inform you that Egon Schiele, the Portrait of a Russian Prisoner, was lot 39 in our stock catalogue No. 57. The exhibition took place from September 8th to October 6th, 1956. This watercolor came from the Grünbaum collection. We had bought the Grünbaum collection from Mrs. Lukacs, the sister from the widow Grünbaum. The collection of Grünbaum was never seized by Nazi authorities. The widow could keep it and gave it to her sister. The sister kept the collection until 1955 and sold it thereafter in different parts.*

See Exhibit 117 (2002 Kornfeld fax to AIC).

b. Even though Kornfeld’s fax arrived *after* the 1998 exposé that identified his involvement in selling Nazi-looted art in Switzerland—and even though Kornfeld appears to have given AIC a single corroborating document—AIC did not question Kornfeld’s self-serving cover story. They simply updated their provenance virtually word-for-word from Kornfeld’s uncorroborated fax. AIC’s “new” 2002 provenance became the following:

*The works sold in the 1956 G & K exhibition were probably consigned to sale by Mathilde Lukacs, the sister-in-law of Fritz Grünbaum, an Austrian Jew who died in WWII. The painting, “Dead City III,” from the Leopold Collection in Austria that was sequestered by the state of New York following its exhibition at MOMA has the same provenance, according to Rudolf Leopold. Although the controversy surrounding the work drew international attention, it was eventually returned to the Leopold collection, as it was determined that the painting was sold legally in 1956 by Ms. Lukacs who was at that time Grünbaum’s closest living relative. Therefore, if it is true that our work was also sold by Ms. Lukacs, then all is probably well for this work. I have written to Eberhard Kornfeld for confirmation on this. In his letter, Kornfeld has confirmed this to be true! Otto Kallir of Galerie St. Etienne probably purchased the work from the 1956 Bern sale, as I*

*know he purchased many works from there.*

See Exhibit 118 (October 2002 updated AIC Provenance).

131. The problems with this provenance are legion.

a. First, the use of the word “*probably*” three times in one paragraph about the provenance of an artwork underscores the lack of reliability of this unverified provenance. It is difficult to accept that a single fax and the word “probably” repeated so many times constitute “*reasonable inquiry*.”

b. Second, AIC’s source was Kornfeld: “*Kornfeld has confirmed this to be true!*” See Exhibit 118 (October 2002 updated AIC Provenance). Given what we know about Kornfeld’s criminal behavior and lack of credibility, the irony of the exclamation point is priceless. As for the other name, Rudolph Leopold, the irony is just as profound. Leopold was the owner of *Dead City III*, another Schiele work stolen from Grünbaum by the Nazis. Like AIC, Leopold refused to concede the obvious and contested Grünbaum’s ownership of his Schiele. In other words, he had a vested interest in saying his Schiele was “legal.” And Leopold’s source was none other than Eberhard Kornfeld. Even AIC must have had its doubts, appending “*if it is true*” when citing Kornfeld in its provenance. *Id.*

c. Finally, the new provenance stated that *Dead City III*—which had the same provenance as *Russian War Prisoner*—“*was sequestered by the state of New York following its exhibition at MOMA...[but]...was eventually returned to the Leopold collection, as it was determined that the painting was sold legally in 1956 by Ms. Lukacs.*” *Id.* By implication, if *Dead City III* were legal, then *Russian War Prisoner* was as well. This official statement in AIC’s files that “*it was determined that the painting was sold legally in 1956*” was startlingly false. As will be seen, the case

in which this Office seized *Dead City III* in 1998, was *People v. Museum of Mod. Art (In re Grand Jury Subpoena Duces Tecum)*, 93 N.Y.2d 729 (1999).<sup>88</sup> The painting was returned, not following a determination on the merits, but on the grounds that the work had been immune from seizure by subpoena under Arts and Cultural Affairs Law § 12.03.

132. AIC's deft maneuverings aside, even if Kornfeld were telling the truth about how he received *Russian War Prisoner*—despite all evidence to the contrary—*Russian War Prisoner* would still constitute stolen property. At core, Kornfeld asserted, without evidence, that Fritz's widow somehow kept the artwork after Fritz's murder and somehow gave it to Mathilde.<sup>89</sup> But absent proof, the law does not presume a gift has been made. In *Grey v. Grey*, 47 N.Y. 552 (1872), a decedent's relative presented a promissory note as the sole evidence that he had been released from the debt described in the note. The Court of Appeals rejected that argument:

*[I]t is clear that if I own a chattel...and next week it is found in another's possession, the law does not presume a legal transfer of the title to the possessor...It is not a defence to show that defendant, a member of the family of deceased, and hence having access to his papers, is found in possession of a note owned by deceased at or about the time of his decease...There is nothing left to stand upon but a gift, and that the law does not presume.*

*Id.* at 554-55; see also *Lewis v. Merritt*, 113 N.Y. 386, 390 (1889) (“*circumstances legitimately raising a suspicion of fraud or wrong must be explained away...the law does not presume [a gift] but requires clear and convincing proof.*”). Indeed, the Court of Appeals noted that “*courts cannot be too cautious in requiring clear proof of*” a gift. *Id.* (quoting *Grymes v. Hone*, 49 N. Y. 17 (1872)); see also *In re Canfield's Estate*, (2d Dept. 1917) (“*Gifts are not presumed. Ownership of such property proved is presumed to continue.*”).

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<sup>88</sup> This seizure was made more than a decade before the creation of the ATU.

<sup>89</sup> Interestingly, it does not appear that Kornfeld knew Elisabeth's name, referring to her twice as “*the widow.*”

*In re Scherzinger's Estate*, put it best:

*To establish a valid gift...burden rested upon respondent to show by definite, clear and convincing evidence (1) an intention to give; (2) delivery of the thing given to the done pursuant to that intention and (3) acceptance of the gift by the done.*

272 A.D. 722, 723 (1st Dept. 1947) (per curiam).

133. Here, there is no evidence of a gift to Mathilde Lukacs—either during Fritz’s lifetime or after. Nor is there any evidence AIC engaged “*reasonable inquiry*.” At best, AIC exhibited willful blindness.

### ***Jurisdiction and Timeliness***

134. New York County has jurisdiction over the crime of criminal possession of stolen property. Criminal Procedure Law § 20.20 defines New York’s jurisdictional reach:

*Except as otherwise provided in this section and section § 20.30, a person may be convicted in the criminal courts of this state of an offense defined by the laws of this state...when: 1) conduct occurred within this state sufficient to establish (a) an element of such offense, (b) an attempt to commit such offense, or (c) a conspiracy or criminal solicitation to commit such offense, or otherwise establish the complicity of at least one of the persons liable therefor; provided that the jurisdiction accorded by this paragraph extends only to conviction of those persons whose conspiratorial or other conduct of complicity occurred within this state.*

a. Thus, only one element of the offense of Criminal Possession of Stolen Property in the First Degree must have occurred within New York State. This element was satisfied the moment Kallir purchased *Russian War Prisoner* from Kornfeld to sell in Kallir’s Manhattan-based Galerie St. Etienne. That the stolen artwork thereafter left New York County in furtherance of the conspiracy to launder Nazi-looted art for profit when Kallir then sold it to the Connecticut-based private collector David Warren Kimball, Sr., does not deprive New York County of jurisdiction. *See People v. Pinchuk*, 929 N.Y.S. 2d 842, 846 (Sup. Ct. Kings Cnty 2011) (finding that New York jurisdiction existed over defendant who shipped pills from

Los Angeles to New York because defendant was “*deemed to have been present in New York when Federal Express delivered to the co-conspirators the pills*”).

b. Criminal Procedure Law § 20.30 does limit New York’s ability to assert jurisdiction over actions performed largely outside of the state. But that limitation is inapplicable here and cannot shield the members of the Kornfeld-Kallir Conspiracy, and thus AIC, from New York’s jurisdictional reach. Specifically, Criminal Procedure Law § 20.30 provides,

*Notwithstanding the provisions of section 20.20, the courts of this state do not have jurisdiction to convict a person of an alleged offense partly committed within this state but consummated in another jurisdiction...unless the conduct constituting the consummated offense...constitutes an offense under the laws of such other jurisdiction as well as under the laws of this state.*

Thus, AIC could assert a defense to New York jurisdiction only if it were legal to possess the stolen *Russian War Prisoner* under Illinois law. Unsurprisingly, it is not. In a statute that mirrors New York’s, 720 Illinois Compiled Statutes 5/16-1(a)(1) provides that, “*A person commits theft when he or she knowingly obtains or exerts unauthorized control over property of the owner.*”

c. Therefore, New York has jurisdiction over AIC’s continued possession of *Russian War Prisoner*.

135. As for timeliness of both prosecution and recovery, this subsumes two distinct question. It is crucial to distinguish between an applicable statute of limitations barring an individual from being prosecuted and the stolen nature of the property.

a. As for the property itself, it is a bedrock of our criminal law that “once stolen, always stolen.” And it does not matter how much time has elapsed since the initial theft. Or whether any of those involved have passed away—Kallir in 1978 and Kornfeld in 2023. It is always stolen. In other words, the passage of time (or death) may shield a criminally culpable



offender from prosecution. But it does not magically transform stolen property through some modern-day alchemy into legal property. Not in New York. And not anywhere in the United States.

b. As for the prosecution of any individual or institution involved, Criminal Procedure Law § 30.10(2)(b) provides that, with several exceptions not applicable here, a felony prosecution must be “*commenced within five years after the commission [of the crime].*” The question, of course, is when does that five-year statute start running. Here, Kallir possessed the stolen *Russian War Prisoner* in 1956 and AIC in 1966—both more than five years ago. Why, then, has the statute not run?

136. Because the crime of criminal possession of stolen property constitutes what the law refers to as a “continuing crime,” continuing as long as the stolen object is possessed by anyone other than the legal owner. *See, e.g., People v. Miernik*, 284 A.D.2d 919, 919 (4th Dept 2001) (“[T]he offense of criminal possession of stolen property in the fourth degree was a continuing offense”); *People v. Lawson*, 64 Misc.3d 200, 203-5 (Crim. Ct. Richmond Cnty 2019) (“[1965] amendment to Penal Law § 165.40...transformed [criminal possession of stolen property] into a continuing offense.”); *see also Johnson v. Morgenthau*, 69 N.Y.2d 148 (1987) (charging criminal possession of a weapon and holding unlawful possession is a continuing offense).<sup>90</sup>

a. Moreover, under New York law, the statute of limitations for an offense is governed by the date of the offense’s termination, not its beginning. *See People v. Randall-Whitaker*, 55 A.D.3d 931, 931 (2d Dept. 2008) (“since this prosecution was commenced within

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<sup>90</sup> Illinois courts also view criminal possession of stolen property as a continuing offense. Thus, the statute of limitations in Illinois begins to run only at the time the owner divests themselves of the property. *See People v. Walton*, 2013 I.L. App. (3d) 110630 (2013).

five years of the termination of the crimes as charged, it was timely”).

b. Thus, for the crime of criminal possession of stolen property, the statute of limitations does not begin running as to an individual or institution until the stolen property is no longer being possessed by that individual or institution. Whether sold, transferred, or seized by law-enforcement officers, the clock only starts at the sale, transfer, or seizure. AIC’s illegal possession of *Russian War Prisoner* began in 1966 and terminated on September 12, 2023, when the drawing was seized by the ATU pursuant to the search warrant issued by this Court. The five-year clock began running on that date.

137. Finally, it is worth noting in passing that the doctrine of laches, i.e., that a long delay in asserting a claim has prejudiced the adverse party—often raised in civil cases—does not apply in a criminal case. *See, e.g., United States v. Batson*, 608 F.3d 630, 633 (9th Cir. 2010) (“Like the Second Circuit, [w]e have found no case applying a laches defense in the criminal context.” (quoting *United States v. Milstein*, 401 F.3d 53, 63 n.3 (2d Cir. 2005))). The criminal law does not reward the thief by punishing the victim.

### **Seizure Proper Under Criminal Procedure Law § 690.10**

138. Regardless of whether criminal charges against AIC or others are time-barred or abated by death, New York law would still permit the seizure of *Russian War Prisoner*. Criminal Procedure Law § 690.10 provides,

*Personal property is subject to seizure pursuant to a search warrant if there is reasonable cause to believe that it is: 1) stolen; or 2) unlawfully possessed; or...4) constitutes evidence or tends to demonstrate that an offense was committed in this state or another state, or that a particular person participated in the commission of an offense in this state or another state, provided however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a felony against the laws of this state.*

In other words, a New York court’s ability to issue a search warrant ordering the seizure of an

object is independent of whether a viable prosecution can result from the seizure.

a. Notably, Criminal Procedure Law § 690.10 does not mention any statute of limitations, only *the commission* of an offense. Thus, even if the statute of limitations were to time-bar a criminal charge, it would not retroactively render the underlying conduct lawful. Just unprosecutable. There are many reasons for this. Judges, District Attorneys' Offices, and the public all have an interest in investigating crimes, even those that are time-barred from a full prosecution. Consider this Office's numerous re-investigations and exonerations—for example, the much-publicized re-investigation of the Central Park Five or the assassination of Malcom X—to understand that law-enforcement has a prerogative to follow the facts wherever they lead—even decades later, and even if no new prosecution can result.

b. Another example of this can be seen in New York's Criminal Procedure Law, which provides the Grand Jury with the authority to investigate events and, instead of issuing an indictment, submit a report with recommendations for "*the public interest.*" Criminal Procedure Law § 190.85.

139. Finally, just as New York law provides for the seizure of *Russian War Prisoner* regardless of the statute of limitations over the subject crime(s), it also authorizes the seizure of *Russian War Prisoner* regardless of New York's jurisdiction over the criminal conduct described in this application. Under Criminal Procedure Law § 690.10(4), a New York court can authorize the seizure of property that would "*constitute evidence or tend to demonstrate that an offense was committed in this state or in another state.*"

#### **Return of *Russian War Prisoner* Under Penal Law § 450.10**

140. Once property—here *Russian War Prisoner*—is seized under Criminal Procedure

Law § 690.10, the seizing officer “*must without unnecessary delay return to the court the warrant and the property.*” Criminal Procedure Law § 690.50(5).

a. Thereafter, only this Court, as the warrant-issuing court, may determine the ultimate disposition of *Russian War Prisoner*. Criminal Procedure Law § 690.55(1); *Simpson v. St. John*, 93 N.Y. 363, 366 (1883) (property seized pursuant to a court order “*cannot be taken away until that custody is ended by...an order of the magistrate permitting its surrender to the owner*”).

b. Toward that end, Penal Law § 450.10 “*provides a mechanism for returning allegedly stolen property to an owner prior to, or during the pendency of, a criminal proceeding.*” *People v. Museum of Mod. Art (In re Grand Jury Subpoena Duces Tecum)*, 93 N.Y. 2d 729, 740 (1999). According to the Court of Appeals, therefore, the controlling statute is Penal Law § 450.10(5). It is unambiguous:

*If stolen property comes into the custody of a court, it must, unless temporary retention be deemed necessary in furtherance of justice, be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the court.*

### ***This Court Must Determine the Owner Under Penal Law § 450.10***

141. As the plain language of the statute, especially of the mandatory “*must*,” makes clear, only this Court has the authority to determine the “owner” of *Russian War Prisoner*. In the words of the statute, “a court” that has “custody” of the property is “*the court*” that must certify the ownership of the property.

a. Indeed, having the seizing criminal court determine the ownership of the stolen property is precisely why Penal Law § 450.10 was enacted in the first place: to “*enable* [ ] *victim[s] of a larceny...to have his or her property returned much more quickly than possible on the existing law.*” See *Memorandum of Assemb. Stephen M. Saland*, Laws 1984, ch. 795, published in New York

State Legislative Annual, 1984, p. 264 (1985).<sup>91</sup>

b. The Court of Appeals has confirmed this reading of § 450.10. In *Museum of Modern Art*, the court affirmed a criminal court’s use of Penal Law § 450.10 “for returning allegedly stolen property to an owner.” 93 N.Y. 2d. at 740. In that case, and as was mentioned *infra*, the Court of Appeals quashed this Office’s subpoena on the grounds that Arts and Cultural Affairs Law § 12.03 prohibited the seizure by subpoena of art in a traveling exhibition. But it is the Court of Appeals’ ruling on Penal Law § 450.10 that is dispositive for our purposes:

*Penal Law § 450.10, which provides a mechanism for returning allegedly stolen property to an owner prior to, or during the pendency of, a criminal proceeding, requires proof of title before property in the custody of the People or the court can be returned. Thus, a civil-like proceeding would have to be commenced in this case to return the paintings to the rightful owners under either Criminal Procedure Law §610.25 (2) or Penal Law § 450.10—regardless of the outcome of the People’s case.*

*Id.* Thus, the court “in this case,” i.e., Part 61, “would have to” conduct “a civil-like proceeding” under Penal Law § 450.10.

142. And this “civil-like proceeding” may be conducted “prior to, or during the pendency of, a criminal proceeding.” Notably, neither the statute nor the Court of Appeals requires an accusatory instrument to trigger the warrant-issuing court’s authority to return property to the rightful owner pursuant to Penal Law § 450.10. That is because Criminal Procedure Law § 1.20(18)

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<sup>91</sup> Penal Law § 450.10 replaced N.Y. Code Crim. Proc. § 687 after the former had been challenged in *People ex rel. Robert Simpson Co. v. Kempner*, 154 A.D. 674 (2d Dept. 1913). In *Kempner*, a maid stole two diamond rings from her employer and sold them to a pawnbroker—from whom they were seized pursuant to a search warrant. The maid was never arrested, and the pawnbroker was never charged. *Id.* at 675. The warrant-issuing judge released the rings to the original owner and the pawnbroker appealed the court’s authority to do so. *Id.* The Court of Appeals held that § 687 violated constitutional due process by not providing notice and an opportunity to be heard, opining that the issue of ownership had to “be determined in a civil action.” *People ex rel. Robert Simpson Co. v. Kempner*, 208 N.Y. 16, 25 (1913). The current PL § 450.10 cured that defect by requiring that the People give notice and that the possessor be given an opportunity to be heard under the revised statutory language. Thus, *Kempner*’s concerns a statute that no longer exists. Moreover, and as will be addressed, *infra*, even assuming *arguendo* that *Kempner* was still applicable, it was overruled in *People v. Museum of Mod. Art (In re Grand Jury Subpoena Duces Tecum)*, 93 N.Y.2d 729 (1999).

defines “*Criminal Proceeding*” as “*any proceeding which (a) constitutes a part of a criminal action or (b) occurs in a criminal court and is related to a prospective, pending, or completed criminal action, either in this state or of another jurisdiction, or involves a criminal investigation.*” In other words, Penal Law § 450.10 is the statutorily prescribed mechanism for returning stolen property to its owner in any “*criminal investigation.*” Because the seizure of *Russian War Prisoner* was based on, and remains, *a criminal investigation*, the determination of their ownership is indisputably a “*criminal proceeding,*” and Penal Law § 450.10 applies. And, of course, this criminal investigation is still open.

143. Not surprisingly, then, the release of stolen property under Penal Law § 450.10 is commonplace—even when contested. *See, e.g., Stuhler v. State*, 127 Misc. 2d 390, 393-94 (N.Y. Sup. Ct. 1985) (directing New York Attorney General to return to victims money seized from defendants pursuant to a search warrant: “PL § 450.10...governs the disposal of stolen property...It authorizes the court to deliver or order the delivery of stolen property to the owner, on proof of title.” (emphasis added)); and *Matter of Okada v. Prop. Clerk of the Police Dept of N.Y.*, 2004 N.Y. Misc. Lexis 3220 (N.Y. Sup. Ct. 2004) (directing this Office to return stolen 19<sup>th</sup> century Rocca violin to its owner prior to completion of criminal case). In *Okada*, the defendant absconded after he was released on bail, and this Office objected to the violin’s return, arguing that it was evidence in the pending criminal case for criminal possession of stolen property. The court disagreed. Noting that “PL § 450.10 is predicated on the demand of an owner,” *id.* at 4, the court held that the owner of the violin had “*established by affidavit and documentary evidence that he is the owner of the Rocca [violin].*” *id.*, at 2. The court, therefore, exercised its powers under Penal Law § 450.10 to

determine ownership of the stolen property and ordered its return to that owner.<sup>92</sup>

144. Finally, and as compared with more traditional forms of stolen property—cars, jewelry, etc.—there are even more compelling reasons for criminal courts adjudicating the ownership of stolen artworks and antiquities sold through New York’s robust art markets, arguably the most lucrative in the world.

a. In addition to creating tax revenue for the city’s coffers from the many millions of dollars spent annually on the sale of art and antiquities, New York’s art market draws countless visitors and enhances New York City’s reputation as an international cultural mecca.

b. Thus, New York courts have an undeniable interest in denying safe haven to possessors of stolen cultural property. *See, e.g., Kunstsammlungen Zu Weimar v. Elicofon*, 536 F. Supp. 829, 846 (E.D.N.Y. 1981) (concerning Dürer portraits stolen in Germany: “New York policy is...to preserve the integrity of transactions and prevent the state from becoming a marketplace for stolen goods”); and *George W. Gowen as Limited Ancillary Administrator of the Estate of Oscar Stettiner v. Helly Nahmad Gallery, Inc., et al.*, p. 48, (concerning Nazi-looted

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<sup>92</sup> Not including this application, this Office has applied for well over 100 turnover orders for more than 4,000 antiquities and artworks. Of these, the warrant-issuing court has granted all but one. In October 2017, this Office seized a Persian Guard Relief that had been stolen from Persepolis in modern-day Iran. After the People moved under PL § 450.10 to return the Relief to Iran, the warrant-issuing judge, the Honorable Melissa C. Jackson, initially ruled that under *Kempner*, the court did not have jurisdiction to determine the issue of ownership since no criminal prosecution was pending against the current possessors and none was forthcoming. Seven months later, after the investigation continued, leading the possessors to execute a stipulation consenting to the repatriation, Judge Jackson ordered the Relief to be returned to Iran, affirming her authority under Penal Law § 450.10 to adjudicate and order the release of stolen property. The Relief has since been returned to Iran. In February 2018, this Office seized a Head of Alexander that had been stolen from the Roman Forum in Italy. After the People moved under PL § 450.10 to return the Head to Italy, and the current possessor opposed, the warrant-issuing judge, the Honorable Thomas Farber, affirmed that he did have jurisdiction to determine the issue of ownership. He deferred his ruling on the People’s application, however, awaiting the outcome of a federal lawsuit brought by the possessor of the Head. Unfortunately, that federal case is still pending more than three years later.

Modigliani painting, New York “*has a vested interest in ensuring stolen works of art do **NOT** enter its stream of commerce*”) (emphasis in original). *See* Exhibit 119 (George W. Gowen v. Helly Nahmad Gallery, Inc., et al.).

145. For all these reasons, I respectfully submit this warrant-issuing Court must exercise its exclusive authority over this criminal proceeding in determining the owner of *Russian War Prisoner*.

### ***Civil Courts Ill-Equipped to Determine Owner Under Penal Law § 450.10***

146. Despite the plain language of Penal Law § 450.10, counsel in other criminal cases involving the ATU have argued that civil courts are the more appropriate forum to adjudicate ownership of stolen property. Such arguments are legally incorrect. Not only has the Court of Appeals ruled otherwise, but the argument ignores the reality of civil court and the dual criminal-civil authority of criminal courts.

147. First, because civil-court delays are legendary, staying any return to the victim-owner while civil courts make their determinations is anathema to the plain language of the statute, its legislative intent, and the justice dependent on swift resolution. Delayed justice rewards the thief and punishes the victim.

a. Federal and New York civil cases are illustrative. *See, e.g., Kunstsammlungen Zu Weimar v. Elicofon*, 536 F.Supp. 829 (E.D.N.Y. 1981) (German museum claimed Elicofon had two paintings by Albrecht Dürer that had been stolen from the museum—12 years later, museum was determined to be rightful owner); *Republic of Turkey v. Metropolitan Museum of Art*, 762 F.Supp. 44 (S.D.N.Y. 1990) (Turkey sued the Met for the return of the “*Lydian Horde*”—7 years later, parties settled out of court); and *United States v. An Antique Platter of Gold*, 184



F.3d 131 (2d Cir. 1999) (U.S. Attorney for Southern District of New York filed civil-forfeiture action against Michael Steinhardt for a stolen Sicilian gold *phiale mesomphalos*—4 years later, Italy was determined to be rightful owner). New York is similar. *See, e.g., Solomon R. Guggenheim Found. v. Lubell*, 77 N.Y.2d 311 (1991) (Guggenheim Foundation claimed Lubell had stolen Chagall painting—5 years later, the Foundation was determined to be rightful owner).<sup>93</sup>

b. It is not surprising, therefore, that New York has long rejected initiating separate civil actions for the return of property seized pursuant to a warrant. *See, e.g., In the Matter of Documents Seized Pursuant to a Search Warrant*, 124 Misc. 2d 897, 898-99 (Sup. Ct. N. Y. Cnty, 1984) (defendant-business owner petitioned warrant-issuing court for return of documents seized by this Office). In ordering the return of the documents to the owner, the court held that under “*long usage*,” the warrant-issuing court has *exclusive* authority over the return of property. *See also People v. Louis Posner*, 86 A.D.3d 443 (1st Dept 2011) (affirming warrant-issuing court’s authority to release seized funds to pay the defendants’ attorneys’ fees and living expenses); and *People v. Braunhut*, 101 Misc. 2d 975, 981 (Bronx Cnty 1979) (“*The local criminal court possesses the requisite jurisdiction to order the release of property...It is the court most familiar with the facts of the case, and should not be reluctant to exercise its jurisdiction*”).

148. Second, since criminal courts possess both criminal and civil jurisdiction, this ownership determination falls comfortably within the court’s statutory authority:

*[A] court specified herein which possesses civil as well as criminal jurisdiction does not act as a criminal court when acting solely in the exercise of its civil jurisdiction, and an order or determination made by such a court in its civil capacity is not an order or determination of a criminal court even though it may terminate or otherwise control or affect a criminal action or proceeding.*

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<sup>93</sup> From 2016 through 2020, approximately 440,000 cases were arraigned in New York County criminal courts—on average, 240 per day. Property is seized in most cases. If even a fraction of these criminal cases were stayed pending ownership determinations to be made by civil courts, the system would collapse.

CPL § 10.10[7]. The Court of Appeals has explained why,

*[T]here may be a variety of reasons why a particular [civil] matter is assigned to a Criminal Term of the Supreme Court, not the least of which may be that the matter requires prompt attention, but because of a backlog of other civil matters no other parts are available.*

*In re Abrams*, 62 N.Y.2d 183, 190 (1984). The Court of Appeals itself is governed by this dual criminal-civil jurisdiction in its appellate review of lower-court motions to quash subpoenas:

*[A] motion to quash subpoenas, even those issued pursuant to a criminal investigation, is civil by nature and not subject to the rule restricting direct appellate review of orders in criminal proceedings.*

*Id.* at 192. See also *People v. Santangelo*, 38 N.Y. 2d 536 (1976) (motions to quash subpoenas in criminal court are civil in nature); and *In the Matter of the People & c., v. Conrado Juarez and Frances Robles*, Slip Op., 58 (June 27, 2018) (motions to quash subpoenas prior to filing of accusatory instrument are civil in nature and those that occur after filing are criminal in nature and not subject to appeal).

### ***Proper Proceeding and Burden under Penal Law § 450.10***

149. To fulfill this Court's statutorily required ownership determination, this Court must conduct the "civil-like proceeding" prescribed by the Court of Appeals. There is, of course, nothing novel about criminal courts conducting civil-like proceedings.

a. A non-exhaustive list would include the following: restitution hearings; civil-forfeiture actions; confessions of judgment; record-sealing proceedings (*People v. M.E.*, 121 A.D. 3d 157 (4th Dept. 2014)); issuance of supplemental orders (*People v. Purley*, 297 A.D. 2d 499 (1st Dept. 2002)); and certain civil-commitment proceedings (*New York State Dept of Mental Hygiene v. Cnty of Broome*, 89 Misc. 2d 354 (Broome Cnty 1977)).

b. Similarly, the Diversion, Veterans Treatment, and Integrated Domestic

Violence courts all hear related criminal and civil matters simultaneously.

150. Nor does it matter that the precise procedure to be used in a Penal Law § 450.10 hearing is left to the discretion of the criminal court—just as it is in *Ventimiglia* hearings, *Sandoval* hearings, *Geraci* hearings (to determine admissibility of grand jury testimony where the defendant is responsible for the witness’s unavailability), etc. The Court of Appeals directs when hearings are necessary and leaves it to the criminal courts to determine how to conduct such hearings— whether those hearing are “criminal” or “civil” in nature—trusting judges to assess the quality and quantity of the evidence in rendering a just decision.

151. As for the specific burden of proof, Penal Law § 450.10 (5) requires “*satisfactory proof of his title.*” In other words, whether this Court is satisfied based on the totality of the evidence that the Grünbaum heirs are the owners. Although “*satisfactory proof of title*” is not defined in the penal law, I respectfully submit that the legislature intended that the standard be preponderance of the evidence.

a. At the outset, the legislature easily could have specified a burden such as proof beyond a reasonable doubt or clear and convincing evidence. The failure of the legislature to include those specific higher burdens is evidence that the legislature omitted such provision intentionally. *Pajak v. Pajak*, 56 N.Y.2d 394 (1982) (“*The failure of the Legislature to include a matter within a particular statute is an indication that its exclusion was intended*”). Rather, they chose “satisfactory” and left it to the sound discretion of the court that has custody of the stolen property, doubtless because that “*is the court most familiar with the facts of the case.*” *Braunbut*, 101 Misc. 2d at 981.

b. In this case, therefore, “*legislative intent is to be ascertained from the words and*

*language used, and the statutory language is generally construed according its natural and most obvious sense.”*

McKinney’s Consolidated Laws of New York § 94. As for the “*natural and most obvious sense*” of “*satisfactory*,” Webster defines it as “*adequate*” or “*good enough to fulfill a need, wish, requirement.*” Since the New York legislature—redolent of Alice and the March Hare—is presumed to mean what they say and to say what they mean, we are constrained to adopt the most obvious reading of “*satisfactory*,” i.e., the tested and much-used preponderance of the evidence standard.

c. Indeed, although the courts have not specified the meaning of “satisfactory” as used here, New York courts adjudicating property disputes have routinely applied a preponderance standard. *Aetna Casualty & Sur. Co. v. Glass*, 75 A.D.2d 786 (1st Dept. 1980) (holding that in a civil action for conversion, proof must be made by a fair preponderance of the credible evidence); *Hecker-Jones-Jewell Milling Co. v. Murray*, 178 N.Y.S. 335 (App. Term 1st Dept. 1919) (a plaintiff’s burden to recover his stolen property in the possession of the police department is preponderance of evidence.); *Matter of Canfield*, 176 A.D. 554 (2d Dept. 1917) (proof of a gift of property must be proven by a preponderance of the evidence.).

152. Penal Law § 450.10 also does not contain a statute of limitations. Other sections of the criminal procedure and penal laws of New York are replete with mandatory deadlines for the filing of motions, the bringing of charges, the commencement of trials, the provision of notices, etc. Yet there is no deadline. Again, this omission is evidence that the legislature did so intentionally. *Pajak v. Pajak*, 56 N.Y.2d 394 (1982).

a. This comports with the canon of statutory construction that holds the legislature does not intend for its statutes to cause unjust effects. *See, e.g., Jacobus v. Colgate*, 217 N.Y. 235 (1916) (“*A statute should be interpreted in the remedial spirit that actuated the Legislature, rather*

*than in the technical spirit which gave rise to the mischief which the Legislature has sought to remedy”).*

*It must be presumed that the Legislature did not intend that a statute would have unjust effect and unless the language forbids, it must be given an interpretation and application consistent with such presumption. Where there is any doubt about proper interpretation of a statute, it should receive that construction which would not work hardship or injustice.*

*Stone v. Agricultural Ins.*, 76 Misc.2d 1021, 1024 (Sup. Ct. Albany Cnty 1973).

b. Here, the intent of Penal Law § 450.10 is to effectuate the prompt return of stolen property to its true owner—without even an oblique reference to a statute of limitations. It would undoubtedly promote unfairness and injustice for courts to require that the property be returned to anyone other than the owner merely because of the passage of time.

c. Penal Law § 450.10 applies, therefore, no matter how much time has elapsed since the property was stolen.

### **Seizure & Return of Russian War Prisoner is Consistent with International Law**

153. Several provisions of international law speak directly to the issue of stolen artwork and cultural property in times of war. Although the instant seizure of *Russian War Prisoner* is not bound by these principles, this section sets out the three most relevant sources of international law and demonstrates their consistency with the seizure of *Russian War Prisoner* and its return to its rightful owners.

a. First, the 1907 Hague Convention Respecting the Laws and Customs of War on Land in Article 56 states in relevant part that, “[a]ll seizure of, destruction or wilful damage done to...works of art...is forbidden, and should be made the subject of legal proceedings.” *Hague Convention Respecting the Laws and Customs of War on Land*, Art. 56, ¶ 2 (1907). Although the 1907 Hague Convention is silent as the precise nature of the form that the proceedings should take, this Court’s ongoing proceedings regarding the Nazi-looted collection of Fritz Grünbaum are

consistent with the 1907 Hague Convention.

b. Second, as has already been seen, in 1943, 18 countries issued a “*Declaration Regarding Forced Transfers of Property in Enemy-Controlled Territory*.” See Exhibit 106 (Dept. of State Bulletin, January 9, 1943). This declaration announced the policy of the United States government and the allied powers of World War II to return stolen property to its rightful owners. This Court’s ongoing proceedings regarding the Nazi-looted collection of Fritz Grünbaum are consistent with this *Declaration*.

c. Finally, in 1998, the U.S. State Department’s Office of the Special Envoy for Holocaust Issues released a series of guidelines known as the “*Washington Conference Principles on Nazi-Confiscated Art*.” See Exhibit 120 (*Washington Principles*). The *Washington Principles* identified 11 principles intended to aid in the resolution of disputes regarding Nazi-looted art. Principles 1, 4, and 8 are particularly relevant here:

1. *Art that had been confiscated by the Nazis and not subsequently restituted should be identified.*

. . .

4. *In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.*

. . .

8. *If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.*

Again, this Court’s ongoing proceedings regarding the Nazi-looted collection of Fritz Grünbaum are consistent with these principles.

### **A Hearing is Unnecessary**

154. The case at bar already has a long, well-developed record consisting of extensive evidence. And this motion has included as an exhibit every relevant and probative document

known to still exist. As for witnesses, most were murdered by the Nazis. Those who survived—either because they safely emigrated or because they were not targeted by the Nazis—have passed away. Therefore, every fact that can be known—given the passage of time—has been presented. Doubtless, AIC may offer a different interpretation of some of the evidence. But—apart from sound, reasoned oral argument—there is simply nothing left for a hearing to uncover. The Court, therefore, may justly rule on this motion on the papers and—should the Court permit—oral argument of both parties without a hearing.

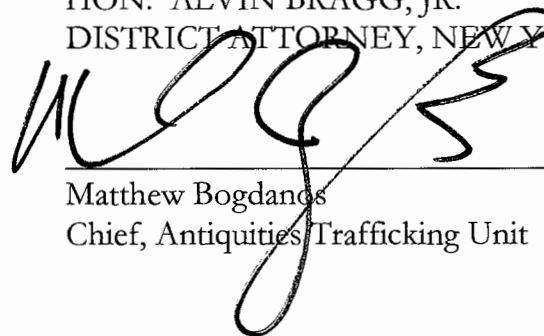
### Conclusion

155. I respectfully submit this application in accordance with New York State law as satisfactory proof of Fritz Grünbaum's heirs' ownership of *Russian War Prisoner*.

WHEREFORE, it is respectfully requested that the Court grant this Application for an Order returning *Russian War Prisoner* to the heirs of Fritz Grünbaum.

Dated: February 22, 2024  
New York, New York

HON. ALVIN BRAGG, JR.  
DISTRICT ATTORNEY, NEW YORK COUNTY



Matthew Bogdansk  
Chief, Antiquities/Trafficking Unit

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK, PART 621

IN THE MATTER OF AN APPLICATION FOR A WARRANT  
TO SEARCH THE PREMISES LOCATED AT THE ART  
INSTITUTE OF CHICAGO 111 SOUTH MICHIGAN AVENUE  
CHICAGO, IL 60603 (“THE TARGET PREMISES C”)

ORDER

Upon the application of Assistant District Attorney Matthew Bogdanos, dated February 22, 2024,

WHEREAS the New York County District Attorney has shown that the **drawing** *Russian War Prisoner* by Egon Schiele, dated 1916, watercolor and pencil on paper, measuring 17 ¼ × 12 ¼ inches, and valued at approximately \$1,250,000, has been stolen from Fritz Grünbaum.

It is HEREBY

ORDERED, in accordance with Penal Law § 450.10, that the New York County District Attorney transfer custody of *Russian War Prisoner* to the heirs of Fritz Grünbaum.

Dated: \_\_\_\_\_

\_\_\_\_\_  
J.S.C.