

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARTIN GROSZ and LILIAN GROSZ :

Plaintiffs, :

against :

THE MUSEUM OF MODERN ART, :

Defendant, :

PORTRAIT OF THE POET MAX :
HERRMANN-NEISSE With Cognac-Glass, :
SELF-PORTRAIT WITH MODEL and :
REPUBLICAN AUTOMATONS, :
Three Paintings by George Grosz :

Defendants in rem. :

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Case No.: 09 Civ. 3706 (CM)(THK)

ECF CASE

**EXPERT REPORT OF
JONATHAN G. PETROPOULOS**

JONATHAN G. PETROPOULOS deposes and certifies, as follows:

1. I am over the age of twenty-one and reside at 526 West 12th Street, Claremont, California, 91711. I have been retained by the attorneys for the heirs of George Grosz to provide this Expert Report in relation to historical fact issues arising in the above-captioned matter.

2. Specifically, I have been requested to review two questions: (1) whether the allegations the three paintings by George Grosz, *Portrait of the Poet Max-Herrmann-Neisse (with Cognac Glass)*, *Self-Portrait with Model* and *Republican Automatons* (together “the Paintings”), were lost or stolen are grounded in historical fact; and (2) whether the report of Nicholas deB. Katzenbach (“the Katzenbach Report”) relied upon by the defendant, The Museum of Modern Art (“The MoMA”) is consistent with the

historical record and provenance documentation available to art historians and scholars. As set forth below, a review of available documentation and scholarly resources shows: (1) that the allegations of the First Amended Complaint (“FAC”) appear to be supported by documentary evidence and otherwise well-grounded in historical fact and (2) that the statements contained in the Katzenbach Report are inconsistent with the historical record.

Professional Experience

3. I am the John V. Croul Professor of European History at Claremont McKenna College in Southern California. A complete curriculum vitae is attached hereto as Exhibit “A.” I received my Ph.D. from Harvard University (1990), where I also had an appointment as a Lecturer in History. I began working on the subject of Nazi art looting and restitution in 1983, when I commenced my graduate work in history and art history. I am the author of *Art as Politics in the Third Reich* (University of North Carolina Press, 1996); *The Faustian Bargain: The Art World in Nazi Germany* (Oxford University Press, 2000); and *Royals and the Reich: The Princes von Hessen in Nazi Germany* (Oxford University Press, 2006); as well as co-editor of a number of volumes, including *The Spoils of War: The Loss, Reappearance, and Recovery of Cultural Property During and After World War II* (New York: Harry Abrams, 1997). I have also helped organize art exhibitions, including *Degenerate Art: The Fate of the Avant-Garde in Nazi Germany*, which opened at the Los Angeles County Museum of Art in 1991.

4. From 1998 to 2000, I served as Research Director for Art and Cultural Property on the Presidential Commission on Holocaust Assets in the United States (“PCHA”), where I helped draft the report, *Restitution and Plunder: The U.S. and Holocaust Victims’ Assets* (2001) (DBM 04157-04409). In this capacity as Research

Director, I supervised a staff of researchers who combed archives in the United States and Europe in order to understand better how representatives of the U.S. government (including the Armed Forces) handled the assets of Holocaust victims both during and after the war. As Research Director, I provided expert testimony to the Select Committee on Culture, Media and Sport in the U.K. House of Commons and to the Banking and Finance Committee of the U.S. House of Representatives.

5. I have served as an expert witness (as an historian/art historian) in a number of cases where Holocaust victims sought to recover lost artworks. This includes *Altmann v. Austria*, which involved six paintings by Gustav Klimt claimed by Maria Altmann and other family members. Mrs. Altmann was born and raised in Vienna and her family had its art collections seized after the Anschluss.

6. The research that my staff and I conducted at the PCHA on the disposition of the valuables (including artworks) transported on the so-called “Hungarian Gold Train” showed that U.S. forces in Austria had mishandled this property. We uncovered and documented widespread theft and numerous other violations of Allied restitution policy. I subsequently testified as an expert in a lawsuit filed by Hungarian Jewish victims and heirs that resulted in a settlement of approximately \$25 million.

7. I have also written expert reports for the Herzog family, whose art in Budapest was stolen first by the Nazis and then by the Soviet Red Army (many of the artworks are still in Russia); for the Cassirer family, whose members had a painting by Camille Pissarro stolen from their Berlin home (it is now in the Thyssen-Bornemisza Museum in Madrid); and for the Wildensteins, well-known art dealers who had a great

deal stolen from by the Nazis during World War II. I have been engaged by both plaintiffs and defendants to conduct research and to testify about my findings.

8. I wrote an expert report on the fate of the art collection of Viennese cabaret performer Fritz Grünbaum for *David Bakalar v. Milos Vavra and Leon Fischer*. I also reported on the fate of two works by Oskar Kokoschka in *Boston Museum of Fine Arts v. Dr. Claudia Seger-Thomschitz*, and *Sarah Blodgett Dunbar v. Dr. Claudia Seger-Thomschitz*. I subsequently authored an affidavit about what was known in the United States and Europe about Nazi art looting in the post-1945 period for the case, *Julius Schoeps v. The Museum of Modern Art and the Solomon R. Guggenheim Foundation*.

9. Pursuant to the highest standards of historical research, my objective is to approach the historical issues in a fair and objective manner, and to present and summarize complex historical documents in such a way as to facilitate understanding the events in question. I have been retained in this action at the rate of \$350 per hour.

10. Based upon my experience, as described above in brief, I am qualified to testify regarding historical research, documentation and historical issues relating to the subject matter of the case and to summarize, organize and provide reports on voluminous documentation that I believe will be helpful to the finder of fact in this action.

Methodology

11. I have read the FAC, considered the allegations therein, and studied voluminous evidence relating to the allegations that the Paintings were lost or stolen. I was also initially provided with a set of Bates-numbered documents (numbered DBM 1-4582), which I used to draft my 23 June 2009 Declaration submitted in connection with

Plaintiffs' Opposition to The MoMA's Motion to Dismiss. I subsequently examined the following documents:

MoMA 0000752	MoMA 0000758	MoMA 0000771	MoMA 0000777
MoMA 0000784	MoMA 0000786	MoMA 0000792	MoMA 0000795
MoMA 0000798	MoMA 0000802	MoMA 0000804	MoMA 0000810
MoMA 0013444	MoMA 0013539	MoMA 0013771	MoMA 0013885
MoMA 0013965	MoMA 0014066	MoMA 0005993	MoMA 006063
MoMA 006353	MoMA 006921	MoMA 007337	MoMA 008113
MoMA 008223	MoMA 008235	MoMA 008316	MoMA 009474
MoMA 009628	MoMA 009730	MoMA 011445	MoMA 011548
MoMA 011631	MoMA 0011671	MoMA 0011845	MoMA 0011939
MoMA 0012000	MoMA 0012002	MoMA 0012004	MoMA 0012410
MoMA 0012469	MoMA 0012470	MoMA 0012471	MoMA 0012472
MoMA 0012473	MoMA 0012474	MoMA 0012600	MoMA 0012603
MoMA 0012606	MoMA 0012638	MoMA 0012642	MoMA 0013350
DBM 0035-36	DBM 004934-4944	DBM 004990-5032	DBM 005482
DBM 005483-5504	DBM 005505-5618	DBM 005873-6195	DBM 006196-6201
DBM 007843-8461			

For the purposes of this expert report, I have assumed the authenticity of the documents.

Where necessary, I have conducted limited outside research and consulted relevant authoritative texts. Where I have done so, I have so indicated below. My methods and

analysis are consistent with the methodologies of professional historians in analyzing primary and secondary source documentation.

Chronology

12. Counsel for Plaintiffs provided me with a timeline of the events in Grosz's life and The MoMA's acquisitions relevant to this proceeding. I have edited it, checked it for accuracy and added additional documents, dates and details as I compiled this expert report. This chronology may be helpful to the Court and so I have annexed it hereto as Exhibit "B."

Caveat

13. To conduct an accurate historical analysis and to analyze anomalies in documentation, it is important to review all documents relevant to The MoMA's acquisition of artworks from Germany during the relevant periods.

14. I have noted in my review that certain documentation appears to be incomplete. For example, I have been provided with correspondence dated 8 December 1938 from Curt Valentin to Alfred Barr regarding Barr's apparent request to make acquisitions of artworks from the Nazi Reich Ministry for People's Enlightenment and Propaganda (DBM 03405-03406). It has been represented to me that some of Barr's correspondence to Valentin is missing from The MoMA's files, as well as any written response from Barr. My analysis herein is thus limited to the documents I have received. Provision of additional documentation may significantly affect my analysis and conclusions.

Questions Presented

15. The questions I have been asked to consider are as follows:

(1) Are the allegations that Grosz’s paintings were lost or stolen grounded in evidence and supported by the historical facts? If so, were The MoMA’s acquisitions consistent with ethical museum acquisition practices at the time of such acquisitions?

(2) Did The MoMA, in considering Nicholas deB. Katzenbach’s Report, adequately evaluate the evidence and scholarly resources available to resolve stolen art claims?

As set forth below, I have concluded that Grosz's paintings were lost or stolen when Grosz fled Germany and were never recovered by Grosz or his heirs. When The MoMA purchased or received the paintings, The MoMA failed to follow ethical acquisition practices. In preparing and issuing the Katzenbach report, The MoMA failed to follow procedures consistent with accepted practices and issued a report that is entirely unreliable and inaccurate.

Question 1. Are the allegations that Grosz’s paintings were lost or stolen grounded in evidence and supported by the historical facts?

16. I have examined the following allegations in the FAC and documents provided to me:

- Grosz’s work typified the “degenerate” art Hitler hated. Although Grosz was not Jewish, Grosz’s work was critical of the Nazis and explored political and religious themes antithetical to Nazi doctrine. (FAC ¶ 3).
- On 12 January 1933, just prior to the Nazis taking power, Grosz emigrated to New York with his wife. On 30 January 1933 Adolf Hitler was named Chancellor of Germany. (FAC ¶ 46).
- When Hitler came to power, Grosz was one of the first artists to be declared an “enemy of the state” and his works were confiscated and banned from sale or display, decreasing the value of Grosz’s artworks then in stock with his dealer, Alfred Flechtheim. (FAC ¶ 3).
- By formal decree, the Nazis confiscated everything Grosz left behind when he fled Germany, including his paintings. Grosz, whose works explored political and religious themes, championed the common man

and challenged totalitarian power and greed in pursuing unjust wars. (FAC ¶ 2).

17. I have examined the following documents to determine whether the allegations made by Plaintiffs are supported by evidence:

- Articles about George Grosz's life in Germany and in the USA (DBM 03042, DBM 03038, DBM 03047-03058);
- A formal decree stating that Grosz's property was confiscated (DBM 01355-01385);
- Documents relating to compensation proceedings for damages due to Nazi persecution filed by George Grosz and his heirs after the war (DBM 01756-01882);
- George Grosz's autobiography, *A Little Yes and a Big No* (1946).

18. Grosz was one of the most daring political artists of his time. He gained iconic status in Germany's Weimar Republic for his artistic assaults on totalitarianism, greed, licentiousness and warmongering. His *K.V. (Fit for active service)* (1916-17) (Museum of Modern Art) is an example of an anti-war work: the image of a doctor approving a human skeleton as fit for duty in the war. His *Hitler, the Saviour (Siegfried Hitler)* (1923) mocked Hitler by putting him in ancient barbarian costume with a Swastika tattooed on his arm (DBM 04555).

19. According to biographer Hans Hess, Grosz's "most discussed" single work was an antiwar drawing of Jesus Christ on a cross wearing a gasmask bearing the title "Yours is not to reason why, yours is but to do and die" *Christ with the gasmask* (1927). Grosz argued that he had symbolized crucified humanity. Grosz faced charges under section 166 of the criminal code for "insulting institutions of the Church" and was found guilty (DBM 04556).

20. Grosz won a resounding victory on appeal for his pacifist message, with the court stating:

As little as the gasmask and jackboot fit the picture of Christ, as little does the teaching of the Church in support of the war fit true Christian doctrine. The artist wanted to show that those who preach war have reduced Christ. The highest symbol of the Church, the crucifix, appeared most fitting to the artist, to show to mankind and the Church the error of fanning the flames of war.

(DBM 04557).

21. By all accounts, Grosz was probably the artist most despised by Hitler and would have been killed had he not fled Germany. In his colorful and well-documented career that transformed him from Communist to Capitalist, his persecution by the Nazis is confirmed by an overwhelming number of reliable sources.

22. Grosz was a victim of Nazi persecution as ruled by a West German court. Beginning in March 1933, the Gestapo undertook the seizure of all the property belonging to him and his wife Eva. The 237-page file entered into evidence that records the expropriation of their property is a chilling document: the Berlin Gestapo and the Reich Finance Ministry carry out the measures, and the Reichsführer-SS (and head of the Gestapo) Heinrich Himmler, described by historian Richard Breitman as “the architect of genocide” is personally briefed on the seizure of the Grosz estate (DBM 02728–02964 for the file, and DBM 02729-0230 for the 26 October 1937 letter from the Gestapo to the Finance Office in Berlin-Moabit, where Himmler is briefed on the seizure of Grosz’s property and his being stripped of German citizenship).¹

¹ Richard Breitman, *The Architect of Genocide: Himmler and the Final Solution* (New York: Alfred Knopf, 1991).

23. His Jewish art dealer, Alfred Flechtheim, lost most of his assets, including an inventory of Grosz's artworks and fled Nazi Germany for his life. The MoMA's argument that the Holocaust is irrelevant to the present claim is not well founded.

24. Based on the foregoing allegations and documents provided to me, I conclude that the allegations are consistent with and are supported by the documentary records. I therefore conclude that George Grosz was persecuted by the Nazis that his persecution had already begun prior to the early days of Hitler's government, and that Grosz therefore could not return to Germany after he left in January 1933.

Portrait of the Poet Max Herrmann-Neisse (with Cognac Glass) (1927).

25. In answering the question of whether the evidence shows that George Grosz's *Portrait of the Poet Max Herrmann-Neisse (with Cognac Glass)* (1927) ("*Herrmann-Neisse with Cognac*") was lost or stolen, I first place the artist's work in his *oeuvre*. Grosz was a close friend of the poet Max Herrmann-Neisse. Grosz completed two major portraits of Herrmann-Neisse during his "New Objectivity" (*Neue Sachlichkeit*) period in the late 1920s. This "New Objectivity" period is characterized by a highly realistic and painterly approach. The record shows that The MoMA's Alfred Barr attempted to acquire both portraits of Herrmann-Neisse. The first portrait of Herrmann-Neisse (1925) is a larger oil, now owned by the Mannheim Museum. Barr was involved in negotiations with art dealers in the period December 1947 – November 1949 (DBM 03254-03272). Ultimately, The MoMA did not acquire the first portrait of Herrmann-Neisse.

26. The second portrait of Herrmann-Neisse is smaller and is distinguished by the appearance of a cognac glass on the table before him. Thus the original provenance

document shows that George Grosz referred to this work as *Kleines Porträt Max Herrmann (mit Cognakflasche)* (*Small Portrait Max Herrmann (with Cognac bottle)*).

(FAC, Ex. 1).

27. I have examined the following allegations in the FAC to determine whether they are supported by evidence:

- Following Grosz's delivery of *Herrmann-Neisse with Cognac* to Galerie Flechtheim in Berlin, it was exhibited in 1928 at the Prussian Academy of Arts, MoMA in 1931, and at the Palais des Beaux Arts in Brussels in 1932. The MoMA's exhibition catalog indicates that it was on loan from Galerie Flechtheim. (See FAC Exhibit 2). MoMA's catalog clearly distinguishes artworks on loan from Flechtheim's private collection. (FAC ¶ 129).
- The extensive list of Grosz's oil paintings located at Galerie Billiet did not include the *Herrmann-Neisse with Cognac*. Indeed, Grosz's watercolors and oil paintings, part of the consignment inventory of Galerie Flechtheim at the time of liquidation, were excluded from the liquidation of the Berlin gallery, since title remained with Grosz. A 15 April 1934 Flechtheim letter indicates that the liquidation had already been completed and creditors paid 20% of their claims. (See FAC Exhibit 17) (FAC ¶ 130).
- *Herrmann-Neisse with Cognac*'s title could not possibly have been transferred to Galerie Flechtheim as an offset against debt, as the body of Grosz's artworks were sent to London and Paris. Liquidation of Flechtheim's Düsseldorf and Berlin galleries was completed prior to 15 April 1934. (FAC ¶ 131).
- Alfred Flechtheim was persecuted by the Nazis and left Germany in October 1933, yet continued to act as a consignee for certain Grosz works as evidenced by his delivery of certain of Grosz's oil paintings to Paris and Grosz's watercolors to London. (FAC ¶ 132).
- There is no evidence in business records that Flechtheim possessed *Herrmann Neisse with Cognac* after leaving Berlin. (FAC ¶ 133).
- *Herrmann-Neisse with Cognac* was not sent to Paris with the other oil paintings. *Herrmann-Neisse with Cognac* was clearly not in Flechtheim's inventory while he lived in Paris or London. (FAC ¶ 134).

- There is no evidence that Grosz ever pledged *Herrmann-Neisse with Cognac* as security for a debt. Indeed, there is no evidence that title to the painting was transferred by Grosz to anyone. Grosz in letters to his brother-in-law and to his friends revealed that the painting was “stolen.” (FAC ¶ 138)
- On 18 January 1936, the wind-up and dissolution of Galerie Alfred Flechtheim G.m.b.H. in Berlin started. On the same date, Alfred Flechtheim made a will designating his nephew, Heinz Hulisch, as his sole heir. (FAC Exhibit 10) (FAC ¶ 50).
- On 27 January 1937, Charlotte Weidler, a German art dealer, critic, and curator for the Carnegie Institute in Pittsburgh, wrote that many German artists were expelled from German museums and could not show their work, including “George Gross [sic] (now in New York).” *Archives of American Art Journal*, Vol. 25, No. 1&2, p. 21 (1985). (FAC ¶ 74).
- On 12 April 1937, Charlotte Weidler wrote to German art historian and critic Paul Westheim, claiming that George Grosz’s dealer Alfred Flechtheim gave her a number of paintings as an “inheritance,” including *Herrmann-Neisse with Cognac*. According to Weidler, Flechtheim wanted to thank her for a favor she made to his wife Betty. (FAC ¶ 75).
- In December 1939, Weidler emigrated to New York. (FAC ¶ 77).
- In early 1942, an Assistant Director of the Freer Gallery of Art in Washington, D.C., and a Trustee of the Carnegie Institute corresponded concerning suspicions that Weidler, then with the Carnegie Institute’s Fine Arts Department, was a Nazi agent. (FAC ¶ 78).
- On 5 February 1950, Weidler wrote to Barr. She “claimed” that some of her paintings survived the war and she would soon arrive in New York. She also informed Barr that she had a “strong early Grosz which once had belonged to the Kronzprinzen Palais and has been ousted by Hitler” for sale. (FAC Exhibit 21) (FAC ¶ 87).
- *Herrmann-Neisse with Cognac* was never exhibited at the Kronzprinzen Palais in Berlin. (FAC ¶ 89).

28. From the evidentiary record, the chain of possession (as compared to ownership) for *Herrmann-Neisse with Cognac* as based upon The MoMA's website (DBM 02722) appears as follows:

George Grosz (Berlin, 1927)

Galerie Alfred Flechtheim (Berlin, 1928).

Charlotte Weidler (Berlin, April 1937?)

Curt Valentin Gallery (New York, 1952)

The Museum of Modern Art (New York, April 1952)

29. I have examined the following documents to conclude if the allegations made by Plaintiffs are supported by evidence:

- Exhibition catalogue of the *Frühjahrsausstellung* of the Prussian Academy of Arts (DBM 01053);
- Exhibition catalogue *German Painting and Sculpture* at The MoMA from 1931 (DBM 01083-01087);
- Letter from Flechtheim to Grosz regarding the liquidation of his Gallery including the consignment list for the Galerie Billiet (DBM 01391-01400);
- Letters from Grosz to his brother in law Otto Schmalhausen and friend Herbert Fiedler that The MoMA is exhibiting a painting that was stolen from him (DBM 02240-02241, 02248-02249);
- Records of the Berlin commercial registry regarding the dissolution of Galerie Flechtheim (DBM 01203-01227; DBM 01228-01273);
- Copy of the last will of Alfred Flechtheim (DBM 01401-01402);
- *Alfred Flechtheim. Sammler. Kunsthändler. Verleger* (DBM 03843-04156);
- Letter from Charlotte Weidler to Paul Westheim regarding an "inheritance" (DBM 01311-01314).

- Emigration Documents regarding Charlotte Weidler (DBM 03836-03839);
- Correspondence between the Carnegie and Freer Galleries regarding the question whether Weidler was a Nazi spy (DBM 01315-01321);
- Letter from Charlotte Weidler to Alfred Barr, she tells him that her collection has been rescued and offers him Lehmbruck drawings. She tells him of *Herrmann-Neisse with Cognac* (DBM 02700-02701);
- Correspondence between Alfred Barr and Curt Valentin regarding the sale of *Herrmann-Neisse with Cognac* (DBM 02709-02711);
- Charlotte Weidler Documents (DBM 0173-0204);
- Hausmann-Weidler-Lücke-Fiedler correspondence from 1947 and 1948 (MoMA 00752-00757, MoMA 00777-00809 and MoMA 0011631-0011632);
- Registration card for *Herrmann-Neisse with Cognac* from The MoMA (MoMA 008117-008118).
- Stefan Koldehoff's book, *Die Bilder sind unter uns. Das Geschäft mit der NS-Raubkunst* (Frankfurt: Eichborn Verlag, 2009).

30. **Elaboration:** The historical record contains business records showing that the work was consigned to the art dealer Alfred Flechtheim. As is well known, Flechtheim was a prominent German Jewish art dealer with galleries in Berlin, Düsseldorf, Frankfurt, and Cologne (DBM 03868).² George Grosz was well-known for an early flirtation with Communist political views (he had joined the German Communist Party in 1919).³ Both Flechtheim and Grosz were persecuted by the Nazis: the former because he was Jewish, Grosz for his political views.

² See the exhibition catalogue devoted to Flechtheim's career: Kunstmuseum Düsseldorf, eds., *Alfred Flechtheim*. Flechtheim's stationery, reproduced on page 25, lists the addresses of his branch galleries as of 1924.

³ See Barbara McCloskey, *George Grosz and the Communist Party: Art and Radicalism in Crisis, 1918-1936* (Princeton: Princeton University Press, 1997).

31. It perhaps bears mentioning that Grosz was sometimes labeled “Jewish” by Nazi opponents (and portrayed as such in cartoons, such as one that appeared on 14 April 1934 in the Nazi newspaper, *Der Stürmer*) (DBM 04618). But the fact is that Grosz was persecuted for political reasons, and Flechtheim on racial grounds. Flechtheim emigrated in March 1933, although, according to art historian Cordula Frowein, who has studied his years in exile in the United Kingdom, Flechtheim traveled back to Germany between 1933 and 1936 (specifically, she says that Flechtheim met with art dealer Curt Valentin, his former assistant, during these visits) (DBM 03902).⁴

32. A key figure in the liquidation of Flechtheim’s business in Germany was Alfred Schulte, an accountant and tax expert who joined several Nazi affiliated organizations, including *Nationalsozialistischer Rechtswahrerbund* or National Socialist Legal Workers’ Association; he later joined the air defense organization (the Reichsluftschutzbund) (DBM 088-089, DBM 005878-00585, DBM 005914-005915, and DBM 005939-005942). Schulte became the trustee who was charged with liquidating Flechtheim’s business. To become a trustee or liquidator required good connections with the Nazi authorities.

33. In most cases, the trustees were Nazi party members. When I wrote an expert report for the *Altmann v. Austria* case about the trustee of the Bloch-Bauer property in Vienna, the trustee, Dr. Erich Führer, appeared to be a lawyer and Nazi Party member. I subsequently learned that he was also a secret agent for the Reich Security Main Office. While the extant evidence about Dr. Schulte does not yield this conclusion,

⁴ Cordula Frowein, “Alfred Flechtheim im Exil in England,” in Kunstmuseum Düsseldorf, eds., *Alfred Flechtheim*, 59. Frowein notes that Flechtheim’s wife and mother continued to live in Germany: the former in Berlin, that latter in Düsseldorf.

there can be no doubt that Schulte had excellent relations with the Nazi regime and that he was the formal trustee of the Flechtheim gallery as of November 1933 (DBM 073).

34. According to the documentary evidence, Schulte, the liquidator appointed to sell-off Flechtheim's assets was a member of a Nazi group (DBM 088-089). There is at least some evidence which shows that Schulte looted Flechtheim's business in favor of the Nazis (DBM 01199). Documents show that Schulte claims not to remember any of Flechtheim's paintings, which is not credible. One newspaper article from 2003 regarding a claim for works in the Bremen Kunsthalle quotes respected provenance researcher Ute Haug with regard to the liquidation of the Flechtheim Gallery through Schulte, "such a confiscation would fully justify a comparison to so-called looted art" (MoMA 001200-12005). Flechtheim himself wrote to Grosz in April 1934 that his gallery had "fallen apart financially" and that he scarcely avoided "full bankruptcy" (MoMA 06938). Schulte's liquidation plan entailed paying creditors of the Flechtheim gallery twenty percent of what they were due, and this was what Schulte proposed to artist Paul Klee in February 1934 (DBM 006002-006004). I have seen no such offer made by Schulte to George Grosz. Indeed, in an 18 November 1933 communication from Schulte to Grosz, the liquidator claimed that Grosz owed the gallery RM 16,255 (DBM 005877).

35. After his emigration from Germany to Great Britain, Flechtheim no longer had direct possession of Grosz's works held on consignment, as they were put at the disposal of other dealers in London (Freddie Mayor) and Paris (Galerie Billiet). During this time, Flechtheim and Grosz did not maintain close contact. This is indicated in a 12 November 1934 postcard that Grosz sent to his friend, Max Herrmann-Neisse, where he

asked, “**Do you know by any chance where Flechtheim lives in London? Address??**” (MoMA 008316-008317). While Neisse indeed sent Flechtheim’s address to Grosz, this appeared to do little to improve their relationship. In March 1937, upon learning of Flechtheim’s death, Grosz wrote author Ulrich Becher, who was living in Zurich, “[...]Talking about the art market, did you read, that old man Flechtheim died in London. [The *London*] *Times* reported that he was the discoverer and connoisseur of French art [...]Alf had cinnamon [meaning money] and pictures outside...but in London he was also only one amongst many. By the way it would interest me what you [know] about the auction price where how and when and which picture what you heard about it...I didn’t hear anything, no nothing. Often people talk and in the end it is just a fairy tale...even if, money I won’t see anyways but anyways eager to know.[...] (MoMA 008241-008242). This communication reflects not only a strained relationship, but also Flechtheim’s failure to communicate business information to Grosz. It also strongly suggests that Flechtheim was not keeping Grosz informed of the status of works the dealer placed with other galleries. I would note that Flechtheim never traveled to the United States of America in the 1930s (as mistakenly asserted by Laurie Stein in her report commissioned by The MoMA) (MoMA 006922-006933). The Flechtheim-Grosz consignment agreement from 1932 was negotiated by Curt Valentin (representing Flechtheim) and the artist.

36. It also bears mentioning that Flechtheim and Grosz had a history of financial wrangling. Back in July 1927, for example, Flechtheim asked Grosz to pay back an advance that the dealer had provided (MoMA 0013447). I have seen no evidence that this transpired. It is very possible that Flechtheim believed that Grosz still owed him

money from an earlier period, and that this helped Flechtheim justify his failure to keep him informed about the status of works held on consignment in the 1930s. In one letter from Flechtheim to Grosz, dated 15 April 1934, Flechtheim refers to Grosz's oil paintings as "security" (MoMA 06928). Flechtheim also asks that Grosz send \$100 to \$200 per month.

37. If this theory is correct—that Flechtheim after 1933 believed that Grosz owed him money—it would not justify his taking works provided to him on consignment. In the dealer's defense, the persecution and financial dislocation he suffered and his sudden death in 1937 mitigated against a clear and orderly report about the Grosz works in his custody. And, as elaborated below, the final disposition of all three works occurred after Flechtheim's death, and ultimate responsibility for the failure to render compensation to Grosz lies with others.

38. Flechtheim's legal heir, Heinz Hulisch engaged legal counsel to help him clarify Flechtheim's estate—and this included making inquiries with the dealer Jacques Seligmann about possible co-ownership of a Picasso painting (MoMA 009476). Neither Hulisch or his attorneys appear to have contacted Grosz to inquire about the status of the works Flechtheim held on consignment. While there are documents showing that Hulisch and his attorneys continued their efforts to clarify artworks found in Flechtheim's estate until 1946, there are no communications with George Grosz in these papers (MoMA 009478).

39. George Grosz accepted a teaching appointment at the Art Students League of New York from 1932 until 1936. A Guggenheim Fellowship ensued from 1937 to 1939, which permitted Grosz to focus on his own work. Grosz became a U.S. citizen in

1938 and resided in New York until shortly before his death in 1959. After Grosz's unsuccessful attempt to open his own art school in New York, he returned to teaching at the Art Students League of New York, a position he held through most of the 1950s.

40. *Herrmann-Neisse with Cognac* was exhibited in Brussels at the Palais des Beaux Arts in April-May 1932 (DBM 3590-3596). It somehow came into the possession of art critic and curator Charlotte Weidler (1895-1983), who resided in Germany until she emigrated to the United States in 1939.

41. Charlotte Weidler herself wrote on 12 April 1937 to Paul Westheim, a Jewish art critic who had earlier emigrated to France, that she had inherited paintings from Alfred Flechtheim (FAC Exhibit 13). Weidler claimed that *Herrmann-Neisse with Cognac* was one of them, and also wrote,

Please don't publish this, because otherwise I will only get in trouble, will have to pay inheritance taxes, and they will say, how come you are still in contact with the Flechtheim family [the dealer's wife Betty Flechtheim was still alive and residing in Berlin, although she later committed suicide in 1941] (FAC Exhibit 13). (FAC ¶ 63).

42. There is no evidence that Charlotte Weidler ever inherited any art from Alfred Flechtheim. Flechtheim's will, which he drafted on 18 January 1936, does not mention her (FAC Exhibit 10). Flechtheim named his nephew, Heinz Hulisch, as his sole heir (FAC Exhibit 10). This contradiction between Weidler's claim to be Flechtheim's heir and the will that he drafted some 14 months prior to his death, appears to directly undermine Weidler's claim that she "inherited" the painting from Flechtheim. After Flechtheim's death, Heinz Hulisch, it should be noted, was very open about his having the legal authority to dispose of works from the dealer's estate: in October 1937, for example, his lawyers wrote to the well-known dealer Jacques Seligmann and offered him

Picasso's *Harlequin*: the letter featured the heading "Alfred Flechtheim deceased" (MoMA 009474). I have seen no documents from Heinz Hulich or his attorneys indicating that Charlotte Weidler was an heir of Alfred Flechtheim.

43. In a recent book, titled *Die Bilder sind unter uns (The Pictures are Among Us)* journalist Stefan Koldehoff documents how Charlotte Weidler (1895-1983) safeguarded valuable artworks owned by German-Jewish art critic Paul Westheim (1886-1963) after his emigration in 1933, and then systematically defrauded him (pp. 37-54). Koldehoff describes how Charlotte Weidler took possession of Westheim's artworks, sold off some of them with Westheim's consent, but then later represented that the remainder of the stock was destroyed in Berlin by Allied bombing. Koldehoff states that this was not the case: that Charlotte Weidler gave the works to her sister, Melitta Weidler, who safeguarded the works (partly with the help of a friend, whose husband, Wilhelm Lücke, was a high ranking official in the Nazi Finance Ministry and had access to an underground storage facility). Koldehoff, who cites the research of historian Monika Tatzkow and others on this subject, finds that Charlotte Weidler recovered Westheim's artworks after the war and subsequently sold them in the United States (while breaking off correspondence with her old friend Westheim). According to Koldehoff, Weidler had come into possession of two works by George Grosz that had been given on consignment to Alfred Flechtheim, and then had been seized during the liquidation of the gallery (p. 52). One of these two works was *Portrait of Max Herrmann-Neisse with Cognac*. Koldehoff notes that Wilhelm Lücke initially tried to retain these two works as his "finder's fee" but Weidler used Lücke's Nazi Party membership and high ranking position in the regime to pressure him to return the works

to her. According to Koldehoff, during the late 1930s, Weidler, who received her wages in U.S. dollars and therefore could offer the foreign currency desired by Nazi officials, purchased purged so-called “degenerate” art from the Nazi government.

44. The location of *Herrmann-Neisse with Cognac* between 1932 and 1952 remains unclear. The work appears not to be among those works taken out of Germany by Flechtheim right after the Nazi seizure of power and exhibited in Paris at the Galerie Billiet (FAC, Exhibit 13, Galerie Billiet inventory). *Herrmann-Neisse with Cognac* was also not in Flechtheim’s inventory when he lived in Paris and London between 1933 and 1937 (FAC, Exhibit 8). The painting presumably remained in Germany during the Third Reich. Documents produced during discovery for this case show the involvement of Charlotte and Melitta Weidler in efforts to safeguard artworks during the war; these documents also portray the sisters’ efforts to recover these artworks after the war, and the documents attest to their relationship with the above-mentioned Wilhelm Lücke (MoMA 00752-00757, MoMA 00777-00809 and MoMA 0011631-0011632). A January 1947 letter from an artist named Wilhelm Hausmann to Melitta Weidler, for example, references the two pictures by George Grosz and the dispute with Wilhelm Lücke (MoMA 00752). In this document, which includes a few lines by Hausmann’s wife, who is the sister of Wilhelm Lücke, Frau Hausmann writes, “Please could you see to it that you give one of these paintings to my brother [Lücke]. Write to your sister [Charlotte] in this vein. He really does not deserve to have anything said against him” (MoMA 00753). In a later letter, from January 1948, Charlotte Weidler’s aunt, Berthe Fiedler, writes to Frau Hausmann about the two Grosz pictures, “Charlotte, in America, is not willing to

sacrifice the pictures” (MoMA 00777-00778). In short, these documents are consistent with Koldehoff’s interpretation outlined above.

45. Sometime during 1952, Weidler asked Valentin to sell *Herrmann-Neisse with Cognac* for her. Valentin contacted Alfred Barr and flipped the painting to The MoMA on 10 April 1952. Weidler’s identity purportedly remained undisclosed during the transaction. See Charlotte Weidler papers at The MoMA. (FAC ¶ 90). The MoMA’s registration card for the painting, however, does list Weidler as a previous owner, and this card appears to be dated after the acquisition in 1952 (MoMA 008117-008118).

46. The painting, *Max Herrmann-Neisse with Cognac*, was purchased by The MoMA via Curt Valentin in April 1952 for \$775 with the money coming from the Stephen C. Clark Fund (DBM 02709-02711; DBM 08010; and MoMA 008113). This was a low price and should have put Alfred Barr and his colleagues at The MoMA on alert. As a basis of comparison, Barr had offered \$1,200 for *Portrait of Max Herrmann-Neisse* in the Mannheim Museum in August 1949 (MoMA 0011865); and there was simultaneous discussion of this work being offered at \$1,500 (MoMA 0011866-0011868). *Herrmann-Neisse with Cognac* is a somewhat smaller painting than the Mannheim version, but it is exquisitely rendered and merited a comparable price. In January 1953 (some eight months after the picture was purchased by The MoMA), a Mrs. Hildebrandt in Milan offered the museum another Grosz painting for \$1,500, which she considered a “very low price” (MoMA 0012607). Just a short time later, in April 1954, Valentin was offering “a very important Grosz painting” from the Douglas Cooper collection for \$1,800 (MoMA 007377). An August 1953 letter from Dorothy Miller, a curator at the Whitney Museum, regarding paintings reserved for an exhibition indicated

that *Herrmann Neisse with Cognac* had an insurance value of \$1,200 (MoMA 0013771). The fact remains that the price paid by The MoMA (\$775) appears well below market value.

47. Curt Valentin had actually offered *Herrmann Neisse with Cognac* to the MoMA for \$1,000, but accepted a lower price. An internal MoMA memo regarding the painting dated 14 February 1952, states “A German woman here has it and is asking \$1,000 but Curt thinks we could get it for less” (MoMA 009631 and DBM 08005). Valentin asked Barr for \$100 for his services, and was not working on a percentage basis (DBM 08005). This letter would suggest several important points: first, that Barr knew that Valentin was serving as a front, and second, that Valentin, who knew the market, was heavily discounting the painting on his own accord. While Valentin’s motives for facilitating a lower price remain unclear, the evidence suggests that Valentin recognized that the provenance of the work was problematic. An under-priced painting should have constituted a “red-flag” for Alfred Barr and all involved. In 1950, Barr had complained to Valentin that he was offering over-priced paintings (MoMA 0013965-001386). Valentin did not have a reputation for selling at bargain-prices.

48. The MoMA’s archives show no investigations by The MoMA into ownership or provenance of *Herrmann-Neisse with Cognac*. At the time, Grosz lived in New York. Although The MoMA knew where Grosz lived and taught, it never contacted him about the painting. (FAC ¶ 91). In January 1950, the MoMA did contact Grosz seeking information about a drawing they had recently acquired, but there is no evidence that they inquired about the painting *Herrmann-Neisse with Cognac* (MoMA 0011671).

49. *Herrmann-Neisse with Cognac* was damaged at the time when The MoMA acquired it. Instead of asking Grosz to restore it, The MoMA restored it for \$75. *Herrmann-Neisse with Cognac* was never signed. The MoMA never asked Grosz to sign it, nor did The MoMA invite him to its first exhibition. (FAC ¶ 92).

50. To decipher the chain of title of *Herrmann-Neisse with Cognac*, an understanding of art dealer Curt Valentin and his partner Karl Buchholz is critical. Curt Valentin (1902-1954) was one of the most famous and influential art dealers of the twentieth century, but also, as the documents show, Valentin was an agent for the Nazi government. On 14 November 1936 Valentin, while in Germany received authorization from the Nazi Reich Chamber for the Visual Arts stating “once you are in a foreign country, you are free to purchase works by German artists in Germany and make use of them in America” (FAC Exhibit 12).

51. I have reproduced an excerpt of The MoMA’s biography of Valentin from its website in italics below:

Curt Valentin was born in Hamburg Germany in 1902. After completing his education, Valentin became a modern art dealer in Berlin. In 1934 Valentin returned to Hamburg to work in the Buchholz Gallery. Owned by Karl Buchholz, this gallery maintained two businesses: a bookstore in the front and, in the rear, an art gallery devoted to the modern art classified as degenerate by Hitler.

In 1937 Valentin immigrated to the United States with a sufficient number of modern German paintings to open a gallery under the Buchholz name in New York City. After two difficult years on West Forty-sixth Street, Valentin moved the gallery to West Fifty-seventh Street. In 1951 the gallery became the Curt Valentin Gallery.

Widely respected as one of the most astute dealers in modern art, Valentin organized influential exhibitions and attracted major artists to his Gallery. His enthusiasm for sculpture is obvious from the artists and exhibitions he selected.

Valentin also published several distinguished, limited edition books in which the writings of poets and novelists were "illustrated" by a contemporary artist.

(DBM 04559) (emphasis supplied).

52. Godula Buchholz quotes an undated letter of her father, Karl Buchholz, describing his meeting with Valentin at a dinner party in 1934. Buchholz immediately offered Valentin a job at his Berlin-Leipziger Strasse gallery: “it was mutual trust on first sight. This began a beautiful and fruitful period for us.” (DBM 04591). These dealers of modern art would begin their “fruitful period” in 1934—during the Third Reich.

53. Buchholz was one of the four dealers initially selected by Joseph Goebbels’s Reich Ministry of People’s Enlightenment and Propaganda to sell “degenerate” art purged from German state collections. Buchholz used Valentin to ship modernist artworks to the United States. We know, for example, from the website of The MoMA, that Buchholz sent Valentin Paul Klee’s painting, *Twittering Machine*, in 1939 (DBM 04541). Flechtheim was Paul Klee’s dealer. When Buchholz received his formal contract with the Reich Propaganda Ministry to sell off “degenerate” art on 5 May 1939, the last provision was that Buchholz keep the contract secret: Buchholz received a commission of 25 % in Reichsmarks of the works he sold (DBM 04605).

Contemporaneous documents from Goebbels’s Reich Propaganda Ministry—now located in the German Federal Archives--also list the works purged from German museums that were sent to Valentin for sale between 1939 and 1941 (DBM 005514-005515).

54. Valentin opened a branch of the Buchholz Gallery in New York in 1937: that is, after he had received authorization from the Nazi government. There is some confusion about the date that Valentin established the business. In the late-1930s, Valentin developed a highly successful business. The gallery was initially located on 46th

Street in Manhattan, but soon moved to its permanent location at 32 East 57th Street.

Valentin was able to travel freely between the U.S. and Europe (including Nazi Germany).

55. Curt Valentin represented The MoMA (and other clients) at the Fischer auction in Lucerne in June 1939 (MoMA 007360). Stephanie Barron notes, “Quickly establishing himself as the leading dealer in German Expressionist art in America, Valentin would indeed become one of the most important bidders at the [Fischer] auction [of “degenerate” works removed from German state collections].” (DBM 04584). Alice Goldfarb Marquis notes,

Actually, the Barrs were in Paris while the auction took place and had given exiled German art dealer Curt Valentin, who owned the Buchholz Gallery, money donated by Mrs. Resor and others to bid. ‘I am just as glad not to have the museum’s name or my own associated with the auction,’ he wrote MOMA manager Thomas Mabry on July. Many French dealers, artists, and newspapers were outraged that anyone had bid on art stolen by the Nazis. ‘I think it very important,’ Barr added, ‘that our releases ... should state that [the works] have been purchased from the Buchholz Gallery, New York.’

Barr handsomely repaid Valentin for his services by sending trustees to shop in his gallery and by stopping there himself about once a week. When the dealer applied for American citizenship in 1943 (*sic*), Barr vouched for his good character. Barr’s uneasiness over the morality of buying art stolen from German collectors and museums lingered on for decades....

To an Associated Press reporter a decade later, Barr implied that the MOMA had actually boycotted the auction and thereby had lost the best Munch ever on the market. After thinking ‘a long time,’ eighteen years in fact, Barr decided that he had acted correctly in accepting--and keeping—the stolen works.” (DBM 04421).

56. Valentin helped sell the “degenerate” artworks purged from German museums. This was a program coordinated by Joseph Goebbels’s Reich Ministry for People’s Enlightenment and Propaganda (RMVP). The Reich Propaganda Ministry tasked about a half-dozen well-connected art dealers, including Karl Buchholz, to sell off

the approximately 20,000 artworks the Nazis removed from German state collections. Valentin helped with this work through his partnership with the dealer Karl Buchholz.

57. To conclude a sale of a work from a German state collection, the Reich Propaganda Ministry had to approve of the transaction. That meant that the German dealers told their foreign, mostly American and Swiss, clients that any sale was contingent upon government approval. The dealers for the Reich Propaganda Ministry and their foreign clients would agree on a price, and then turn to the Propaganda Ministry for final approval (with the exception of the auction at the Fischer Lucerne Gallery in June 1939).

58. Godula Buchholz writes that when Valentin arrived to set up this branch of the Buchholz empire (there would be galleries in Bucharest, Lisbon, Madrid and Bogota), he carried “baggage containing sculptures, Paintings, and drawings from the Galerie Buchholz in Berlin.” (DBM 04598). She goes on to say that the works in his luggage were by artists who had been declared “degenerate” back in Germany. I have not seen any customs receipts or records showing that Valentin established this business in an orderly and legal fashion.

59. In his FBI file, Valentin is on record saying that he got his start in New York thanks to the financial backing of Edward Warburg and someone from Cassel & Co. (the name is redacted) (DBM 03658–03660). Warburg was a trustee of The MoMA in 1939 (DBM 04480). Valentin’s statements to the FBI, where he conceals his connection to Buchholz, are not consistent with Buchholz’s daughter’s account. On 30 June 1942, Alfred Barr wrote:

Mr. Valentin is a refugee from the Nazis both because of Jewish extraction and because of his affiliation with free art

movements banned by Hitler. He came to this country in 1937, robbed by the Nazis of virtually all possessions and funds.

Barr further praised Valentin's patriotism in Valentin's application to become a U.S. citizen. (FAC ¶ 70, Ex. 15, DBM 01310). Barr's praise of Valentin and his claim that Valentin is not consistent with Barr's knowledge that Valentin's partner was an authorized art dealer of the Reich Propaganda Ministry.

60. Nor is Barr's statement that Valentin arrived in the U.S "robbed by the Nazis of all virtually all possessions" consistent with the statement on The MoMA's website that "*In 1937 Valentin immigrated to the United States with a sufficient number of modern German paintings to open a gallery under the Buchholz name in New York City*" (DBM 04559). Based on these inconsistencies it appears that Barr was not candid with the authorities about the circumstances of Valentin's arrival in the United States.

61. Indeed after Valentin arrived in the United States he brought from Germany 19 Klee artworks as evidenced by a list prepared in the spring 1938 by Charlotte Weidler. While it is unclear why Weidler prepared this list, it should be noted that the total value of the Klee artworks indicated on the list exceeded \$4,500 (DBM 09041).

62. Buchholz's arrangement with Valentin was such that Valentin received 50% of the profits. Buchholz's daughter, in her hagiographical treatment of her father, quotes Buchholz as saying that the contract was seized by the SS (the Nazi organization headed by Himmler) in 1942 (DBM 04599). I have seen no other evidence concerning the terms of the agreement between Buchholz and Valentin (DBM 04599). After Valentin's death in 1954, Buchholz sued Valentin's children claiming that he was due a

share of Valentin's New York gallery (DBM 4600-4603). I do not know the outcome of this lawsuit, which Godula Buchholz notes lasted many years into the 1960s (DBM 04600-4603).

63. Buchholz financed the Nazi regime by selling artworks for foreign currency supplied by Valentin. He would sign letters to the Reich Ministry for Propaganda and People's Enlightenment with the phrase, "Heil Hitler." One letter in the German Federal Archives from Buchholz to the Reich Propaganda Ministry from 4 March 1939 is signed, "I greet you with honor and Heil Hitler!" ("Es grüsst Sie verehrungsvoll mit Heil Hitler!") (DBM 04604; and, more generally, the Buchholz correspondence with the Reich Propaganda Ministry at DBM 005516-005618).

64. Karl Buchholz founded a branch of his gallery in Bucharest, Romania, in 1940 and later in 1943 opened a branch in Lisbon. He was able to travel between Berlin, Bucharest, and Lisbon throughout the war--a remarkable accomplishment in that Lisbon was located in neutral Portugal (DBM 04609). Buchholz remained in contact with the Reich Ministry for People's Enlightenment and Propaganda, as illustrated by a letter he sent on 2 November 1942 to Reich Propaganda Ministry employee Dr. Rolf Hetsch (DBM 04608). He also had good relations with the Reich Foreign Ministry, which assisted him in the shipment of books to neutral Portugal in October 1943 (DBM 04610).

65. Godula Buchholz claims that her father and Valentin suspended their partnership during the war. She does note, however, that Valentin sent a check to Buchholz for foreign currency for \$325 that arrived in April 1941 (before the United States entered the war in December 1941) (DBM 04608).

66. During the war, the United States government, through the office of the Alien Property Custodian, seized the Buchholz/Valentin stock as part of the Trading with the Enemy Act. The seized artworks had been shipped from Lisbon and had been addressed to Valentin at the Buchholz Galerie at 32 East 57th Street. In a letter of 2 November 1942 from Karl Buchholz to Rolf Hetsch of the Reich Propaganda Ministry, Buchholz explained these events and said he would continue to work to settle his debts to the Reich Propaganda Ministry “with the help of business friends who are citizens of neutral countries.” (DBM 04608).

67. According to The MoMA’s website, a work in The MoMA’s collection, August Macke’s *Lady in a Park* [*Frau mit Sonnenschirm und karierten Handschuhen*] 1914, was purchased by Curt Valentin in 1945 from the U.S. Alien Property Custodian (DBM 04540). Thus, Valentin appears to have simply purchased at least one of the artworks that the U.S. government had seized from him.

68. I have seen no correspondence between Karl Buchholz and Curt Valentin during World War II. From 1945 to 1951, Karl Buchholz’s main business was located in Madrid. Franco’s Spain was infamous for protecting Nazis who were sought by the Allies, including SS-Commando Otto Skorzeny (who had “rescued” Mussolini from the Gran Sasso in September 1943).

69. The Allies set up an Art Looting Investigation Unit (“ALIU”). Its final report, issued on 1 May 1946 stated the following about Buchholz and Valentin in its section on Portugal:

BUCHHOLZ, Karl

Lisbon, 50 Avenida da Libordado

Berlin book dealer, who opened a branch in Lisbon in 1943. Suspected of having worked for von RIBBENTROP and GOEBBELS, and of possible traffic in loot.

Partner of LEHRFELD, Portuguese national. Pre-war Berlin partner of Curt VALENTIN, German refugee dealer now established in New York (Buchholz Gallery, East 57th Street). VALENTIN is believed to have no contact with BUCHHOLZ during the war.

(DBM 04548). Allied investigators knew little of the traffic in artworks between Buchholz and Valentin and were likely misled.

70. Buchholz and Valentin continued their partnership in the post-1945 period. One letter from 15 May 1946 from Buchholz to Valentin begins, “I received three letters from you this week dated 3 May, 14 April and 22 April....” (DBM 04612). Buchholz, as noted above, was in Madrid at this time. In the immediate postwar period, Valentin also sent Buchholz catalogues from MoMA (DBM 04611). In short, the two men worked together intensively in the post-1945 period, just as they had in the pre-War period.

71. Considering their close personal and business relationship before and after the war, and that Buchholz spent considerable time in neutral Lisbon during the war (where it would have been easier to send letters without them being intercepted by the Nazi authorities), it seems likely that Buchholz and Valentin remained in contact during the war. The U.S. government also intercepted and censored mail, and this would no doubt have provided an obstacle for the two dealers (and partners). Some of the records of the so-called “postal intercepts” are in the U.S. National Archives and Records Administration in College Park, Maryland, and should be examined.

72. While much of Valentin’s wartime activity remains cloaked in mystery, we know that he sold *Herrmann-Neisse with Cognac* to The MoMA in 1952. A review of Grosz’s business records show that he was not paid for the painting (DBM 03436-03585 and DBM 04945-04989). Flechtheim’s records show an absence of the picture being sent to any third party (FAC Exhibits 7, 8).

73. Grosz writes in the early 1950s (twice) that the work was stolen: once to his brother-in-law Otto Schmalhausen on 8 January 1953, and once to his friends Herbert and “Amrei” Fiedler on 9 January 1953 (DBM 02240-02441 and DBM 02248-02449).

74. In the first letter, he noted that the “Museum of Modern Art exhibits a stolen picture of mine (am powerless to do anything about it).”⁵ This statement appears to be an assertion that a work belonging to him was obtained by the Museum without his consent. In the second letter, to the Fiedlers, Grosz offers a similar formulation (DBM 02248-02449).

75. With respect to *Herrmann-Neisse with Cognac* (1928), based upon my review, I conclude the evidence supports the finding that this painting was lost or stolen. I am unaware of any evidence that would contradict a finding that the painting was lost or stolen.

Republican Automatons (1920)

76. In answering the question of whether the evidence shows that George Grosz’s *Republican Automatons* (1920) was lost or stolen, I first place the artist’s work in his *oeuvre*. In 1920, Grosz was part of an avant-garde movement known as Dada. Dadaists were known for irreverence, their embrace of the surreal and irrational, their anti-authoritarian stances, and their belief that art could stimulate people to think critically about social, political and religious issues. *Republican Automatons* is an important example of Grosz’s Dada period.

77. I have examined the following allegations in the FAC to determine whether they are supported by evidence:

⁵ The German reads, “Modern Museum stellte ein mir gestohlenen Bild aus (bin machtlos dagegen).”

- Grosz's first exhibition with Alfred Flechtheim was in Berlin in 1923. Grosz was a prolific artist and the exhibition successfully established Grosz's artistic reputation. By 1925, the Galerie Flechtheim paid Grosz monthly support payments (300 to 800 Reichsmarks ("RM")) in exchange for being Grosz's exclusive dealer. (FAC ¶ 37).
- In December 1931, Galerie Flechtheim cancelled its consignment agreement with Grosz and stopped making monthly support payments (FAC Exhibit 3). Notwithstanding the cancellation of the consignment agreement, Grosz's artworks, including the Paintings, remained in Galerie Flechtheim's possession. (FAC ¶ 41).
- On 23 May 1932, Flechtheim offered to renew the consignment agreement with Grosz. Flechtheim's letter indicated that Curt Valentin, Flechtheim's assistant, visited Grosz in New York to try to renegotiate a new exclusive consignment agreement with him (Exhibit 4). In a subsequent letter, Grosz denied agreeing to enter into any exclusive relationship, but agreed to provide paintings to Galerie Flechtheim on a non-exclusive basis (FAC Exhibit 5) (FAC ¶ 43).
- Prior to his death, Flechtheim never accounted to Grosz for the artworks sold, many works were never returned, are missing and still being sought by the Heirs. (FAC ¶ 44).
- It was Nazi practice to force Jews to liquidate their property and take the proceeds for the Reich either directly or in confiscatory "flight taxes." Prior to his flight from persecution, Flechtheim hired Alfred Schulte to help put the business's books in order. Schulte subsequently liquidated Flechtheim's Düsseldorf and Berlin galleries. In connection with the liquidation, Schulte demanded payment from Grosz of a purported debt owed to Galerie Flechtheim in the amount of 16,255 RM. Schulte claimed that Grosz's artworks remained on consignment, but were unsellable (FAC Exhibit 6). (FAC ¶ 47).
- In April 1934, Flechtheim wrote to Grosz in New York informing him that watercolors and oils Grosz had previously consigned were with galleries in London and Paris. *Republican Automotons* was on the list of works sent to Mayor Gallery in London (FAC Exhibit 8). (FAC ¶ 48) (DBM 006122-006123).
- On 20 February 1937, Galerie Alfred Flechtheim G.m.b.H. was officially dissolved and removed from Berlin's commercial registry. (FAC ¶ 52).

- On 11 March 1937, Flechtheim died of blood poisoning in London after stepping on a rusty nail leading to the amputation of his leg. (FAC ¶ 53).
- In early 1938, following Flechtheim’s death, an art dealer named Carel van Lier brought Grosz’s artworks to Amsterdam for a purported “auction.” Van Lier purported to auction paintings and drawings of Grosz’s that he had previously tried to sell for Flechtheim and failed. At the “auction,” van Lier purchased for himself the *Self-Portrait with Model* (Lot 278) for 16 Dutch Guilders (US\$ 10.16). *Self-Portrait with Model* was resold two months later for 150 Dutch Guilders (US\$ 95.25), or a profit of over 900%. The purchaser, Leo Lionni, who was art director for *Fortune* magazine from 1948 -1960, gave the painting as a gift to The MoMA in 1954. (FAC ¶ 56) (MoMA 006353).
- In early 1938, following Flechtheim’s death, van Lier arranged the transfer of *Republican Automatons* from Mayor Gallery in London. As with *Self-Portrait with Model*, van Lier arranged for *Republican Automatons* to be sold at the “auction” held on 1-2 February 1938. *Republican Automatons* was sold at the sham Amsterdam auction to Paul Brandt, together with three other watercolors and one drawing, for a combined total of 25 Dutch Guilders (US\$ 15.92). (FAC ¶ 57).
- Brandt apparently attempted to sell *Republican Automatons* to Dr. Herbert Tannenbaum in 1939 for an unknown amount, who soon thereafter sold the artwork to Dr. William Landman in Toronto. (FAC ¶ 58).
- The MoMA purchased *Republican Automatons* from Dr. Landman in February 1946. (FAC ¶ 59) (MoMA 0012469-0012474).

78. Based upon The MoMA’s website (DBM 03587), the chain of possession (as compared to ownership) of *Republican Automatons* appears as follows:

George Grosz (Berlin, 1920)

Galerie Goltz (Munich, September 1920)

Galerie Alfred Flechtheim (Berlin/Düsseldorf, 1923?)⁶

Mayor Gallery (London, December 1933)

Leicester Galleries (London, March 1936)

⁶ The first exhibition organized by Flechtheim of Grosz’s work was in 1923: *Ölgemälde und Zeichnungen* (Berlin: Querschnitt, 1923). See also, Frank Whitford, the Berlin of George Grosz at DBM 04587.

Auction Sale, S. J. Mak van Waay (Amsterdam, February 1938)

Paul Brandt (Amsterdam, February 1938)

Dr. Herbert Tannenbaum (Amsterdam, 1939)

Dr. William Landman (Toronto, February 1946)

The Museum of Modern Art (New York, 1946).

79. I have examined the following documents to conclude if the allegations made by Plaintiffs are supported by evidence:

- Grosz's ledger with notes about the dates of exhibitions, payments and consignments (DBM 03436-03585);
- Letter from Grosz to DuMont telling him of the cancellation of his consignment agreement in 1931(DBM 01379-01381);
- Letter from Flechtheim to Grosz regarding the renewal of the consignment agreement in 1932 (DBM 01382-01384);
- Grosz's response to Flechtheim regarding the renewal of the consignment agreement in 1932 (DBM 01385-01387);
- Flechtheim's letter to Grosz telling him he gave artworks to Galerie Billet (Pierre) on commission (DBM 050);
- Alfred Schulte's demand letter to Grosz in 1933(DBM 01388-01390)
- Flechtheim's 1934 letter to Grosz telling him his artworks are in London and Paris (DBM 01391-01400);
- Entry in commercial registry that Galerie Flechtheim is dissolved in 1937 (DBM 01202);
- Email from Louisa Mayor of Mayor Gallery regarding consignment to Mayor (DBM 0118-0119);
- Probate decree regarding Alfred Flechtheim's will (DBM 01409);
- Auction Catalogue Mak van Waay with Auctioneer's notes (DBM 0107-0117);

- Correspondence between Landmann to Sweeney regarding acquisition of *Republican Automaton*s for \$ 275, Jan-Feb 1953 (MoMA 0012469-0012474);
- Correspondence between the current proprietors of the Leicester Gallery in London and The MoMA (MoMA 012414-012456);
- The MoMA's Provenance (see above).

80. **Elaboration:** From the documents provided to me, it is not clear when Grosz consigned the painting to Alfred Flechtheim. The artwork is clearly among those Flechtheim sent out of Germany (DBM 0118-0119). It was exhibited by Freddy Mayor at his gallery in December 1933, then provided to the Leicester Galleries in London (DBM 03903). The artwork failed to sell in the U.K. and was sent to Amsterdam to the well-known dealer, Carel van Lier (DBM 0165).

81. We do not know how *Republican Automaton*s went from London to Amsterdam. Somehow, Freddy Mayor and/or Flechtheim transferred the work to Carel van Lier. When a MoMA provenance researcher requested information about this transfer, she received the following reply from the current proprietors of the gallery: “Unfortunately, we do not have the original Leicester Galleries archives and are unable to help you with this... The archives are in the family and the owner has been extremely unhelpful to all major museums and researchers in the past and has now moved without a trace (MoMA 012427). The response of the Mayor family suggests that there are past business practices and transactions that they wish to conceal.

82. However Carel van Lier obtained *Republican Automaton*s, he too failed to sell it in 1936. After Flechtheim's death in March 1937, van Lier developed another strategy that enabled him to profit from the work: he helped organize what appears to be a sham auction on 1 and 2 February 1938 at the establishment of his Amsterdam

colleague, S. J. Mak van Waay, where he purchased it himself (DBM 0146-0147; 04054).⁷ The consigner of *Republican Automatons*, Carel van Lier, “bought in” this and other works at an extremely low price and then sold them within the year for a large profit (DBM 0011548). The lot at Mak van Way, which included four watercolors and one drawings and, as noted above, sold for the equivalent of less than \$16 did not correspond to market prices (DBM 07990). The painting then passed through the hands of two art dealers, Paul Brandt and Herbert Tannenbaum, and a Dr. William Landmann, who sold it to The MoMA.⁸ According to The MoMA’s provenance information, the work was purchased through the museum’s Advisory Committee Fund in 1946 (DBM 03587). (MoMA 0012469-0012474).

83. With respect to *Republican Automatons*, I conclude that the evidence strongly supports the finding that this painting was lost or stolen since there is no indication that Grosz knew about or consented to any sale following Flechtheim’s death. I am unaware of any evidence that would contradict a finding that the painting was lost or stolen.

Self Portrait with Model (1928)

84. An oil painting of the artist and his sister-in-law, Lotte, this work shows Grosz behind the near-naked model who is positioned in front of a mirror. The work does not include the explicit political commentary of his early work, or the hard-edged characteristics of his New Objectivity phase, but instead, Grosz renders the pair in ways where they possess sculptural qualities. The two figures reflect a complex psychological

⁷ See Copies of auction catalogue provided by Sotheby’s Amsterdam with auctioneer’s hand-written notes (DBM 0107-0117).

⁸ Dr. William Landman sold The MoMA another work in 1946: George Grosz’s 1917 painting *Metropolis*. (See DBM 04416).

interaction. It is a subtle, yet powerful painting, and viewed by many art historians as a significant work in his *oeuvre* (DBM 04545).

85. The provenance of *Self Portrait with Model*, as based upon The MoMA's website (DBM 03586), is:

George Grosz (Berlin, 1928)

Galerie Alfred Flechtheim (Berlin, 1929)

Kunstzaal van Lier (Amsterdam, 1936)

S. J. Max van Waay (Amsterdam, February 1938)

Carel van Lier (Amsterdam, February 1938)

Willem Beffie (Amsterdam, April 1938?)

Mr. and Mrs. Leo Lionni (Milan/New York, April 1938)

The Museum of Modern Art (New York, December 1954)

86. I have examined the following documents to conclude if the allegations made by Plaintiffs are supported by evidence:

- Grosz's ledger with notes about the dates of exhibitions, payments and consignments (DBM 03436-03585);
- Letter from Grosz to DuMont telling him of the cancellation of his consignment agreement in 1931 (DBM 01379-01381);
- Letter from Flechtheim to Grosz regarding the renewal of the consignment agreement in 1932 (DBM 01382-01384);
- Grosz's response to Flechtheim regarding the renewal of the consignment agreement in 1932 (DBM 01385-01387);
- Flechtheim's letter to Grosz telling him he gave artworks to Galerie Billet (Pierre) on commission (DBM 050);
- Alfred Schulte's demand letter to Grosz in 1933 (DBM 01388-01390);

- Flechtheim's 1934 letter to Grosz telling him his artworks are in London and Paris with consignment list Galerie Billiet (DBM 01391-01400);
- Exhibition card Kunstzaal Van Lier with Handwritten notes by Carel van Lier of the pieces exhibited (DBM 0133-0134);
- Entry in commercial registry that Galerie Flechtheim is dissolved in 1937 (DBM 01202);
- Probate decree regarding Alfred Flechtheim's will (DBM 01409);
- Auction Catalogue Mak van Waay with Auctioneer's notes (DBM 0107–0117);
- The MoMA's Provenance (see above).

87. **Elaboration:** It appears that *Self-Portrait with Model* was consigned by Grosz to Flechtheim in 1929 (DBM 0163). Flechtheim provided the work to Dutch dealer Carel van Lier in 1936 for a sales exhibition, and the painting apparently failed to sell (DBM 0156, DBM 0108). As with *Republican Automaton* noted above, we also know that after Flechtheim's death on 9 March 1937, van Lier consigned the painting to the auction house, Mak van Waay of Amsterdam, where he then purchased it back: in this case, for 16 Guilder (US\$ 10) (DBM 012). This price was not consistent with market values for Grosz's work, as evidenced by the subsequent transaction, where Leo Lionni purchased the work for 150 Dutch Guilders (US\$ 95.25)--evidently from Carel van Lier. In 1936, an oil painting by Grosz is reported to have sold in London for 900 pounds sterling (MoMA 008241-008242).

88. There is also no indication that Grosz ever received any remuneration from the sales in the Netherlands. While Grosz did receive Dutch Guilders as a payment on at least one occasion as reflected in his calendar, these Guilders did not come from Mak van Waay, Carel van Lier, or any representative of Alfred Flechtheim, but instead came from

89. As noted above, the auction at S. J. Mak van Waay firm is highly suspect. According to the Dutch historian Gerard Aalders, during World War II, Mak van Waay was one of the most important Dutch auction houses with regard to the liquidation of looted Jewish property.⁹ The twenty-four works that were sold brought an average of 24 Reichsmarks each, and van Lier purchased five of those works (DBM 0137-0147). Following Flechtheim's death, there is no evidence that Grosz was consulted in the disposition of the painting.

90. With respect to *Self-Portrait with Model* (1929), I find no documentation that Grosz authorized or knew of any of the Dutch transactions. Nor have I encountered any documentation inconsistent with allegations of the FAC that this painting was taken from Grosz without his knowledge and without compensation.. Indeed, Grosz endeavored to keep track of the artworks he had created, but (as elaborated further below) he felt powerless to pursue them, even when the current holders had obtained them illegally. I am unaware of any evidence that would contradict a finding that this painting was lost or stolen.

⁹ Gerard Aalders, *Nazi Looting: The Plunder of Dutch Jewry during the Second World War* (Oxford/New York, Berg, 2004), 185-88.

Conclusion

91. Based on my review of the provenance documentation available to the Grosz heirs and to The MoMA and based upon the authoritative secondary sources cited above, such evidence appears to strongly support the conclusion that each of the Paintings were lost or stolen. I am unaware of any evidence that would contradict a finding that the Paintings were lost or stolen.

Given the above-stated conclusion that the evidence supports the conclusion that Grosz's Paintings were lost or stolen, I consider the following question: If so, were The MoMA's acquisitions consistent with ethical museum acquisition practices at the time of such acquisitions?

92. A diligent search of the documents provided to me shows no provenance research being conducted by The MoMA prior to acquiring the Paintings. This is surprising, because, as set forth below, the U.S. had issued warnings to museums against acquiring artworks from Nazi-occupied territories without checking provenance. Additionally, Barr knew of Flechtheim's persecution by the Nazis and the loss of Flechtheim's stock in 1935 (see Barr's letter to Mrs. Stanley Resor from 24 October 1935, where Barr uses phrases such as "unfortunate refugee" and "pretty desperate straits" at DBM 03435). Given Flechtheim's untimely death in 1937, a failure to conduct such an inquiry must be regarded, at best, as negligent behavior. Flechtheim had also written to Barr on 8 August 1935, stating, "But don't forget that I lost all my money and all my Paintings," indicating that the refugee Flechtheim had already communicated his difficult situation to Barr (DBM 018).

Acquisition of Artworks By American Museums From Nazi-Occupied Europe Following Hitler's Rise To Power in 1933

93. Following Hitler's ascent to power, New York's newspapers and magazines were full of stories of spoliation of Jews in Nazi Germany (DBM 03080, DBM 03002-03003, DBM 03023-3024, DBM 03025, DBM 03026, DBM 03030-3031, DBM 03032-03033).

94. The National Socialists were the greatest art plunderers of all time. Beginning in 1933, they forced emigrating Jews to sell the artworks in their collections for prices below market value. They subsequently turned to outright expropriation, and during the war, developed a vast plundering bureaucracy to carry out this program.

95. During my tenure with the Presidential Commission on Holocaust Assets in the United States, my research team developed the estimate that the Nazis stole some 600,000 artworks in Germany and Western Europe during the Third Reich (DBM 04157-04409).

96. The Allies' London Declaration of 5 January 1943 put the world on notice that transactions in German occupied or neutral lands were subject to annulment (DBM 03835, 03840-3842).

97. Knowledge about the Nazis' plundering program increased exponentially after 1945. The topic of Nazi looting of personal and cultural property and the horrors of Nazi concentration camps were treated in great detail at the International Military Tribunal at Nuremberg in 1945-46 which received extensive media coverage.

98. American museum officials in the period 1933 to 1945 had full and direct knowledge of Nazi art looting: German émigrés offered accounts of looting of individual collections of Jewish-owned or held property; the sale of so-called "degenerate" art from German state collections brought attention to the Nazis' art-policy; and there were

widespread press reports on the Nazis' depredations of conquered countries' cultural patrimony.

99. According to the 2006 Congressional testimony of James Cuno, President of the American Association of Museum Directors, U.S. Museums have potentially "tens of thousands" of artworks in their collections with potential Nazi-era provenance problems that remain unresearched (DBM 04439).

Alfred Barr's Knowledge of The Need To Establish Clear Chains of Title For European Artworks Entering the United States Following 1933

100. Alfred Barr Jr. had particularly deep knowledge of issues relating George Grosz's persecution in Germany and to art looting and persecution of Jewish art dealers.

101. Barr was fluent in German, had studied German art and traveled extensively in Germany. In 1933, Barr wrote articles based on his attendance at a Nazi rally discussing Nazi cultural policies, which included removing Jews from positions of responsibility and denouncing modern art as un-German (DBM 04492-04501).

102. In 1935, Alfred Flechtheim, Grosz's dealer, wrote to Barr that he had lost all of his money and artworks except for a sculpture by Wilhelm Lehmbruck. Flechtheim wrote this letter while in Florence in August 1935 (DBM 018-021).

103. Barr then wrote to Mrs. Stanley Resor that he thought he could acquire the Lehmbruck from Flechtheim for under \$2,000 because of Flechtheim's distress in fleeing the Nazis (DBM 03435).

104. Barr knew that Flechtheim was Grosz's art dealer. Flechtheim had lent Grosz's artworks to The MoMA's *German Painting and Sculpture* exhibition in 1931 (DBM 01083-0187). Indeed, Barr corresponded with dealer/art historian Douglas Cooper in early 1937 and made explicit reference to Flechtheim and his relocated business in

London (MoMA 0035-0036). Flechtheim was also writing to Barr from his London exile, in one case providing a letter of introduction to The MoMA Director on behalf of a friend who had taken up a fellowship at Yale University (MoMA 007384).

105. The above noted exchange between Alfred Barr and Douglas Cooper is significant in another respect. In this letter, (MoMA 0035-0036), Barr appeared to ask Cooper not to tell Flechtheim about new collectors (“Your mention of Flechtheim leads me to ask you for a favor. Would you mind confirming the fact that you will not use these introductions or visits which we have arranged for any commercial purposes?”), I would interpret this to mean that Barr did not want Cooper to give Flechtheim contacts for selling art. This was an ungenerous action on Barr’s part, especially because Flechtheim had been one of the strongest supporters of The MoMA in its early years and regularly lent pictures to Barr. When Flechtheim experienced financial difficulties due to Nazi persecution, Barr turned his back on him.

106. Among the four works loaned by, in the words of the catalogue, the “Collection the Flechtheim Gallery, Berlin” (sic) was *Herrmann-Neisse with Cognac*, which was also illustrated in the catalog (FAC, Ex. 2). Barr maintained the world’s most extensive files about works of modern art, including thousands of photos and nuggets of data on who owned what, exhibition catalogs, and research notes for exhibitions (DBM 04429). An internal MoMA report from 1965 about works “formerly in German collections and were designated ‘degenerate art’ under the Nazis” (MoMA 0012600-12603) reflects considerable research and is suggestive of the information contained in MoMA’s files. Alfred Barr’s file on the Mannheim version of *Portrait of Max Herrmann-Neisse* (MoMA 0011845-011917) is also illustrative of his prodigious

research skills and extensive contacts. But no such files have been produced concerning the three works by Grosz at issue in this case.

107. Alfred Barr also had a close relationship with Curt Valentin—who was trained by Alfred Flechtheim and once served as his assistant, before he went to work for Karl Buchholz. The extant correspondence suggests a cordial relationship, such as a May 1939 letter from Valentin to Barr congratulating the director on The MoMA’s new building (MoMA 0012638), but at times, Barr could be more critical, such as his 1950 letter from Barr to Valentin where he complains about high prices (MoMA 0013965-001386). Such frank exchanges, in my opinion, reflect a close relationship.

108. In 1942, Barr wrote on behalf of Valentin as the émigré dealer sought U.S. citizenship (DBM 01310).

109. Alfred Barr therefore had every reason to research the provenance of the Paintings prior to making any acquisition, and the resources to do so.

110. Thus, from the circumstances known to Barr at the time, a failure to investigate the Paintings’ provenances suggests a lack of the ordinary diligence required of a museum director.

111. News media reports suggest another motive for Barr to fail to perform ordinary due diligence. In 1944 issue of *Harper’s* magazine—then a preeminent periodical—art critic Emily Genauer criticized Barr’s MoMA for only having one Grosz work, and claiming that he had ruthlessly imposed his quirky taste upon intimidated trustees, creating a collection of ‘Sure Things and Shockers.’ Genauer attacked Barr’s collecting: “no Ossip Zadkine, but thirteen Arp collages; no Oskar Blümner and only one George Grosz, but eighteen Max Ernsts” (DBM 04427-04428; DBM 04471-04478). The

1939 exhibition, *Art in Our Time*, celebrating the tenth anniversary of the The MoMA's founding, included three Grosz works, two lent by Mr. and Mrs. Erich Cohn, the third a gift from the Cohns. This confirmed that The MoMA owned no oils by Grosz and only one watercolor (DBM 03680-03682).

112. Barr was known for being very sensitive to criticism. The fact that The MoMA acquired two major works (*Republican Automaton* and *Metropolis*) in 1946 may be rooted in Barr's personal motivation, rather than any motive of The MoMA's trustees. By 1950, Barr was aggressively pursuing works by George Grosz, even going so far as to have an assistant write Allied Restitution authorities in Germany seeking a painting by Grosz: in this case, an approach was made to Theodore Heinrich with specific mention of the painting *Portrait of the Poet Max Herrmann-Neisse* (the version from the Mannheim Museum), which "we would still be in the market for if the title is cleared" (MoMA 0011846). Approaching Allied restitution authorities in order to attempt to acquire art was highly irregular: their function was to return art to the government of the country of origin (or to the rightful owners within the Federal Republic of Germany), and not to sell art or broker deals. Barr's approach to Heinrich speaks of an extraordinarily strong desire to acquire this painting. Back in 1949, Barr had exhibited some reserve about acquiring the work—stating that "... it was impossible for our museum, a public institution, to buy a picture which would leave us open, however unjustly to the charge that we had stood in the way of a German museum in recovering a painting which the Nazis had taken" (MoMA 0011848). But Barr's continued expression of interest in the painting after this date is telling.

113. Because of the lack of transparency about Barr's collecting practices, I am forced to make extensive use on the interpretations of his biographer, Alice Goldfarb Marquis, and the other sources available to me.

Caveat

114. As noted above, I have not been able to review every document provided by The MoMA in recent days: any conclusions that I reach are provisional in that such conclusions do not take into account evidence not yet considered.

Question 2. Did The MoMA, by considering the report by Nicholas deB. Katzenbach, adequately evaluate the evidence and scholarly resources available to resolve stolen art claims?

115. I have been asked to determine whether the Katzenbach Report is consistent with the documentary evidence and scholarship regarding the provenance and history of the Paintings.

116. The Katzenbach Report is contradicted by the evidence and is contradicted by contemporary scholarship. The Katzenbach Report is based mainly on matters about which Mr. Katzenbach has no personal knowledge. Mr. Katzenbach's reliance on such matters as Charlotte Weidler's reputation or his personal belief that art dealers would not engage in sales of stolen art are contradicted by documentary evidence and contemporary scholarship.

117. The Katzenbach Report does not indicate what documentary evidence was relied on or reviewed in its compilation, if any.

Katzenbach's Claim That Weidler Purchased *Herrmann-Neisse with Cognac* Is Contradicted By the Record

118. With regard to *Max Herrmann-Neisse with Cognac*, Katzenbach opines that Weidler,

could have purchased the painting in Germany from the Galerie Flechtheim during its liquidation to avoid bankruptcy in 1933, or from another person who had purchased it from the Galerie, or even outside Germany if the painting was not returned to Berlin from Brussels or if Flechtheim had been able to remove it from Berlin to London or Paris (Katzenbach at 7, DBM 02276).

Upon careful review of the evidence, I find absolutely no evidence to support Mr.

Katzenbach's hypothetical formulations. I thus conclude that Mr. Katzenbach's theory is based on sheer speculation.

119. As set forth above, Weidler claimed she "inherited" the Painting from Flechtheim. I am aware of no evidence supporting the hypothetical contention that Weidler purchased the Painting.

Katzenbach's Reliance On Weidler's Reputation In Discounting Evidence That Grosz's Paintings Were Lost or Stolen Is Contradicted By The Evidence of Weidler's Poor Reputation

120. Mr. Katzenbach claims that Charlotte Weidler had an "**excellent reputation**" and a "**longstanding anti-Nazi reputation**" (Katzenbach at 7, DBM 02276). This assessment is not supported by any evidence about which I am aware.

121. While Weidler did indeed work for the prestigious Carnegie International, there is evidence demonstrating that her colleagues at Carnegie suspected her of being a Nazi collaborator (DBM 1315-1321) (FAC Exhibit ¶ 17). This colleague at the Carnegie Institute, the Assistant Director Grace Dunham Gueast, concluded her letter of 27 May 1942, "After the Nazi plan for world domination became, during the months that followed, more and more apparent, it seemed rather that she [Weidler] fitted into their picture" (DBM 01315) (FAC Exhibit 17).

122. Additionally, Weidler appears to have been involved in acquiring artworks stolen from the art dealer Paul Westheim. Westheim's direct complaints to The MoMA's

Barr regarding missing works that disappeared while in Weidler's custody (FAC ¶¶ 82) and their reappearance following Westheim's death (FAC ¶¶ 94) are all allegations fully supported by underlying documentation. This evidence directly contradicts Katzenbach's reliance on Weidler's purported excellent reputation.

Katzenbach's Belief That Weidler Sold *Herrmann-Neisse with Cognac* Directly To The MoMA Is Contradicted By The Provenance Documents

123. Katzenbach states that *Herrmann-Neisse with Cognac* was sold by Charlotte Weidler to The MoMA in 1952 (Katzenbach at 7, DBM 02276). In fact, the work was sold by dealer Curt Valentin to The MoMA and there is no evidence that Alfred Barr at the time of acquisition was aware that Weidler was the seller. However, there is mention of Weidler in The MoMA's post-acquisition registry records (MoMA008117-008118).

Katzenbach's Reference To Grosz's "Close Friend" Erich Cohn Fails To Take Into Account Cohn's Pre-existing Close Relationship With Alfred Barr and The MoMA

124. Katzenbach writes about Grosz and "his close friend and benefactor, Erich Cohn" (Katzenbach at 8, DBM 02277).

125. Erich Cohn had a long-standing relationship with The MoMA. The three Grosz works exhibited in the *Art in Our Time* exhibit of summer 1939 all came from Erich Cohn (DBM 0443-04437).

126. Because Cohn was a major collector of Grosz works, he had a pecuniary interest in seeing Grosz's works acquired and displayed prominently by The MoMA.

127. Katzenbach notes that Cohn, in correspondence with Barr, expresses his pleasure at the acquisition, compliments Barr on its repair and cleaning, notes that it is

unsigned on the front, and volunteers to bring Grosz in to sign it (Katzenbach at 8, DBM 02277).

128. There is no evidence that Barr requested that Cohn speak to Grosz about signing or restoring *Herrmann-Neisse with Cognac*.

129. It is highly unusual that there is no evidence that Barr turned to Grosz to restore this or other paintings acquired by The MoMA. Barr knew that Grosz lived in Huntington, Long Island and taught in New York in close proximity to The MoMA. In his letter to Otto Schmalhausen from 8 January 1953, Grosz notes that he is teaching at the Art Students League, which was located on 57th Street less than a half-mile from The MoMA (DBM 2240); and in his 9 January 1953 letter to the Fiedlers, that he travels into New York City twice a week to teach his classes (DBM 02248).

130. Barr's biographer Alice Goldfarb Marquis tells how Barr turned to other artists in the area, such as modernist painter Piet Mondrian, to repair works. Marquis noted, "Barr could now personally consult Fernand Leger about his inspiration... [and] stroll over to Mondrian's pristine studio and pay him thirty dollars to restore his 1925 *Compositions*, which Philip Johnson had just given to the museum" (DBM 04423-4424).

131. In fact, as noted in the FAC, it was also "a serious breach of etiquette in the museum community" that Barr did not invite Grosz to the first exhibition of *Herrmann-Neisse with Cognac* or any of the other works (FAC ¶ 18). It also would have made sense to have the artist sign *Herrmann-Neisse with Cognac*: this could only have enhanced the value of the work. In short, I would not view the statements by Erich Cohn cited by Katzenbach as evidence supporting the proposition that Barr consulted Grosz. On the contrary, the evidence appears to support the opposite conclusion.

The Katzenbach Report’s Failure To Note Barr’s Failure To Obtain Provenance Documentation Prior To Acquiring The Paintings Tainted Katzenbach’s Conclusions

132. Katzenbach states with regard to *Herrmann-Neisse with Cognac* that “There is nothing in the record – nor does Mr. Jentsch indicate any facts—suggesting any bad faith, negligence, or questionable conduct at any time by anyone connected with MoMA” (Katzenbach at 8, DBM 02277). In reviewing the historical record, I perceive the conduct on the part of Barr to reflect, at this stage of the evidence, an extraordinary lack of due diligence.

133. The Heirs have been provided with no evidence that Alfred Barr or any other officials at The MoMA ever inquired about the provenance of the painting, despite knowing that both Flechtheim and Grosz (and their families) had been persecuted by the Nazis. Alfred Barr had been in Germany in 1933 when the Nazis came to power, he had close ties to the German art world and émigré community in the United States, and he had helped provide sanctuary for a number of cultural figures (including writing a letter of support for Curt Valentin in the dealer’s quest for U.S. citizenship in 1942) (DBM 01310). Barr had also used Valentin’s services to purchase art purged from German museums that were sold at the Gallery Fischer in Lucerne, Switzerland in June 1939. In short, Barr was extremely knowledgeable about the Nazis’ art looting program.

134. When Barr and The MoMA acquired *Herrmann-Neisse with Cognac* from Valentin in 1952, the media was rife with reports of Nazi looting programs. There had been a series of publications in high profile media outlets describing the plundering program in vivid terms. This included Janet Flanner’s series of articles in *The New Yorker* (DBM 02967-02984), and James Plaut’s account in *The Atlantic*. It bears mention

that Plaut was the Director of the Institute of Contemporary Art in Boston from 1939 to 1958 (and a colleague well-known to Barr), who spent the war years in the Office of Strategic Services as a key member of the Art Looting Investigation Unit.¹⁰ The so-called “Monuments Men” had also published memoirs of their experiences: see, for example, Thomas Carr Howe’s *Salt Mines and Castles* (1946) and James Rorimer’s *Survival: The Salvage and Protection of Art in War* (1950).¹¹ That Rorimer worked for (and later directed) the Metropolitan Museum of Art in New York and that Howe became the director of the San Francisco Legion of Honor only increased the visibility of these books, which recounted both the Nazis’ plundering operations, and also, the challenges of restitution work. With this widespread coverage of the Nazi looting practices, anyone in the museum community would find it difficult to claim they were unaware of the need for diligence in provenance research.

135. Furthermore, the U.S. Department of State had put museum officials and others in the art world on notice about the dangers of acquiring Nazi stolen art. The American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas (also known as the "Roberts Commission" after its Chairman, Supreme Court Justice Owen J. Roberts), distributed circulars in 1945 on the subject to "museums, art and antique dealers, and auction houses" (DBM 04553). This warning included the observation, "It is, of course, obvious, that no clear title can be passed on objects that have been looted from public or private collections abroad" (American Commission for the Protection and

¹⁰ Former OSS officer and member of the Art Looting Investigation Unit James Plaut wrote a piece, "Hitler's Capital: Loot from the Master Race," that appeared in *The Atlantic* (October 1946), 75-80.

¹¹ Thomas Carr Howe, who penned the pioneering work, *Salt Mines and Castles: The Discovery and Restitution of Looted European Art* (Indianapolis: Bobbs-Merrill, 1946); and James Rorimer, *Survival: The Salvage and Protection of Art in War* (New York: Abelard, 1950).

Salvage of Artistic and Historic Monuments in War Areas, Circular to Museums, Art and Antiques Dealers, and Auction Houses).

136. In 1951, the U.S. Department of State issued a second circular letter to the U.S. art trade and to leading museums reiterating this warning (DBM 04554-04555). This circular appeared on State Department stationery and was worded in an unambiguous manner: it was incumbent of those acquiring artworks to perform due diligence and research whether artworks had been looted by the Nazis, but never properly restituted.

137. The U.S. Department of State tasked Ardelia Hall to alert members of the art world to issues of Nazi art looting, and she was extraordinarily energetic in her work throughout the 1950s and 1960s. Ardelia Hall amassed an extensive archive of relevant documents (today housed in the U.S. National Archives and Records Administration in College Park and considered a key records group for researchers in the field). Hall kept in touch with many former “Monuments Men” (members of the U.S. Armed Forces’ Monuments, Fine Arts and Archives Division), and members of the Office of Strategic Services’ Art Looting Investigation Unit: a significant number of whom had gone on to leading positions in the U.S. museum establishment. Hall also liaised with counterparts in European governments, keeping abreast of the restitution work that continued across the Continent.

138. In light of this information, it was incumbent on Barr and The MoMA to ask Valentin for more information about the provenance of the works he sold the museum. At a minimum, one must speak of “negligence” in any acquisition by a museum of European works entering the U.S. after 1933 and created before 1945 that did not have a solid provenance record.

Katzenbach’s “Disbelief” That Art Dealers Would Sell Stolen Art Is Contradicted Generally Historically and Specifically By Scholarship Regarding These Particular Dealers: Katzenbach’s Turning a Blind Eye To The Stolen Art Trade Tainted Katzenbach’s Conclusions

139. The Katzenbach Report stated: **“I do not find Jentsch’s arguments sufficiently supported by facts to be convincing speculations. With respect to the *Self-Portrait* I have difficulty believing that reputable dealers would enter into the conspiracy that Jentsch speculates”** (Katzenbach at 9). The dealers listed in the provenance of *Self-Portrait*, excluding Flechtheim, of course, are: Carel van Lier, S. J. Max van Waay, Paul Brandt, Herbert Tannenbaum, and Curt Valentin. With the exception of Valentin, we know relatively little about these dealers.

140. Carel van Lier (1897-1945) was an Amsterdam dealer who specialized in contemporary and non-western art. Van Lier is currently regarded as a “red-flag” dealer by those investigating Nazi looted art (*see* Stefan Koldehoff’s article at DBM 007843-00784). Jewish by birth, van Lier was arrested by the Germans in April 1943. Sent to various concentration camps and the death camp of Auschwitz, van Lier perished in a camp near Hannover near war’s end. His son published a book about him, but this latter source is hardly objective and contains little information about the dealer’s activities (DBM 0128-0132). Dutch art historian Adriaan Venema did note that van Lier was able to move freely around the Netherlands during the early years of the war and included in his book a copy of a letter of denunciation from 6 July 1942, where a Dutch bureaucrat collaborating with the Nazis denounced him for walking around without wearing a Jewish star (DBM 04539). Further research is needed to understand why van Lier did not wear the mandatory symbol of his status as a Jew in the Nazi-occupied country.

141. S. J. Mak van Waay owned a Dutch auction house. Then located in the building of the Lees Museum, the firm was purchased by Sotheby's in 1974 (DBM 0107-0117). S. J. Mak van Waay was one of the two leading auction houses that sold artworks plundered from Dutch Jews (who suffered the highest mortality rate among Jewish populations in Western Europe). Historian Gerard Aalders notes that S. J. Mak van Waay died of a heart-attack on the day the Netherlands was liberated from Nazi rule (5 May 1945) and "could not be questioned." Aalders also notes that the records of the auction house were lost until 1998¹².

142. Paul Brandt was a Dutch dealer who sold Old Masters and graphic art. He had a gallery on Pieter de Hooch Street in Amsterdam.

143. Herbert Tannenbaum (1892-1958) was a German Jewish dealer who owned a gallery that sold modern art in Mannheim. He emigrated to the Netherlands in 1937. We know from letters produced during discovery that Tannenbaum was in the Netherlands in the fall of 1945 (apparently having spent the war there); that he was friends with Dr. Landmann in Toronto, and that Tannenbaum was acquainted with Curt Valentin (see Tannenbaum's October 1945 letter to Valentin at DBM 007918).

144. The fact is, as noted above, we know very little about these dealers. We do not know enough to exonerate them of trafficking in looted art, or to implicate them in a more systematic effort to profit from such objects.

145. Curt Valentin, as noted previously, was one of the most famous and influential art dealers of the twentieth century, but Valentin has problematic aspects to his biography. The same can be said about his partner, Karl Buchholz, whose business

¹² Gerard Aalders, *Nazi Looting: The Plunder of Dutch Jewry during the Second World War* (Oxford/New York, Berg, 2004), 187, 194, 274.

dealings were so complex that no scholar has yet arrived at a clear understanding of his activities.

Katzenbach's Disbelief That A Nazi Trustee Would Despoil A Jewish Art Dealer in The Period 1933-1936 Is Contradicted By Historical Evidence

146. Katzenbach writes, "I find it difficult to accept the sinister role assigned to Schulte in the liquidation of the gallery" (Katzenbach at 10, DBM 02279). As previously noted, Alfred Schulte had belonged in several Nazi affiliated organizations, including *Nationalsozialistischer Rechtswahrerbund* or National Socialist Legal Workers' Association (DBM 088-089). Lest one forget, he was charged by the Nazi state (the Reich Ministry of Finance) to liquidate the business of a Jew. To liquidate a persecuted Jew's business is, contrary to Katzenbach's view, "a sinister role."

147. In another part of his report, Katzenbach characterizes Dr. Alfred Schulte as the "assistant" of Alfred Flechtheim (Katzenbach at 3, DBM 02272). This wording misconstrues their relationship. After Flechtheim's emigration to London, he indeed corresponded with Schulte in an attempt to preserve some of his assets left behind in Germany. But to suggest that they were simply colleagues is highly misleading.

148. Katzenbach has misinterpreted the relationship between Schulte and Flechtheim. Schulte, a Nazi-authorized liquidator, made a demand for repayment (FAC paragraphs 37, 47), and at the same time claimed the Grosz artworks were unsellable. The artworks were unsellable (in Berlin) because the Nazis had already labeled Grosz a leading public enemy and the genre in which he worked was considered "degenerate" by Nazis policies. I interpret this transaction to be an act of spoliation by the Nazis regime of both Flechtheim and Grosz.

Katzenbach’s Contention That “Barr Had Every Reason To Believe That Grosz Was Happy With The MoMA Acquisition” Appears To Be Unsupported By The Record

149. Katzenbach alleges that “Barr had every reason to believe that Grosz was happy with MoMA acquisition and the exhibition of the *Herrmann Neisse [with Cognac]*” (Katzenbach at 11).

150. As a general matter, there is little historical support for the contention that Grosz was happy at all. The 30 June 1954 cover of the German weekly magazine, *Der Spiegel* featured a photo of Grosz with the caption “the saddest man in Europe” (DBM 03060-03069). By the 1950s, Grosz had grown disillusioned and depressed. There is no shortage of evidence supporting this point.

151. There is no correspondence from Barr to Grosz regarding *Herrmann-Neisse with Cognac*.

152. The fact that The MoMA paid a commercial restorer \$75 to restore *Herrmann-Neisse with Cognac* indicates either that Grosz refused to restore the work or that Barr concealed the restoration from him.

153. The fact that Grosz did not sign the work is evidence either that Grosz was never asked to do so or, in the alternative, that Grosz refused.

154. Grosz, as Katzenbach notes several times in his report, complained that The MoMA possessed art that had been stolen from him. None of the foregoing evidence that Grosz had any “happiness” with the transaction and I have been unable to locate any evidence supporting Katzenbach’s contention.

Katzenbach’s Contention That Grosz’s Conduct Created A Prejudice To The MoMA Is Unsupported By Any Evidence

155. Katzenbach writes, “Again, the failure of Grosz to act created a serious, however unintentional, prejudice to the Museum” (Katzenbach at 12, DBM 02281). Blaming Grosz for Barr’s failure to check a provenance and the state of affairs connected to the acquisition is not warranted by any evidence that I have examined.

156. Katzenbach writes, “Jentsch suggests that Grosz found it difficult to assert rights of the kind here involved—that he was shy or even what we might call a “wimp” (Katzenbach at 12, DBM 02281). This statement shows a profound lack of historical understanding about George Grosz.

157. First, Grosz was one of the most courageously outspoken artists of the twentieth century. Grosz created daring political and religious art, to label him a “wimp” constitutes a dazzling misrepresentation of George Grosz’s personality. It is certainly not what Ralph Jentsch meant, at least by my reading of Jentsch’s work. Grosz had boldly challenged a variety of political and religious creeds, for example, famously asserting in his art that organized religion had supported the slaughter that was World War I (his *Christ with a Gas Mask* and other images he created for Erwin Piscator’s play, *The Adventures of the Good Soldier Schwejk*, resulted in criminal charges and a three-year long trial beginning in 1928). He also eventually turned against Stalinist communism, and by the mid-1930s viewed both communism and National Socialism as flip-sides of the same totalitarian coin.

158. After emigrating to the United States, Grosz had reason to be apprehensive about his status in post-World War II America. He had seen Communist émigré writer Bertolt Brecht dragged before the House Un-American Activities Committee on 30

October 1947 and humiliated—such that Brecht chose to leave the United States the day after he testified. The sale of *Herrmann-Neisse with Cognac* took place as the anti-Communist paranoia of Senator Joe McCarthy reached its peak. It is understandable that Grosz would have been reluctant to take on a wealthy and powerful museum.

159. After emigrating to the United States, Grosz worked hard to become an American. A November 1943 article in *The New Yorker* magazine, described him as “burgher-like and conservative” in appearance (DBM 03047) and noted that he was “now a solid citizen who likes to work among his marigolds in decent Douglaston” (DBM 03053). The author of the article, Richard Boyer, also noted that Grosz “has forbidden his sons to look at his satiric drawings. He wants the boys to grow up to be wholesome Americans, and he doesn’t think his early drawings are conducive to good citizenship” (DBM 03051). Grosz’s past as a political radical gave him reason to be apprehensive about his status in post-World War II America.

160. Along these lines, because Grosz felt vulnerable in the U.S. (he was also having difficulty selling his work), he did not want to alienate the most important institution in the country, if not the world, with regards to modern art. Besides, he could not prove the *Herrmann-Neisse with Cognac* was stolen.

161. In the late-1950s, Grosz suffered from depression and crippling headaches. He also abused alcohol and deteriorated physically. His wife, Eva (née Peter) Grosz, wrote that he became isolated and increasingly alienated from friends and society more generally (DBM 04615).

162. At times, Grosz evidently considered taking legal action to remedy the wrongs he perceived. For example, in October 1948, Grosz wrote to Bernard Reis

regarding a possible lawsuit for lost drawings in connection to a United States exhibition (referred to as “Dialpeople”) (MoMA 008223). It is striking that Grosz wrote, “I have to proof (sic) more in detail and description the lost drawings.... As I certainly have not enough money right now to spend for a rather doubtful case” (sic). This letter shows how Grosz could not prove any wrongdoing, as well as showing how he was struggling with the English language and the American legal system, and that his less than secure financial situation mitigated against him taking legal action. I believe it was the combination of factors—the depression, alcoholism, and career troubles—that induced Grosz to retreat to a private sphere and not pursue artworks unlawfully taken from him.

163. One must understand the situation in which George Grosz was placed in 1950s America to understand his limited scope of action.

Katzenbach’s Assertion That Barr Was Unable To Discover Provenance Information Regarding the Paintings Is Fallacious

164. Katzenbach writes that MoMA “could not reasonably have been expected to discover” information about the paintings (Katzenbach at 13, DBM 02282). This seems to me a false assertion. If Alfred Barr had wanted to research the provenance of the Paintings, he could have done two things in particular: (1) He could have contacted the artist, who, as noted earlier, lived and worked in the vicinity of the Museum. It appears that Barr made no effort in the respect. Indeed, The MoMA appeared to make an effort to keep Grosz at a distance (as noted above, for example, by not inviting him to the opening of the inaugural exhibition and such); (2) Barr could also have asked Curt Valentin for clarification. As the former assistant to Alfred Flechtheim and as the person who traveled to New York in 1932 in an attempt to re-negotiate a consignment agreement with the artist, Valentin had extensive knowledge about the artist and his work. Valentin

Katzenbach's Arguments Run Contrary to the Washington Conference Principles and the Terezin Declaration

165. Katzenbach, in his discussion of whether Grosz retained good title to The Paintings, writes, “it would be barred under foreign or American law by the equitable doctrine of laches; it would appear to be barred under the New York statute of limitations; and under German or Dutch law the failure to make a claim for more than thirty years would make any claim now barred by prescription” (Katzenbach at 10). He then goes on to say, that “While it is not my function to provide a legal opinion, I do not think in coming to a judgment about these paintings the law can be or should be ignored (Katzenbach at 11). I will leave it to others to decide whether such statements are contradictory or ingenuous, but I would say the following: using such legalistic arguments about statutes of limitations and laches is antithetical to the Washington Conference Principles on Nazi Looted Art.

166. Grosz was a victim of Nazi persecution as ruled by a West German court. Beginning in March 1933, the Gestapo undertook the seizure of all the property belonging to him and his wife Eva. I have already mentioned the 237-page file, produced as DBM 02728 – 02964, that records the expropriation of George and Eva Grosz's property by the Berlin Gestapo and the Reich Finance Ministry, as well as the measures to strip Grosz of his German citizenship (DBM 02729-0230). This case clearly falls within what is referred to as Holocaust Era Assets.

167. I would note that I was a speaker and participant in the Washington Conference of 1998 where the principles were drafted and accepted as best practices by the delegates, including museum representatives. Subsequently, the American Association of Museums, to quote from their Guidelines Concerning the Unlawful Appropriation of Objects during the Nazi Era of April 2001, issued a statement that includes language from the Washington Conference Principles: in addition to affirming a commitment to “make currently available object and provenance (history of ownership) information on those objects accessible,” the statement included the language that the “AAM and AAM/ICOM acknowledge that during World War II and the years following the end of the war, much of the information needed to establish provenance and prove ownership was dispersed or lost. In determining whether an object may have been unlawfully appropriated without restitution, reasonable consideration should be given to gaps or ambiguities in provenance in light of the passage of time and the circumstances of the Holocaust era.”¹³ In short, the Washington Conference Principles call on museums to respond to restitution claims based on the facts, and not resort to arguments about statutes of limitations and laches.

168. The recent Terezin Declaration, which was promulgated by representatives of 46 nations on 30 June 2009, provided for “... the endorsement of the Washington Conference Principles on Nazi-Confiscated Art [whereby] the Participating States affirm[ed] an urgent need to strengthen and sustain these efforts in order to ensure just and fair solutions regarding cultural property, including Judaica, that was looted or displaced during or as a result of the Holocaust (Shoah).” More specifically, the Terezin

¹³ American Association of Museums, to quote from their Guidelines Concerning the Unlawful Appropriation of Objects during the Nazi Era (April 2001) at http://www.aam-us.org/museumresources/ethics/nazi_guidelines.cfm

Declaration urged all “stakeholders ... to make certain that claims to recover such art are resolved expeditiously and based on the facts and the merits of the claims and all the relevant documents submitted by all parties.” The United States of America was one of the Participating States that affirmed this Declaration.¹⁴

169. Katzenbach’s report does not serve the trustees of The MoMA and is not worthy of the court’s respect. It lacks specific citations in many cases, misrepresents certain facts, and, more importantly, misconstrues much of this history.

Conclusion:

170. Based on my review of the provenance documentation available to the Grosz heirs and to The MoMA and based upon the authoritative secondary sources cited above, such evidence strongly supports the conclusion that the Paintings were lost or stolen.

171. There is no evidence that George Grosz was ever compensated for any of the three Paintings. Both he and his dealer, Alfred Flechtheim, were victims of Nazi persecution. This created a situation that prevented the proper remuneration due to both individuals (there is no documentation showing that Flechtheim received his commission).

172. The evidence strongly suggests that Alfred Barr failed to investigate the provenance of these works that entered the Museum’s collection. Despite extensive knowledge of the Nazis’ rapacious cultural policies, and despite possessing extraordinary resources that would have facilitated an inquiry, Barr apparently did not perform the due

¹⁴ For the text of the Terezin Declaration, see <http://www.eu2009.cz/en/news-and-documents/news/terezin-declaration-26304/>.

diligence that was appropriate and necessary and consistent with The MoMA's own policies.

I declare the foregoing to be true and accurate under penalty of perjury under the laws of
the United States of America.

Executed on 20 August 2009

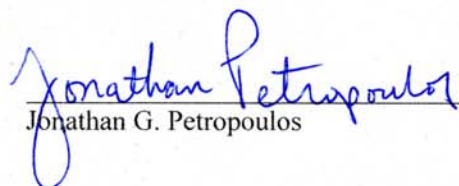

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EXHIBIT A

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ACADEMIC POSITIONS

John V. Croul Professor of European History, Claremont McKenna College, 2001-present.

Professor (Extended Graduate Faculty), Claremont Graduate University, 1999-present.

Director of Center for the Study of the Holocaust, Genocide, and Human Rights, Claremont McKenna College, 2007-2008.

Director of the Gould Center for Humanistic Studies, Claremont McKenna College, 2001-2007.

Founding Associate Director of the Center for the Study of the Holocaust, Genocide, and Human Rights, Claremont McKenna College, 2003-2007.

Life Member, Clare Hall, Cambridge University (U.K.), 2005 – present.

Visiting Fellow, Clare Hall, Cambridge University (U.K.), 2004 – 05.

Fellow, Royal Historical Society (U.K.), 2009 – present.

Professor of History, Claremont McKenna College, 2000-01.

Associate Professor of History, Claremont McKenna College, 1999-2000.

Associate Professor of History, Loyola College in Maryland, 1997-1999.

Assistant Professor of History, Loyola College in Maryland, 1993-1997.

Lecturer on History and Literature, Harvard University, 1990-1993.

Lecturer on History, Harvard University Extension School, 1992-93.

Lecturer on History, Harvard University, 1990-1992

Teaching Fellow in History and in the Core Program, Harvard University, 1985-1990.

EDUCATION

Ph.D. Harvard University, Modern European History, 1990. Adviser: Professor Charles S. Maier.

A.M. Harvard University, Modern European History, 1984.

B.A. U.C.L.A., History (with honors), 1983. University of London, Visiting Student, 1981-82.

PUBLICATIONS

Monographs:

Royals and the Reich: The Princes von Hessen in Nazi Germany (New York/London: Oxford University Press, 2006. Paperback, August 2008).

The Faustian Bargain: The Art World in Nazi Germany (New York: Oxford University Press, 2000). Published in the United Kingdom (London: Penguin Books, 2000).

Art as Politics in the Third Reich (Chapel Hill: University of North Carolina Press, 1996). Paperback edition in 1999. Translation in German (Berlin: Ullstein-Propyläen, 1999). Revised edition, 2003.

Anthologies:

Co-editor with John Roth and Lynn Rapaport, *Lessons and Legacies IX. Memory, History, and Responsibility: Reassessments of the Holocaust, Implications for the Future* (Evanston: Northwestern University Press, forthcoming, September 2009).

Co-editor with John Roth, *Gray Zones: Ambiguity and Compromise During and After the Holocaust* (New York/Oxford: Berghahn Press, 2005).

Co-editor with Scott Denham and Irene Kacandes, *A User's Guide to German Cultural Studies* (Ann Arbor: University of Michigan Press, 1997).

Editorial Board Member for Elizabeth Simpson, ed., *The Spoils of War: The Loss, Reappearance, and Recovery of Cultural Property During and After World War II* (New York: Harry Abrams, 1997).

Scholarly Articles:

“Das Haus Hessen im Dritten Reich: Anmerkungen zu Prinz Philipp und Prinz Christoph von Hessen,” in Eckhardt Franz, ed., *Die Prinzen von Hessen, 1866-1945* (Darmstadt: 2009).

“The Hessens and the British Royals,” in Karina Urbach, ed., *Royal Kinship: Anglo-German Family Networks, 1815-1918* (Munich: K. G. Saur, 2008), 147-60.

“The Art World in Nazi Germany: Choices, Rationalization, and Justice,” in Frank Nicosia and Jonathan Huener, eds., *The Arts in Nazi Germany* ((New York/Oxford: Berghahn Press, 2006), 135-64.

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“The Polycratic Nature of Art Looting,” in Gerald Feldman and Wolfgang Seibel, eds., *Networks of Persecution: The Holocaust as Division-of-Labor-Based Crime* (New York/Oxford: Berghahn Books, 2004), 103-17.

"From Seduction to Denial: Arno Breker's Engagement with National Socialism," in Richard Etlin, ed., *Culture and the Nazis* (Chicago: University of Chicago Press, 2002), 205-29.

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“Art Historians and Nazi Plunder,” in *The New England Review* 21 (Winter 1999), 5-30.

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"Holocaust Denial: A Generational Typology," in Peter Hayes, ed., *Lessons and Legacies of the Holocaust: Memory, Memorialization, and Denial* (Evanston, IL: Northwestern University Press, 1998), 239-47.

"Business as Usual: Switzerland, the Commerce in Artworks during and After World War II, and National Identity," in *Contemporary Austrian Studies* VII (1998), 229-42.

"German Laws and Directives Bearing on the Appropriation of Cultural Property in the Third Reich," in Elizabeth Simpson, ed., *The Spoils of War: The Loss, Reappearance, and Recovery of Cultural Property During and After World War II* (New York: Harry Abrams, 1996), 106-111.

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"The Administration of the Visual Arts in National Socialist Germany," in Glenn Cuomo, ed., *National Socialist Cultural Policy* (New York: St. Martin's Press, 1995), 141-99.

"Confronting the 'Holocaust as Hoax' Phenomenon as Teachers," in *The History Teacher* 28/4 (August 1995), 523-39.

"Not a Case of 'Art for Art's Sake': the Collecting Practices of the National Socialist Elite," in *German Politics and Society* 32 (Summer 1994), 107-24.

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"Bannerträger und Tiroler Bergjäger: Die von den USA beschlagnahmte NS-Kunst," in Jan Tabor, ed., *Kunst und Diktatur* (Vienna: Künstlerhaus Wien, 1994), 864-71.

"Developments in German History and Culture from 1870 to 1945: an Illustrated Chronology," and "A Selected Bibliography of the Cultural History of the Third Reich," in *Degenerate Art: the Fate of the Avant-Garde in Nazi Germany* (New York: Harry Abrams, 1991), 391-401, 406-09.

"Should the Kaiser Ride Again?" in *German Politics and Society* 16 (Spring 1989), 87-90.

Edited *Anthology on Weimar and Nazi Culture* (Harvard University Sourcebook Publications: editions produced in 1986, 1987, 1988, 1989 and 1990).

Journalistic Articles:

"Leni Riefenstahl: Coy Propagandist of the Nazi Era," in *Wall Street Journal* (11 September 2003), D-10.

"Art Historians and Nazi Plunder," in *Jewish Central Europe* (2002), 126-37.

"Scholar in Transition," in *Humboldt Kosmos* (July 2001), 26.

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"Plunder and Power: Art Looting and the Essence of National Socialism," *American Council on Germany Occasional Papers* 5 (March 1995).

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"Provenance Research as History: Reconstructed Collections and National Socialist Art Looting" (Review essay) in *Contemporary Austrian Studies* 14 (2006), 373-81.

James Sheehan, *Museums in the German Art World: From the End of the Old Regime to the Rise of Modernism*, in *Journal of Central European History* 36/1 (2003), 117-21.

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Anton Kaes, *From Heimat to Hitler: The Return of History as Film*, in *German Politics and Society* 20 (Summer 1990), 99-100.

Timothy Ryback, *Rock Around the Bloc: A History of Rock Music in Eastern Europe and the Soviet Union*, in *Harvard International Review* XII, No. 4 (Summer 1990), 63.

RELATED ACADEMIC WORK

Research Director for Presidential Advisory Commission on Holocaust Assets in the United States (chaired by Edgar Bronfman). Oversaw research and helped draft report for President Clinton concerning art looted from Holocaust victims by American forces, as well as victims' art which subsequently entered American collections, 3/99 – 10/2001.

Expert Witness in a number of legal cases, including *Altmann v. Austria* (6 paintings by Gustav Klimt); *Rosner et. al. v. U.S.A.* (the Hungarian “Gold Train”); and *Kann v. Wildenstein* (medieval manuscripts looted by the Nazis), *Cassirer v. Thyssen-Bornemisza Museum* (painting by Camille Pissarro); *Bakalar v. Vavra and Fischer* (artwork by Egon Schiele); *Boston Museum of Fine Arts vs. Seger-Thomschitz* (Kokoschka painting); and *Julius Schoeps v. The Museum of Modern Art and the Solomon R. Guggenheim Foundation* (paintings by Picasso).

Administrative Director and Board Member of The Project for the Documentation of Wartime Cultural Losses, a not for profit organization created in 1998 for the purpose of gathering, centralizing and making available information relating to works of art, archives, and other types of cultural property displaced as a consequence of war, 6/98 – present.

Consultant: at Los Angeles County Museum of Art. Helped write panel texts and brochure for exhibition, “The Bloch-Bauer Klimts,” April-July 2006; The National Geographic Society (exploration project), 2009.

Assistant to Curator at Los Angeles County Museum of Art. Worked with curator Stephanie Barron in preparation of exhibition, *Degenerate Art: The Fate of the Avant Garde in Nazi Germany* (February-November 1991): prepared section of exhibition on artists and intellectuals during the Third Reich and assisted with production of catalogue (which won the College Art Association’s Alfred H. Barr Award for Museum Scholarship in 1993 and the George L. Wittenborn Award for outstanding museum exhibition of the year). Full time position, Summer 1989 and Summer 1990. Part-time September 1989-May 1991.

Co-Editor for series, “Interdisciplinary German Cultural Studies” at the Verlag Walter de Gruyter GmbH & Co. (Berlin and New York), 2005-present. Along with two colleagues, review and edit manuscripts for series.

Consultant for Stuart Eizenstat in preparation of his “Testimony on the Status of Art Restitution Worldwide,” before the Subcommittee on Domestic and International Monetary Policy, Trade, and Technology Committee on Financial Services, U.S. House of Representatives, Washington, DC, 27 July 2006

Scholarly Associate (Wissenschaftliche Mitarbeiter) at Künstlerhaus Wien. Worked with curator Jan Tabor in preparation of exhibition *Kunst und Diktatur* (March-August 1994): helped arrange loans from collections in the United States, located illustrations for catalog, consulted on provenance of exhibits. Part time position December 1993-April 1994.

Affiliate of the Minda de Gunzburg Center for European Studies, Harvard University, 1990-1993. Participated in scholarly exchanges at a research center which promotes the interdisciplinary study of modern Europe.

Consultant at the Derek C. Bok Center for Teaching and Learning, Harvard University, 1991-1992. Advised Teaching Assistants and administrators with the aim of improving the quality of instruction at the university.

Tutor in History at Lowell House, Harvard University. A Non-Resident Tutor from 1985 to 1989 and 1992 to 1993 and a Resident Tutor from 1989 to 1992. As a member of the Senior Common Room, advised students, voted on fellowship recommendations; also participated in extra-curricular activities.

GRANTS AND AWARDS

Alexander von Humboldt Foundation, for three-month research fellowship in Munich, May-August 2009.

Dean of Faculty, Summer Research Grant, Claremont McKenna College, 2009.

Dean of Faculty, Summer Research Grant, Claremont McKenna College, 2006.

Wiener Library, Honorable Mention for the Fraenkel Prize for *Royals and the Reich*, 2005.

Visiting Fellowship, Clare Hall, Cambridge University, 2004-2005.

Visiting Fellowship, Wolfson College, Cambridge University, 2004-2005 (declined).

Huntoon Senior Teaching Award (outstanding teacher), Claremont McKenna College, 2002.

New York Public Library, *The Faustian Bargain* named one of the 25 most memorable books of 2000.

Alexander von Humboldt Foundation, fellowship for 2000-01.

American Academy in Berlin, Prize Fellow, 1999-2000 (unable to accept).

Fulbright Senior Scholar Fellowship, 1999-2000 (unable to accept).

Holocaust Educational Foundation, Research Grant, summer 1998.

German Academic Exchange Service (DAAD) Research Grant, May-July 1997.

Summer Research Grant, Loyola College, August 1997.

German Academic Exchange Service (DAAD), subvention for book, *A User's Guide to German Cultural Studies*, December 1996.

Summer Research Grant, Loyola College, June-August 1996.

Junior Faculty Sabbatical, Loyola College, July 1995-January 1996.

Enhancing Classroom Teaching (for trip to Holocaust sites in Eastern Europe), Loyola College, June 1995.

Holocaust Educational Foundation, for research into pedagogy of Holocaust, June 1995.

German Academic Exchange Service (DAAD) Research Grant for Recent PhDs, August 1993-January 1994.

Selected as "Young Leader" by the American Council on Germany, August 1993.

Grant from Austrian Foreign Office, Vienna, for research in Austria, summer 1992.

Milton Fund, Harvard University, for research in Austria, summer 1992.

German Academic Exchange Service (DAAD), for study and research in the Federal Republic of Germany, 1987-1988.

Harvard University Minda de Gunzburg Center for European Studies Summer Research Grant, 1986.

Harvard University Committee on Undergraduate Education Distinguished Teaching Award, 1988-89 and 1989-90.

Graduated from the Honors College at U.C.L.A.: a selective and rigorous program which the university calls its "highest academic achievement," 1983.

Phi Beta Kappa at U.C.L.A., 1983.

BOARDS AND PROFESSIONAL ASSOCIATIONS

Chair, Richard M. Hunt and Guido Goldman Fellowships, American Council on Germany (2003-present); American Association of Museums' Task Force on Nazi-Era Provenance (2003-present); Board member of the War Documentation Project (1997-present); Advisory Board Member of the Commission on Art Recovery (London) (2000-present); Scholarly Board (Wissenschaftliches Beirat) for the Archive of the Obersalzberg (Berchtesgaden) (2003-present); Nominating Committee for Conference Group for Central European History (within American Historian Association) (2000-2001). Chair, Fritz Stern Dissertation Prize, German Historical Institute (2001); Treasurer

of the Friends of the German Historical Institute (1996-2001). Member of the following organizations: American Council on Germany; German Studies Association; American Historical Association; College Art Association.

FILM PROJECTS, DOCUMENTARIES, AND TELEVISION APPEARANCES

Stolen Timbre: The Lost and Found Rhapsody of Stradivarius (feature length film on Stradivarius violen stolen by Nazis, made by Masayo Sodeyama and Manon Banta, 2006).

Hitler's Favourite Royal (hour-long documentary on Prince Charles Edward von Sachsen-Coburg und Gotha made by Channel 4 Films, UK), 2006.

Rape of Europa (feature length film on Nazi art looting made by Actual Films), 2005-06.

Klimt: Adele's Last Will (one-hour documentary made by Laurence Uebersfeld and a French team on the Bloch-Bauer Klimts), 2005-06.

Adele's Wish (directed by Terrence Turner, 2007).

Portrait of Adele (directed/written by Ilana Linden, 2006).

The Art Sleuths (one-hour documentary made by British production company), 2006.

Stealing Klimt (feature length film made by Gilonne d'Origny and a British production company), 2005-06.

Private Life of a Masterpiece: Vermeer's Allegory of Painting (episode of BBC series), 2005.

CNN/Comcast Local Edition (Claremont) (interview concerning Bloch-Bauer Klimts), 26 January 2006.

The Hungarian Gold Train (Israeli documentary film), 2005.

The Twentieth Century (PBS documentary film series), 2002.

Segment on *The Faustian Bargain* (Bayerischer Rundfunk program, *Kulturreport*), 11 March 2001.

Biographical feature, *Window on America* (production of Worldnet, Voice of America), 1999.

Biography: Hermann Göring (A&E Television), 1998.

SPEAKING ENGAGEMENTS

Paper: “New Avenues for Research: European Emigré Dealers Based in the United States,” at conference, Nazi-Era Provenance Research: Archival Sources and Electronic Access, Getty Research Institute, Los Angeles, 31 October 2008.

Arthur G. Weiser Lecture for Interfaith Understanding: “Art and Politics in the Third Reich: Nazi Looted Art and Restitution,” at Temple Emanu-el, San Francisco, 20 September 2008.

Bruce Museum, Greenwich, CT. May 2008.

Keynote address: “Hidden Children in Occupied Greece,” Sephardic Temple Tifereth Israel, Los Angeles, CA, 19 February 2008.

Panel Discussion, after screening of film, *Rape of Europa*, Los Angeles County Museum of Art, Los Angeles, CA, 24 March 2007.

Lecture: “Nazi Art Looting,” at The Desert Museum, Palm Springs, CA, 19 December 2006.

Lecture: “Royals and the Reich,” The University Club, New York, NY, 9 November 2006.

Lecture: “Royals and the Reich,” Fairfield University, Fairfield, CT, 8 November 2006.

Paper: “Prince zu Waldeck und Pymont: Prince Waldeck und Pymont: Context, Career, and Consequences,” at Lessons and Legacies, Claremont, CA, 5 November 2006.

Paper: “The British Royal Family and the Hessens,” at conference, Anglo-German Royal Kinship, 1760-1914, German Historical Institute, London, UK, 30 October 2006.

Panel Moderator and symposium organizer, “The Bloch-Bauer Klimt Paintings: Their History and Wider Significance,” Los Angeles County Museum of Art, Los Angeles, CA, 6 May 2006.

Lecture: “Recent Developments Concerning Nazi Art Looting,” CMC Woman’s Forum, Claremont, CA, 2 May 2006.

Lecture: “Royals and the Reich,” Wordstock Book Fair, Portland, OR, 23 April 2006.

Lecture: “Recent Developments Concerning Nazi Art Looting,” Indianapolis Museum of Art, Indianapolis, IN, 20 April 2006.

Lecture: "The Bloch-Bauer Klimt Paintings," Los Angeles County Museum of Art, LA, CA, 11 April 2006.

Lecture: "The Bloch-Bauer Klimt Paintings," University Synagogue, Brentwood, CA, 9 April 2006.

Lecture: "Royals and the Reich," Pasadena Senior Citizens' Center, Pasadena, CA, 2 March 2006.

Moderator and panel organizer: "The International Military Tribunal at Nuremberg Sixty Years Later," Claremont McKenna College (Athenaeum), Claremont, CA, 22 February 2006.

Lecture: "Recent Developments Concerning Nazi Art Looting," Pasadena Senior Citizens' Center, Pasadena, CA, 28 January 2006.

Lecture: "Expressionism and the Third Reich," German Historical Institute, Washington, DC, 11 November 2006.

Lecture: "Royals and the Reich," Boston University Faculty Seminar, Boston, MA, 9 November 2005.

Lecture: "Royals and the Reich," Modern European History Seminar, Cambridge University, Cambridge, UK, 28 February 2005.

Lecture: "Culture and Barbarism: Nazi Art Looting and its Aftermath," Newcastle University, Newcastle, UK, 15 February 2005.

Lecture: "Holocaust Era Property and Estate Law," Heckerling Institute, University of Miami, Miami, FL, 14 January 2005.

Lecture: "Recent Developments and Legal Considerations Concerning Holocaust-Era Cultural Property," Lauterpacht Center for International Law, Cambridge University, UK, 11 November 2004.

Lecture: "Culture and Barbarism: Nazi Art Looting and Its Legacies," Heilbronn Lecture at the University of New Hampshire, Durham, NH, 26 October 2004.

Lecture: "Nazi Art Looting: History, Legacies, and Unsolved Mysteries," at conference of the Infectious Disease Association of California, Dana Point, CA, 1 May 2004.

Lecture: "The Art World in Nazi Germany: Choices, Rationalizations, and Justice," at the Miller Symposium, "The Arts in Nazi Germany," University of Vermont, Burlington, VT, 25 April 2004.

Chair: “The Market of War—Dealers in the Nazi Era,” at conference, “Beauty and Truth for Sale: The Art of the Dealer,” J. Paul Getty Museum, Los Angeles, CA, 30 March 2004.

Chair (and co-organizer of conference): “Fallen and Risen Cities: Germany during and After World War II,” at conference, “Fallen Cities and the Lure of Ruin,” Claremont Graduate University, Claremont, CA 28 February 2004.

Chair (and co-organizer of conference): “Ambiguity and Compromise in the Writing of the Holocaust: The Accomplishment of Raul Hilberg,” at conference, “Gray Zones: Ambiguity and Compromise in the Holocaust and Its Aftermath,” Claremont, CA, 7 February 2004.

Paper: “Postwar Justice and the Treatment of Nazis’ Assets,” at conference, “Gray Zones: Ambiguity and Compromise in the Holocaust and Its Aftermath,” Claremont, CA, 7 February 2004.

Lecture: “The Legal Implications of Nazi Art Looting,” at The American College of Trust and Estate Counsel (ACTEC) regional conference, Carmel, CA 17 January 2004.

Comment: Panel “Too Little Too Late? Nazi Art Theft and Restitution Efforts After World War II,” German Studies Association annual conference, New Orleans, 20 September 2003.

Paper: “Ten Essential Themes about Restitution for Nazi Atrocities and Plunder,” at San Diego State University, San Diego, CA, 5 May 2003.

Comment: “Response to Stuart Eizenstat and his Lecture, ‘Imperfect Justice,’” University of Judaism, Los Angeles, 30 March 2003.

Lecture: “Nazi Art Looting and Postwar Efforts at Restitution,” Benefit for American Friends of the Israel Museum held at Christies’, Beverly Hills, CA, 4 March 2003.

Chair and Commentator, “Daniel Goldhagen and His Critics: The Vatican and the Holocaust,” Claremont McKenna College, Claremont, CA, 5 February 2003.

Paper: “Reflection on the Presidential Advisory Commission on Holocaust Assets,” at conference, Commissioning History: The Work of Historical Commissions in Germany, Austria and the United States, the D-Day Museum, New Orleans, 21 November 2002.

Comment: on papers concerning memoirs during World War II, Pomona College, Claremont, CA, 16 November 2002.

Paper: “Greed and the Nazi Kleptocracy,” at Lessons and Legacies, University of Minnesota, Minneapolis, MN, 1 November 2002.

Lecture: "Royals and the Reich: The Princes of Hessen in Nazi Germany," at The Athenaeum, Claremont McKenna College, 24 October 2002.

Lecture: "Adolf Hitler and Art," Williams College, Williamstown, MA, 3 October 2002.

Commentator: on panel, "New Approaches to the History of the Third Reich and the Holocaust," American Historical Association conference, San Francisco, 5 January 2002.

Abe Kanof Annual Lecture: "The Faustian Bargain: The Art World in Nazi Germany and Beyond," at the North Carolina Museum of Art, Raleigh, NC, 8 April 2002.

Lecture: "Nazi Art Looting," at The Desert Museum, Palm Springs, CA, 21 March 2002.

Lecture: "Nazi Art Looting," at Iowa State University, Ames, Iowa, 28 January 2002.

Commentator: on panel, "New Approaches to the History of the Third Reich and the Holocaust," American Historical Association conference, San Francisco, 5 January 2002.

Paper: "Recent Developments in Researching Nazi Looted Art" for panel, "The Crime of the Century: Researching Nazi Era Provenance," Western Art Museums Association, Palm Springs, 11 October 2001.

Keynote speaker: "Arno Breker and Sculpture during the Third Reich," at symposium on 20th century German figurative sculpture, Henry Moore Gallery, Leeds, UK, 23 June 2001.

Lecture: "Researching Looted Art," at symposium of provenance researchers and museum curators at the Alte Pinakothek, Munich, 18 May 2001.

Participant: round-table symposium convened by the U.S. Consulate in Munich on compensation to slave and forced laborers by German industry, Munich, 19 April 2001.

Lecture: "Nazi art looting: A Transatlantic Perspective," at Washington University in St. Louis, 8 March 2001.

Lecture: "Nazi Dealer Karl Haberstock," at the Armory in Augsburg, co-sponsored by the University of Augsburg and the Municipal Paintings Collection, 8 February 2001.

Lecture: "Biographical Approaches to researching Looted Art," part of a series on the political economy of the Holocaust at the Technical University of Vienna, 18 December 2000.

Speaker and co-organizer: symposium convened by filmmakers who are producing a PBS documentary on looted art called *The Rape of Europa*, Washington, DC, 11 November 2000.

Member of U.S. delegation and adviser to Deputy Secretary of the Treasury Stuart Eizenstat at the Vilnius Forum on Holocaust Cultural Property, Vilnius, Lithuania, 2-5 October 2000.

Commentator: panel "Intermediary Agencies and Spoliation," at conference, "Networks of Persecution: The Holocaust as a Division-of-Labor Based Crime" at the University of Konstanz, 27-29 September 2001.

Participant : round-table discussion of museum officials and researchers concerning Holocaust era looted art at the National Archives, College Park, MD, 16 August 2000.

Lecture: "Recent Developments Concerning Art Looting," sponsored by the American Council on Germany, Manhattan, 19 June 2000.

Testimony on looted cultural property before the Select Committee on Culture, Media, and Sport, United Kingdom House of Commons, London, U.K., 18 May 2000.

Paper: "Recent Trends in Research into Looted Art," American Museum Association, Baltimore, MD, 16 May. 2000.

Testimony on looted art before the House Banking and Financial Services Committee, U.S. House of Representatives, Washington, DC, 10 February 2000.

Paper: "The History of Art Looting in World War II: The Implications for Locating Works Still Missing," at conference, *Holocaust Research and Holocaust Studies in the 21st Century* at The U.S. Holocaust Memorial Museum, Washington, DC, 15 December 1999.

Respondent: "Panel on Teaching Innovation," Presidential Inauguration Symposium, Claremont McKenna College, 13 October 1999.

Lecture: "The History of Nazi Art Looting: Tracking Works Still Missing" at The Marion Cook Athenaeum, Claremont McKenna College, 29 September 1999.

Paper: "Arno Breker and the Third Reich--From Seduction to Denial," at symposium, "Kultur und Staatsgewalt: Formen und Folgen der Kulturpolitik im Dritten Reich und in der DDR," Technische Universität, Dresden, 4 June 1999.

Lecture, "The Art World in Nazi Germany," at The Art Seminar Group, Baltimore, MD, 4 May 1999.

Keynote speaker: "Looted Art and World War II" at the U.S. Foundation for the World Federation of Friends of Museum, Baltimore, MD, 23 April 1999.

Paper: "Crossing Disciplinary Boundaries: History and Art History," at German Studies Forum, Duke University, Durham, NC, 16 April 1999.

Keynote Speaker: "Looted Art of World War II," at the Memorial Art Gallery, Rochester, NY, 14 April 1999.

Paper: "Researching and Writing About Holocaust-Era Art Looting, Recovery, and Restitution," at a symposium of the National Archives and Records Administration, "Records and Research Related to Holocaust-Era Assets," College Park, 4 December 1999.

Paper: "An Overview of Nazi Art Looting during World War II" at the U.S. Department of State organized, "Washington Conference on Holocaust-Era Assets," Washington, DC, 1 December 1999.

Paper: "'People Turned to Ashes, Their Property Did Not': Plundering and the Pursuit of Profit during the Holocaust," at the German Historical Institute symposium, "The Genesis of Nazi Policy," University of Florida, Gainesville, FL, 11 April 1998.

Scholar in Residence, Beth El Synagogue, Fairfield, CT, 27 February - 1 March 1998.

Paper: "Karl Haberstock: Kunsthändler der Nazi-Führer," at conference "Überbrückt: Ästhetische Moderne und Nationalsozialismus: Kunsthistoriker und Künstler, 1925-1937," at Hamburger Bahnhof--Museum für Gegenwart, Berlin, 29 November 1997.

Lecture and Panel Discussion: "The Nazi Conspiracy and the Market for Stolen Art," at the Metropolitan Museum of Art, New York, NY, 22 October 1997.

Paper: "Business as Usual: Switzerland, the Commerce in Artworks during and after World War II, and National Identity," at the German Studies Association Conference, Washington, DC, 26 September 1997.

Paper: "Museum Director Ernst Buchner--Compromise, Corruption, and Rehabilitation," at Washington Area Germanists' Seminar, Washington, DC, 28 April 1997.

Paper: "From Seduction to Denial: Arno Breker's Engagement with National Socialism," at German Studies Association Conference, Seattle, 12 October 1996 and at College Art Association, New York, 14 February 1997.

Chase-Crowe Lecture: "The Faustian Bargain: The Cooptation of the Artistic Professions in Nazi Germany," at Northwestern University, 3 February 1997.

Comment: on panel "Redefining the Past? Vergangenheitspolitik and Historians in Germany," at German Studies Association Conference, Seattle, 14 October 1996.

Chair and Commentator, for session "Artistic Interactions in Exile," at symposium "Emigrants and Exiles: A Lost Generation of Austrian Artists in America," at Northwestern University, 20 April 1996.

Co-organizer, Chair and Commentator: for symposium, "German Studies as Cultural Studies," at Davidson College, Davidson, N.C., 17-18 March 1995.

Lecture: "Anti-Modernism, Anti-Semitism, and the Essence of National Socialism," Davidson College, Davidson, N.C., 16 March 1995.

Paper: "German Laws and Directives Bearing on the Appropriation of Cultural Property in the Third Reich," at The Spoils of War, New York, 20 January 1995.

Paper: "Holocaust Denial: a Generational Typology," at Lessons and Legacies III: Memorialization, Representation and Teaching the Holocaust, Dartmouth College, 23 October 1994.

Paper: "The Radical Right in Germany and Austria," at the United States Institute of Peace, Washington, DC, 18 July 1994.

Panel participant: "Should One Exhibit National Socialist Art in Museums Today?," at Künstlerhaus Wien, Vienna, 15 April 1994.

Lecture: "Kunst als Politik in Nationalsozialismus," at the Institut für Neuere Geschichte, Ludwig-Maximilian Universität, Munich, 24 November 1994.

Participant: "Differenzen in der Bearbeitung des Nationalsozialismus, des Antisemitismus und des Holocaust in Österreich, in der Bundesrepublik und in der DDR. Zeitgeschichtlich Forschung im Vergleich," at Schloss Leopoldskron, Salzburg, 7-10 November 1993.

Paper: "Teaching the Holocaust in an Interdisciplinary Manner: Confronting the Holocaust as Hoax Phenomenon," at the German Studies Association Conference, Washington, DC, 10 October 1993.

Paper: "The Politics of Art Collecting in the Third Reich," Minda de Gunzburg Center for European Studies, Harvard University, Cambridge, MA, 18 December 1991.

Conference participant: XIII American-German Young Leaders' Conference (sponsored by the American Council on Germany and the Atlantik Brücke), Richmond Virginia, 19-26 August 1991.

Lecture: "Germania and Genocide: The World View of National Socialist Leaders as Expressed Through Their Art Collections": public lecture at Davidson College (Davidson, North Carolina, 14 March 1991).

TEACHING EXPERIENCE

Claremont McKenna College

History of European Aristocracy Since 1750 (Hist. 180e), Fall 2003.

Germany since 1740 (Hist. 146), Spring 2000, Spring 2004, Spring 2009.

The Rise of Modern Europe (Hist. 76), Fall 2001, Fall 2002, Spring 2007, Spring 2008.

The Culture of Fascism (Hist. 145), Spring 2000, Spring 2009.

Culture and Politics in Europe, 1880-1918 (Hist. 142), Spring 2000.

Freshman Honors Seminar on World War II (Hist. 100), Fall 1999.

Culture and Society in Weimar and Nazi Germany (Hist. 139), Fall 1999, Fall 2001, Fall 2002, Spring 2003, Fall 2007.

Researching the Holocaust (Hist.180), Spring 2002, Spring 2003, Spring 2004.

Loyola College in Maryland:

Modern Civilization (HS 101), Spring 1994 through Fall 1998.

Honors Program: The Modern World (HN 280), Spring 1997 and Spring 1998.

The Creation of Modern Germany, 1770 to the Present (HS 318), Spring 1994, Fall 1996, and Fall 1998.

The Holocaust and the USA (HS 716--graduate course), Fall 1996.

Culture and Politics in Fin-de-Siècle Europe (HS 310), Fall 1994 and Spring 1998.

Nazi Germany and the Holocaust (HS 478), Spring 1995, Fall 1997.

Hitler and the Third Reich (HS 410), Spring 1996.

Historical Methods (HS 400), Spring 1996.

Harvard University:

History of Germany, 1890-1900 (History E-1575), Spring 1993.

The Culture of Fascism in 20th Century Europe (History 1506), Spring 1992.

Culture and Politics in Weimar and National Socialist Germany (History 90S), Fall 1992.

EXHIBIT B

Timetable of events 1923 to 2006

Year	Month	Event	Evidence
1920		Grosz creates <i>Republican Automatons</i>	DBM 3587 (MoMA's provenance)
1923/24		Grosz enters into a contractual agreement with Flechtheim	- Hans Hess, George Grosz p. 122 - affidavit of Gurlitt: income for Grosz (DBM 1519; Translation at DBM 3588-3589) - Letter Flechtheim to Klee regarding contract models 1919 (DBM 1008-1009)
1927		Grosz creates <i>Herrmann-Neisse with Cognac</i> .	DBM 2722 (MoMA's provenance)
1928	May - June	<i>Herrmann-Neisse with Cognac</i> is exhibited at the Frühjahrsausstellung of the Prussian Academy of Arts	DBM 0001053 (exhibition catalogue)
1929		Grosz creates <i>Maler und Modell</i> .	DBM 3586 (MoMA's provenance)
1931		German Painting and Sculpture exhibition at MoMA <i>Herrmann-Neisse with Cognac</i> is shown	DBM 01083-01087 (catalogue)
1931		Flechtheim cancels contract with Grosz	DBM 1979 (letter to Mark Neven Dumont Dec 23, 1931)
1932	April	<i>Herrmann-Neisse with Cognac</i> and <i>Maler und Model</i> are exhibited at the Palais des Beaux Arts in Brussels, commissioned by Flechtheim Gallery.	Exhibition catalogue (DBM 03590-03596)

1932	May	Flechtheim tries to renegotiate the contract but Grosz objects to an exclusive engagement with Flechtheim.	DBM 1383 (Grosz letter)
	June- October	Grosz teaches at the art students league in New York	DBM 3039 (<i>NY Times</i> Article May 1932)
	July	NSDAP wins 37 percent at the national elections.	
	31 October	Valentin to Grosz regarding payment of 16,565 RM.	DBM 49
	28 November	Valentin corresponds with Grosz; he says Grosz will pay back part in watercolors other part in cash.	DBM 46
1933	January	Grosz moves to New York City. Hitler is appointed chancellor of Germany by President Hindenburg.	DBM 3045 (<i>NY Times</i> Article Oct. 5, 1932)
	May	Many of Grosz's books and drawings are destroyed and burned at the book burnings. His books are forbidden.	DBM 2212-2213 (affidavit of Aufricht) DBM 1551 (affidavit of Julian Gumpertz)
	6 June	Postcard from Flechtheim to Grosz: his gallery is closed; Grosz artworks are with a shipper.	DBM 39-41

1933	6 October	Letter from Flechtheim: he emigrates to Paris He takes with him most of Grosz artworks. Tells Grosz he made an agreement with Galerie Pierre Flechtheim 25 %, Pierre 25 %, Grosz 50%. He sent <i>Maler und Modell</i> to Pierre.	DBM 50
	18 November	Alfred Schulte to liquidate the Gallery. Letter from Alfred Schulte to Grosz asking him to pay his debt. Schulte adds Grosz should not argue that they still have paintings in commission as these are absolutely unsellable. He only accepts cash.	DBM 1389
	December	Flechtheim sends <i>Republican Automotons</i> to Mayor Gallery in London.	DBM3587 (MoMA Provenance), DBM 118-120 (Mayor Gallery Email correspondence)
1934	April	Letter Flechtheim to Grosz: His watercolors, which he purportedly gave Flechtheim as “a security” are in London, his oil painting that he also purportedly gave him as “security” are in Paris with Gallery Billet. The letter includes a list of the paintings with Billet. <i>Maler und Modell</i> is included in this list.	DBM 1391-1400
1935	8 August	Letter Flechtheim to Barr, he tells Barr he lost everything and that he has one Lehmbruck to sell.	DBM 18-21
1935	July	Alfred Flechtheim and Alfred Barr meet in Europe	DBM 4047-4049 (<i>Alfred Flechtheim. Sammler Kunsthandler. Verleger.</i>)

1936	28 February	Letter Flechtheim to J.B. Neumann: where does Grosz teach, which museums have his paintings?	DBM 32-34
1936	March	Mayor Gallery, London sends <i>Republican Automatons</i> to Leicester Gallery, London	DBM 3587 (MoMA's provenance)
1936	July to August	<i>Maler und Modell</i> is exhibited at Kunstzaal van Lier, Amsterdam.	DBM 133-134
1936	10 November	Nazis authorize Valentin to sell artworks from Germany to USA.	DBM 1303-1304
1937	2 September	Valentin is issued his Immigrant Identification Card	DBM 1020-1023 (immigration documents)
1937	29 January	Douglas Cooper to Alfred Barr: Cooper wants to see Flechtheim, Barr in contact with Flechtheim	DBM 35-36
1937	20 February	Flechtheim gallery is dissolved	DBM 1202
1937	9 March	Alfred Flechtheim dies in London	DBM 1402
	12 April	Charlotte Weidler writes to Paul Westheim telling him that she inherited 9 Grosz paintings from Flechtheim, including <i>Herrmann-Neisse with Cognac</i>	DBM 1311-1314

1938	1-2 February	Auction Mak van Waay, Van Lier sells <i>Republican Automaton</i> s and <i>Maler und Modell</i> . He buys back <i>Maler und Modell</i> . Mr. Brandt buys <i>Republican Automaton</i> s.	DBM 107-117 (auction catalogue with notes)
1938	8 March	The Nazi Government takes the German citizenship from Grosz and declares the entirety of his property in Germany confiscated.	DBM 1355-1358
1939	13 April	MoMA buys five paintings from the Buchholz Gallery that the Nazis confiscated from German Museums.	DBM 3043 (<i>NY Times</i> Article Sept. 8, 1939)
1939	10 May	MoMA's 10 year anniversary show "Art in Our Time" opens. The five works are on display: lent anonymously.	DBM 4479-4491 (Art in our time catalogue excerpts)
1939	26 December	Weidler emigrates to New York.	DBM 3836-3839
1939		Dr. Tannenbaum buys <i>Republican Automaton</i> s from Brandt.	DBM 3587 (MoMA provenance)
1939 ~		William Landman buys <i>Republican Automaton</i> s.	DBM 3587 (MoMA provenance)
1942	March – June	Correspondence between the Carnegie and Freer Galleries regarding the question whether Weidler was a Nazi spy.	DBM 1315-1321
1942	24 June - 24 August	Exhibition Free German Art at MoMA showing new acquisitions of art from Germany.	DBM 3042 (<i>NY Times</i> Article June 23, 1942)

1943		Alfred Schulte is registered in the registry of official accountants, he is not a member of the NSDAP but a member of N.S.V. since 1934.	DBM 88-89
1946		MoMA buys <i>Republican Automaton</i> s from William Landman.	DBM 3587 (MoMA provenance)
1947	February	Letter Melitta Weidler to Charlotte Weidler, informing her that her paintings are rescued and can be shipped to USA. This written correspondence includes a dispute between the brother of acquaintances of Weidler (Mr. and Mrs. Lücke) who kept two Grosz paintings for her. He does not want to give them back.	Charlotte Weidler Papers at MoMA
1947	January February March	Articles about Nazi art looting appear in the <i>New Yorker</i> written by Janet Flanner.	DBM 2967-2984; 2985-3001; 3004-3021
1948-1949		Another, larger version of the <i>Herrmann-Neisse with Cognac</i> is offered to Alfred Barr for The MoMA; he refuses after learning that it was confiscated from the Kunsthalle Mannheim.	DBM 3254-3272
1949	3 August	Valentin to Barr that he was trying to get <i>Street Scene</i> (probably Kirchner) for him in Frankfurt but that it was sold, <i>Madonna</i> still available.	DBM 995

1950	February	Letter from Charlotte Weidler to Alfred Barr, she tells him that her collection has been rescued and offers him Lehmbruck drawings. She tells him of a „strong early Grosz“ (<i>Herrmann-Neisse with Cognac</i>).	DBM 2700-2701
	May	The brother of Mr. Hausmann, Mr. Lücke, writes to Charlotte Weidler telling her he wants to get in touch with George Grosz about <i>Herrmann-Neisse with Cognac</i> .	Charlotte Weidler Papers at MoMA
1952	February - May	Charlotte Weidler asks Curt Valentin to sell <i>Herrmann-Neisse with Cognac</i> for her. Curt Valentin offers <i>Herrmann-Neisse with Cognac</i> to Alfred Barr. Alfred Barr buys it from Valentin, not asking who the actual seller is. Valentin transfers the sales price minus a commission to Charlotte Weidler after the transaction is completed.	DBM 2709-2711 (Valentin and Barr Correspondence) Charlotte Weidler papers at MOMA (letters Weidler to Valentin)
1953	January	Grosz writes to his brother in law Schmalhausen and Herbet Fiedler that MoMA is exhibiting a painting that was stolen from him (<i>Herrmann-Neisse with Cognac</i>).	DBM 2240-41, 2248-49
1955	November	George Grosz files for compensation, he receives compensation award for the loss of his artworks in Germany (regarding artworks that were burned), and for physical damages.	DBM 2028-2034 (physical damages) DBM 1489-90 (settlement regarding property loss)
1956	26 January	Weidler writes to Barr regarding the restoration of a Mueller painting.	DBM 208

1959	July	George Grosz dies in Berlin on July 6, 1959.	DBM 2035 (death certificate)
2003	January	Letter from Ralph Jentsch to MoMA requesting the return of the Paintings.	DBM 1376-77
2006	18 January	Glenn Lowry writes to Jentsch that he cannot decide whether to reject the return but that this falls within the Board of trustees' competence.	DBM 891-892
2006	April	MoMA rejects the return of <i>Herrmann-Neisse with Cognac</i> and <i>Maler und Modell</i> .	DBM 1378