

**“ARMS IN THE HANDS OF JEWS ARE A DANGER  
TO PUBLIC SAFETY”:  
NAZISM, FIREARM REGISTRATION, AND THE  
NIGHT OF THE BROKEN GLASS**

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**I. INTRODUCTION: A LINGERING QUESTION ON GUN CONTROL  
AND THE SECOND AMENDMENT**

In 1938, just weeks before *Reichskristallnacht* (Night of the Broken Glass), in Nazi Germany, Berlin police arrested Alfred Flatow.<sup>2</sup> His crime:

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2. Alfred Flatow, *Bericht über einen polit. Vorfall*, 4.10.38, [hereinafter Alfred Flatow]. A Rep PrBrRep. 030/21620 Bd. 5 Haussuchungen bei Juden 1938–39 (FB Bd. 5), Landesarchiv Berlin. [Alfred Flatow, *Report Concerning Political Incident*, Oct. 4, 1938. House Searches of Jews 1938–39, Berlin State Archives.]

being a Jew in *lawful* possession of firearms.<sup>3</sup> The police knew he possessed firearms because he dutifully registered them in 1932 under a decree by the liberal Weimar Republic.<sup>4</sup> In anticipation of the pogrom, the Nazi leadership launched a campaign to disarm Jews.<sup>5</sup> Flatow was one of many who were arrested and turned over to the Gestapo.<sup>6</sup> He would eventually be deported and die in a concentration camp.<sup>7</sup>

The police may not have realized that they had arrested a world-class gymnast who won the gold for Germany at the 1896 Olympics.<sup>8</sup> A check of his name, birth date, and birth place from the arrest report corresponds to one and the same Alfred Flatow, who was among the athletes who competed for Germany in the Athens Games, winning first place in the parallel bar events (individual and team), and second place in the horizontal bar event.<sup>9</sup>

Flatow's arrest record is in the *Landesarchiv* Berlin in a file labeled *House Searches of Jews 1938-39*.<sup>10</sup> The arrest record, made on a standard four page police form entitled *Report Concerning Political Incident*, tells tales about the use of firearms registration laws to repress Jews in Nazi Germany.<sup>11</sup> Two similar arrest reports were found in the same file.<sup>12</sup>

An arrest record may speak volumes about the nature of a political system, its legal regime, police power, and character as embodying a free society or a totalitarian dictatorship. This article initially focuses on the arrest records of Alfred Flatow and two other Jewish firearm owners. Flatow duly registered his weapons in good faith during the waning days of Germany's Weimar Republic.<sup>13</sup> Coming to power shortly thereafter, the Nazis only had to consult the registration records and conduct house searches to disarm these and other Jews. Having done so in a quiet and systematic manner in the weeks preceding the Night of the Broken Glass, the Nazi leadership found just the right incident to launch this

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3. *Id.*

4. *Id.*

5. *See infra* part IV.

6. Alfred Flatow, *supra* note 2.

7. *See infra* note 75 and accompanying text.

8. Hajo Bernett, *Alfred Flatow – vom Olympiasieger zum Reichsfeind*, in *SOZIAL- UND ZEITGESCHICHTE DES SPORTS* Heft, 2, 94 (1987); *see also* Arnd Krüger, *Once the Olympics are Through, We'll Beat up the Jew: German Jewish Sport 1898-1938 and the Anti-Semitic Discourse*, 26 *J. SPORTS HIST.* 353, 367 (Summer 1999); JOSEPH SIEGMAN, *JEWISH SPORTS LEGENDS: THE INTERNATIONAL JEWISH SPORTS HALL OF FAME* 92 (Brassey's 1997).

9. *Id.* Bernett, *supra* note 8, at 2, 94; *see also* Krüger, *supra* note 8, at 353, 367.

10. Alfred Flatow, *supra* note 2.

11. *Id.*

12. *See infra* notes 78 and 86 and accompanying text.

13. Alfred Flatow, *supra* note 2.

unprecedented pogrom under the guise that Jews with arms were a danger to the state and must be arrested, even though the arms were legally registered, and that their premises—homes, businesses, and even synagogues—must be searched to confiscate any and all remaining arms.<sup>14</sup> Having rendered Jews defenseless, the Nazi government could proceed to expropriate their property, deprive them of all rights, and eventually to subject them to genocide.

Controversy has raged in recent decades about whether law-abiding civilians should have a right to possess firearms at all and, if so, whether all firearms should be registered with the government, or whether firearms should be prohibited except to the military and police. In the United States, in a debate over bills to include a national firearms registration system in the Gun Control Act of 1968, opponents raised the specter of the then more recent Nazi experience,<sup>15</sup> while proponents denied that the Nazis made any use of firearm records or registration lists to disarm enemies.<sup>16</sup> Although it focused on Nazi policies in the occupied countries, a Library of Congress study was “unable to locate references to any German use of registration lists to collect firearms.”<sup>17</sup>

Of relevance to this debate is the purpose and meaning of the Second Amendment to the United States Constitution, which provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>18</sup> In *District of Columbia v. Heller*, the U.S. Supreme Court held that a ban on handguns violates the individual right to possess arms for self defense, also

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14. See *infra* part VI.

15. For example, Rep. John Dingell (D. Mich.) argued that: “Sportsmen fear firearms registration. We have here the same situation we saw in small degree in Nazi Germany. There they did not prohibit citizens from having guns. All they said was first of all we want to register them, and we are going to stop crime by it.” *Federal Firearms Legislation: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary*, 90th Cong., 2nd Sess. 478 (1968) [hereinafter *Federal Firearms Legislation*]. As discussed below, the Nazis actually used registration records generated under the laws of the Weimar Republic to confiscate firearms from selected groups in society. See *infra* part III.

16. For instance, Senator Joseph Tydings (D. Md.) disputed “that registration or licensing of guns has some connection with the Nazi takeover in Germany.” *Federal Firearms Legislation*, *supra* note 15, at 478–79.

17. *Id.* at 483. “However, the possibility cannot be denied that the Germans may have used these registration lists (or indeed hunting license registration), after issuing their proclamations [to surrender firearms].” *Id.* The study included a translation of the Nazi *Waffengesetz* (Weapons Law) of 1938 [*Reichsgesetzblatt* 1938, I, 265] which was applicable in Germany. *Id.* at 489. Senator Thomas Dodd (D. Conn.) who had been a prosecutor at the Nuremberg War Crimes Trials and would be a chief sponsor of the Gun Control Act, supplied his own copy of “the original German text” to the Library of Congress to translate. *Id.*

18. U.S. CONST. amend. II.

noting that “when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.”<sup>19</sup> While the Supreme Court focused on the text and historical understanding of the Second Amendment, some of the amici curiae briefs filed in the case made references to the experience of Nazi Germany.<sup>20</sup>

In support of the District’s prohibitions in the *Heller* case, an amici curiae brief filed on behalf of various Jewish, Christian, and secular organizations referred to “the myth that gun control laws make it easier for government to tyrannically oppress its citizens. While many have suggested that gun control eased Hitler’s rise to power, ‘[the] history of gun control in Germany from the post-World War I period to the inception of World War II seems to be a history of declining, rather than increasing, gun control.’”<sup>21</sup> The brief further argued: “While Germany had discriminatory laws that barred Jews from having firearms, that proves only the evils of discrimination. It surely does not support the myth that arming everyone might allow an oppressed minority, no matter how courageous, to restore democracy and liberty when confronted with Hitler’s (or another demagogue’s) larger armed mob.”<sup>22</sup>

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19. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2801 (2008), *aff’g*, *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). *Parker* wrote in more detail:

The right of self-preservation . . . was understood as the right to defend oneself against attacks by lawless individuals, or, if absolutely necessary, to resist and throw off a tyrannical government . . . . With respect to the right to defend oneself against tyranny and oppression, some have argued that the Second Amendment is utterly irrelevant because the arms it protects, even if commonly owned, would be of no use when opposed to the arsenal of the modern state. . . . [I]ncidents such as the Warsaw ghetto uprising of 1943 provide rather dramatic evidence to the contrary. . . . The deterrent effect of a well-armed populace is surely more important than the probability of overall success in a full-out armed conflict. Thus, could Madison write to the people of New York in 1788:

Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as public resources will bear, the governments are afraid to trust the people with arms. And it is not certain that with this aid alone they would not be able to shake off their yokes.

*Parker*, 478 F.3d at 383 (quoting THE FEDERALIST NO. 46, at 299–300 (James Madison) (Clinton Rossiter ed., 1961)).

20. *E.g.*, Brief of Amicus Curiae Jews for the Preservation of Firearms Ownership in Support of Respondent, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) (No. 07-290), 2008 WL 405561.

21. Brief Supporting Petitioners of Amici Curiae American Jewish Committee, et al., *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) (No. 07-290), 2008 WL 189545, at 31 n.11 (quoting Bernard E. Harcourt, *On Gun Registration, the NRA, Adolf Hitler, and Nazi Gun Laws*, 73 FORDHAM L. REV. 653, 671 (2004)).

22. *Id.* If disarming one group in society “proves only the evils of discrimination,” is the disarming of all private persons unobjectionable? The German government instituted this noble experiment in occupied Poland, where only the military and police were armed and all Poles and Jews were disarmed by law. “The death penalty or, in less serious cases, imprisonment shall be

An amici curiae brief filed by this author in *Heller* on behalf of a majority of members of Congress recalled a law enacted in the United States just before the Pearl Harbor attack prohibiting the requisitioning or registration of firearms or any other action that would “impair or infringe in any manner the right of any individual to keep and bear arms . . . .”<sup>23</sup> It was passed “in view of the fact that certain totalitarian and dictatorial nations are now engaged in the willful and wholesale destruction of personal rights and liberties,”<sup>24</sup> and supported by such arguments as:

Before the advent of Hitler or Stalin, who took power from the German and Russian people, measures were thrust upon the free legislatures of those countries to deprive the people of the possession and use of firearms, so that they could not resist the encroachments of such diabolical and vitriolic state police organizations as the Gestapo, the Ogpu, and the Cheka.<sup>25</sup>

To be sure, such arguments have been simmering in other cases involving the Second Amendment. When the U.S. Court of Appeals for the Ninth Circuit denied a petition to reconsider en banc the holding that individuals have no rights under the Amendment, Circuit Judge Alex Kozinski wrote a dissent in which he reflected:

All too many of the other great tragedies of history – Stalin’s atrocities, the killing fields of Cambodia, the Holocaust, to name but a few – were perpetrated by armed troops against unarmed populations. Many could well have been avoided or mitigated, had the perpetrators known their intended victims were equipped with a rifle and twenty bullets apiece . . . . If a few hundred Jewish fighters in the Warsaw Ghetto

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imposed [on any Pole or Jew] . . . . If he is in unlawful possession of a firearm, . . . or if he has credible information that a Pole or a Jew is in unlawful possession of such objects, and fails to notify the authorities forthwith.” *Reichsgesetzblatt*, I, 759 (Dec. 4, 1941), as reprinted in *Federal Firearms Legislation*, supra note 15, at 482. As for the “myth” that “an oppressed minority” might resist oppression with arms, the Warsaw Ghetto Uprising proved that Jews with only a few pistols could stop deportations, resist German troops, and escape to join the resistance in the forest. See SIMHA ROTEM (KAZIK), MEMOIRS OF A WARSAW GHETTO FIGHTER 118–19 (1994). Nazi Propaganda Minister Joseph Goebbels exclaimed: “The Jews have actually succeeded in making a defensive position of the Ghetto. Heavy engagements are being fought there . . . . It shows what is to be expected of the Jews when they are in possession of arms.” THE GOEBBELS DIARIES: 1942–1943 350–51 (1948).

23. Property Requisition Act, P.L. 274, 55 Stat. 742 (1941); see Brief for Amici Curiae 55 Members of U.S. Senate, the Senate President, and 250 Members of U.S. House of Representatives in Support of Respondent, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) (No. 07-290), 2008 WL 383530, at 19–22.

24. Rpt. No. 1120 [to accompany S. 1579], House Committee on Military Affairs, 77th Cong., 1st Sess. 2 (Aug. 4, 1941).

25. 87 Cong. Rec., 77th Cong., 1st Sess. 6778 (Aug. 5, 1941) (statement of Rep. Edwin Arthur Hall); see Stephen P. Halbrook, *Congress Interprets the Second Amendment: Declarations by a Co-Equal Branch on the Individual Right to Keep and Bear Arms*, 62 TENN. L. REV. 597, 618–31 (Spring 1995).

could hold off the Wehrmacht for almost a month with only a handful of weapons, six million Jews armed with rifles could not so easily have been herded into cattle cars.

. . . But few saw the Third Reich coming until it was too late. The Second Amendment is a doomsday provision, one designed for those exceptionally rare circumstances where all other rights have failed – where the government refuses to stand for reelection and silences those who protest; where courts have lost the courage to oppose, or can find no one to enforce their decrees. However improbable these contingencies may seem today, facing them unprepared is a mistake a free people get to make only once.<sup>26</sup>

The debate is hardly limited to the United States, as the controversy boils over internationally. Great Britain, which supplied its citizens with arms contributed by the United States and even private American citizens to fight an anticipated Nazi invasion, now bans most guns.<sup>27</sup> Proposals to require registration of all firearms and to prohibit firearms are being debated in Switzerland, whose traditional militia army consisting of a populace with arms at home helped to dissuade a Nazi invasion.<sup>28</sup> A proposal to ban civilian possession of firearms in Brazil in 2005 initially seemed headed toward victory, but was defeated near the end of the campaign.<sup>29</sup> The United Nations holds that, while governments should be armed, individuals have no right to armed self defense, and seeks to repress private firearms ownership at the international level.<sup>30</sup>

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26. *Silveira v. Lockyer*, 328 F.3d 567, 569–70 (9th Cir. 2003) (Kozinski, C.J., dissenting from denial of rehearing en banc), cert. denied, 540 U.S. 1046 (2003). *Accord Nordyke v. King*, 364 F.3d 1025 (9th Cir. 2004) (Gould, C.J. joined by O’Scannlain, Kleinfeld, Tallman, and Bea, C.J.s, dissenting from denial of rehearing en banc). Similarly, Judge Janice Rogers Brown, recognizing the individual character of the right to keep and bear arms, noted about those who advocate a disarmed society: “I suspect the freedmen of the Reconstruction Era would vehemently disagree. So would the Armenians facing the Ottoman Turks in 1915, the embattled Jews of the Warsaw Ghetto in 1943, and the victims of Pol Pot’s killing fields.” *Kasler v. Lockyer*, 23 Cal. 4th 472, 510, 2 P.3d 581 (2000) (Brown, J., concurring).

27. “When the ships from America approached our shores with their priceless arms, special trains were waiting in all the ports to receive their cargoes. The Home Guard in every country in every town, in every village, sat up all through the nights to receive them.” WINSTON CHURCHILL, *THE SECOND WORLD WAR: THEIR FINEST HOUR* 272 (Houghton Mifflin 1949); see also *Sporting Guns Sought: Group Here Also Wants Pistols to Send to Britain for Defense*, N.Y. TIMES, Sept. 12, 1940, at 9.

28. See Kevin Sullivan, *An Armory in Gun-Shy Europe: Switzerland Weighs Curbs on Its Culture of Firearm Ownership*, <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/28/AR2007042800944.html> (last visited Aug. 16, 2007); S. Halbrook, *Citizens in Arms: The Swiss Experience*, 8 TEX. REV. L. & POL. 141, 162–74 (2003).

29. Todd Benson & Terry Wade, *Violence-Torn Brazil Votes to Keep Gun Sales Legal*, <http://www.njcsd.org:80/forum/showthread.php?t=79> (last visited Aug. 16, 2007).

30. See Human Rights Council, Subcommission on the Promotion and Protection of Human Rights, 58th Sess., agenda item 8, Adoption of the Report on the Fifty-Eighth Session to the

In the wake of domestic and international controversies about whether to require registration of and to prohibit civilian firearms ownership, there has been a recent surge of scholarly interest in the subject of Nazi firearm policies.<sup>31</sup> This Article seeks to contribute hitherto unknown historical facts so as to advance the scholarly literature to a higher level. Given the enormous literature in the field of Holocaust studies, it seems incredible that the disarming of the German Jews is rarely if ever mentioned.

The following begins with a detailed analysis of the arrest reports of Alfred Flatow and two other Berlin Jews who possessed registered firearms or whose firearms were discovered in house searches by the police. It then shows these arrests to have been part of an orchestrated Nazi police campaign to disarm all Berlin Jews, including those whose firearms were lawfully possessed. Having rendered Jews defenseless, the stage was set for a major pogrom. When an incident, which took place abroad, gave the Nazis the excuse they needed for a rampage throughout all of Germany, the Night of the Broken Glass—characterized by massive searches and seizures against Jews allegedly for weapons, and involving the destruction of homes, businesses, and synagogues—was the result.<sup>32</sup>

## II. NAZI ARREST REPORTS OF JEWS FOR POSSESSION OF FIREARMS REGISTERED UNDER WEIMAR REPUBLIC LAWS

### A. THE ARREST OF ALFRED FLATOW

An arrest report specifying Alfred Flatow as the perpetrator was filed at Police Station 106 Berlin, SW 68, on October 4, 1938.<sup>33</sup> Flatow

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Human Rights Council, A/HRC/Sub.1/58/L.11/Add.1 (Aug. 24, 2006) (advocating prohibition of civilian firearms as a “human right”); David B. Kopel et al., *The Human Right of Self Defense*, 22 BYU J. PUB. L. (No.1) 43 (Fall 2007).

31. See S. Halbrook, *Nazi Firearms Law and the Disarming of the German Jews*, 17 ARIZ. J. INT’L & COMP. L. 483 (2000), <http://www.stephenhalbrook.com/article-nazilaw.pdf>. This article was criticized in Bernard E. Harcourt, *On Gun Registration, the NRA, Adolf Hitler, and Nazi Gun Laws: Exploding the Gun Culture Wars (A Call to Historians)*, 73 FORDHAM L. REV. 653 (2004); Deborah Homsher, *Response to Bernard E. Harcourt’s “On Gun Registration,”* 73 FORDHAM L. REV. 715 (2004); Robert J. Spitzer, *Don’t Know Much About History, Politics, or Theory: A Comment*, 73 FORDHAM L. REV. 721 (2004). The author responded in S. Halbrook, *Nazism, the Second Amendment, & the NRA: A Reply to Professor Harcourt*, 11 TEX. REV. L. & POL. 113 (2006), [http://www.stephenhalbrook.com/law\\_review\\_articles/nazism.nra.pdf](http://www.stephenhalbrook.com/law_review_articles/nazism.nra.pdf).

32. See *infra* part VI; see generally GERALD SCHWAB, *THE DAY THE HOLOCAUST BEGAN: THE ODYSSEY OF HERSHEL GRYNZSPAN* (Praeger 1990); ANTHONY READ & DAVID FISHER, *KRISTALLNACHT: THE UNLEASHING OF THE HOLOCAUST* (Peter Bedrick Books 1989).

33. Unless otherwise indicated, all facts in reference to the Flatow arrest are from Bericht über einen polit. Alfred Flatow, *supra* note 2.

was born on October 3, 1869, in Danzig.<sup>34</sup> His address was Berlin SW 19, Alexandrinenstraße 50.<sup>35</sup> That street intersects with the well-known Oranienstraße, in the Kreuzberg district of Berlin, where Police Station 106 was located.<sup>36</sup>

As noted, the name, birth date, and birthplace correspond to one and the same Alfred Flatow who competed in the 1896 Olympics.<sup>37</sup> Before that, he had served in the 66th Prussian Infantry Regiment during 1893–94.<sup>38</sup> Flatow would be an active gymnast in the Berlin Turnerschaft, Germany's largest gymnastic society, for 46 years.<sup>39</sup> He had a small bicycle shop, officiated at sporting events, and wrote widely on the theory of gymnastics.<sup>40</sup>

The Nazis came to power in early 1933, and by October forced Jews out of the Berlin Turnerschaft.<sup>41</sup> Club chairman Rupert Naumann supported the Jewish athletes, but Flatow only wished to avoid confrontation and resigned.<sup>42</sup>

All German Olympic champions were invited as honorary guests to the 1936 Olympic Games in Berlin, and Alfred Flatow's name—together with his cousin, Gustav Felix Flatow, another champion of the 1896 Games—were printed in the program.<sup>43</sup> However, their names and photographs did not appear in news accounts of the event, as they apparently refused to attend due to the Nazi regime's anti-Semitic policies.<sup>44</sup>

For over three decades, Alfred Flatow lived in the Kreuzberg area of Berlin, in an old house on Alexandrinenstraße, the address shown on his 1938 arrest report.<sup>45</sup> However, the census (*Volkszählung*) of 1939 indicated that he then lived at 33 Landshuter Straße in Schöneberg, where he shared an apartment with Else and Margarete Flatow.<sup>46</sup> Perhaps he moved in with

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34. *Id.*

35. *Id.*

36. See Map of Police Precincts in the Central Districts of Berlin in 1930, in Hsi-Huey Liang, *The Berlin Police Force in the Weimar Republic* 12–13 (U. Cal. Press 1970).

37. See Bernett, *supra* note 8.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*; see Krüger, *supra* note 8, at 367.

42. *Id.*

43. Gerd Steins, *Gustav Felix Flatow: Ein vergessener Olympiasieger*, in *SOZIAL- UND ZEITGESCHICHTE DES SPORTS* Heft, 2, 103, 109 (1987).

44. *Id.*

45. Bernett, *supra* note 8, at 97.

46. Ergänzungskarten der Volkszählung von 17.05.1939, Bundesarchiv R2/GB [hereinafter Ergänzungskarten]. This source also shows: RAD: J. Datum: 22091941 [Sept. 22, 1941].

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these relatives after being released from Gestapo custody. The census listed his descent as “JJJJ,” i.e., all four grandparents were Jewish.<sup>47</sup>

Flatow’s 1938 arrest report states: “Political affiliation: Jew.”<sup>48</sup> The “crime scene” (*Tatort*) was listed as Berlin SW 68, Curtdamm 16, and the time was 1:50 p.m.<sup>49</sup> Yet Curtdamm 16 was the address for Police Station 106.<sup>50</sup> This was no crime scene—Flatow appears to have been standing in line with other Jews to surrender his legally-registered arms, as shown below, because they were ordered to do so by the Berlin Police President.<sup>51</sup>

Under “Weapons Found,” the form specified: “Surrendered a) Slashing and thrusting weapons: 1 dagger, 31 knuckledusters. b) Firearms: 1 revolver, 2 pocket pistols, 22 rounds of ammunition.”<sup>52</sup> Under the type of police intervention, the form indicated “Special operation” (*Sonderaktion*) instead of routine patrol.<sup>53</sup>

“Criminal act (include pertinent statutory sections)” was described simply as “possession of weapons,” but the blank for the statutory section called for by the form was not completed, as there was none to cite.<sup>54</sup> After all, the law had not yet been officially revised to prohibit Jews from possessing a weapon, although a secret Gestapo directive dictated as much.<sup>55</sup> The arrest report continued:

The Jew Alfred Flatow was found to be in possession of one revolver with twenty-two rounds of ammunition, two pocket pistols, one dagger, and thirty-one knuckledusters. Arms in the hands of Jews are a danger to public safety.

[signed] Police First Sergeant Colisle

The arms were registered at Police Station 13 on January 26, 1932. Written confirmation is there.<sup>56</sup>

47. *Id.*

48. Alfred Flatow, *supra* note 2.

49. *Id.*

50. The 1938 Berlin address book listed Police Station 106 as located in Luisenstrasse 37 Kreuzberg. *Berlin Adressbuch 1938*. In 1938, the street was renamed Curthdamm and the station’s new address was Curthdamm 16. *Berlin Adressbuch 1939*. More precisely, Luisenstrasse became Curthdamm on May 20, 1937, and was renamed Segitzdamm on July 31, 1947. Hans-Jürgen Mende, *Lexikon. Alle Berliner Strassen u. Plätze. Von der Gründung bis zur Gegenwart Bd. 1 A-Fre* (Berlin 1998). Curthdamm was named for Udo Curth, a Nazi SA (*Sturmabteilung*) man or Storm Trooper, who was killed in street riots in 1932.

51. *See infra* note 154 and accompanying text.

52. Alfred Flatow, *supra* note 2.

53. *Id.*

54. *Id.*

55. *See infra* note 125 and accompanying text.

56. The German text reads:

Der Jude Alfred Flatow hatte 1 Revolver mit 22 Schuss Munition, 2 Terzerole, 1

As stated, First Sergeant Colisle was mentioned as the source of the information that Flatow's 1932 weapons registration remained at Police Station 13.<sup>57</sup> Station 13 was a kilometer north of Station 106.<sup>58</sup> The officer filling out the report, who listed himself as a "witness to the crime," was Police First Sergeant Edmund Weise of Police Station 106.<sup>59</sup> Perhaps a list of all firearms registered to Jews was circulated to all of the police stations. Officers in charge of the registrations could confer with arresting officers, in writing or by telephone, to verify that the Jewish gun owner in question possessed a registered firearm.<sup>60</sup>

The arrest form required a listing of objects confiscated from the arrested person, including items he supposedly could use to hurt himself or someone else.<sup>61</sup> The policeman here listed a briefcase with journals and various documents (perhaps including Flatow's own copy of his weapon registration papers from 1932 in light of the fact that he was apparently there to surrender his weapons voluntarily and to show his compliance with the law).<sup>62</sup> Also included were a wallet, a tiepin, a penknife, a cigarette case with six cigarettes, glasses, keys, and pencils.<sup>63</sup> Personal belongings seized but not confiscated included about 118 Reichsmark and a gold watch.<sup>64</sup> Flatow signed to acknowledge the accuracy of the inventory of his property.<sup>65</sup>

Then came the ominous words, signed by the *Pol. Oberm. und Revierführer* (Police Chief and Precinct Head): "The perpetrator . . . has been turned over to the Gestapo." "Put into cell from 1:25 p.m. to \_\_\_\_."<sup>66</sup> The latter blank was not filled out,<sup>67</sup> perhaps suggesting that Flatow had an extended stay, or the officer was not there when the Gestapo picked up Flatow. The report includes nothing about what occurred after Flatow was taken into Gestapo custody. Unlike "arrest" which led to a trial, "protective custody" by the Gestapo entailed indefinite incarceration until

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Dolch u. 31 Schlagringe im Besitz. Die Waffen in den Händen der Juden bilden eine Gefahr für die öffentliche Sicherheit.

Colisle, Pol. Hw. [Polizei Hauptwachtmeister]. Die Waffen sind von dem Fl. Am 26.1.1932 dem 13. R. gemeldet worden. Bescheinigung liegt vor.

57. *Id.*

58. See Map in Hsi-Huey Liang, *The Berlin Police Force in the Weimar Republic*, 12–13.

59. Alfred Flatow, *supra* note 2.

60. This evidently occurred in the Flatow arrest. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. Alfred Flatow, *supra* note 2.

66. *Id.*

67. *Id.*

the suspect was no longer considered a threat to the state.<sup>68</sup> Gestapo chief counsel Dr. Werner Best was architect of this procedure, also known as “preventive detention,” which wholly abrogated any judicial review.<sup>69</sup>

Following his 1938 arrest on weapons charges, Flatow’s fate is sketchy. Hitler instigated World War II the following year. In early 1942, the Nazi leadership adopted the Wannsee Protocol, which outlined steps to be taken to accomplish the “final solution of the Jewish question.”<sup>70</sup> Later that year, Flatow, then seventy-three years old, was ordered to be deported.<sup>71</sup> Flatow’s friend Karl Schumann, two-time Olympic champion in Athens, alerted the Olympic Chief of Staff Christian Busch, asking the Reich Sport Leader for intervention.<sup>72</sup> The objection was abruptly rejected.<sup>73</sup> Flatow was transported as prisoner number 8230 with 1,021 other deportees on Transport I/71-8230 from Berlin to Terezin in October 1942.<sup>74</sup> Placed in the Theresienstadt concentration camp, he died of starvation in December 1942.<sup>75</sup>

To commemorate his memory and that of his cousin Gustav Flatow—another champion gymnast from the 1896 games who starved to death in Theresienstadt in 1945—in 1997, Berlin renamed the *Reichssportsfeldstraße* (Reich Sport Field Street) as *Flatowallee* (Flatow Boulevard).<sup>76</sup> The location is in Charlottenburg-Wilmersdorf, Ortsteil Charlottenburg.<sup>77</sup>

## B. THE ARREST OF JULIUS IGNATZ GOLD

Flatow was not alone when arrested for weapons. A second police report also dated October 4, 1938, prepared at the same Police Station 106,

68. RICHARD L. MILLER, *NAZI JUSTIZ: LAW OF THE HOLOCAUST* 52 (Praeger 1995).

69. INGO MÜLLER, *HITLER’S JUSTICE: THE COURTS OF THE THIRD REICH* 175 (Deborah Lucas Schneider trans., Harvard Univ. Press 1991).

70. Wannsee Protocol, Jan. 20, 1942, Avalon Project, Yale Law School, <http://www.yale.edu/lawweb/avalon/imt/wannsee.htm> (last visited Aug. 16, 2007).

71. Bennett, *supra* note 8, at 99.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*; see also Siggie Emmerich, *Olympische Geschichte(n): Alfred Flatow, unsere zeit – Zeitung der DKP* 13. (Aug. 2004), <http://www.dkp-online.de/uz/3633/s0302.htm> (last visited Aug. 16, 2007); Flatow, Alfred, in Central Database of Shoah Victims’ Names, [http://www.yadvashem.org/wps/portal/IY\\_HON\\_Welcome](http://www.yadvashem.org/wps/portal/IY_HON_Welcome) (last visited Aug. 16, 2007).

76. *Die unendliche Geschichte der Flatowallee*, Berliner Zeitung, Oct. 4, 1996, <https://www.berlinonline.de/berliner-zeitung/archiv/.bin/dump.fcgi/1996/1004/none/0019/index.html> (last visited Nov. 2, 2008).

77. *Id.*

and also forwarded to the Gestapo, concerned Julius Ignatz Gold.<sup>78</sup> Gold was born on May 4, 1893, in Polock, Poland, and resided at Berlin SW. 19, Kommandantenstraße 49.<sup>79</sup> That street intersects with Alexandrinenstraße, where Flatow resided, in the Kreuzberg district of Berlin.<sup>80</sup>

As before, the “Political affiliation” is “Jew.”<sup>81</sup> The address of the “crime scene” was identical with that of Flatow—Curtdamm 16, the address for Police Station 106—and the time was ten minutes later: 2:00 p.m.<sup>82</sup> “Weapons Found . . . Firearms: 1 Walther pistol with 6 rounds.”<sup>83</sup>

Once again, this was the same “Special operation,” the crime was “possession of weapons,” and the statement of facts—again filled out by the same Police First Sergeant Weiser, whose source for the pistol’s registration was the same Police First Sergeant Colisle—read:

The Jew Julius Ignatz Gold was in possession of one Walther pistol with 6 rounds. In the hands of Jews, this weapon is a danger for public security. Gold had registered this weapon on February 13, 1932, at Police Station 105 (now Police Station 112).

Police First Sergeant Colisle<sup>84</sup>

Other than this arrest report, no information on the identity of Julius Ignatz Gold could be found. His name does not appear in the Holocaust victim’s central database maintained by Yad Vashem.<sup>85</sup> All that can be surmised is that he may have been standing in line behind Flatow at the police station to surrender his registered firearm. One can only wonder who the other Jewish gun owners were that stood in the same line that day, and in the days before or after.

While Gold must have lived in Berlin at least since 1932, since he registered his Walther pistol there, he was born in Poland. The arrest report does not state whether he was a German or Polish citizen.

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78. Julius Ignatz Gold, *Bericht über einen polit. Vorfall*, 4.10.38 [hereinafter Gold]. A Rep PrBrRep. 030/21620 Bd. 5 Haussuchungen bei Juden 1938-39 (FB Bd. 5), Landesarchiv Berlin. Unless otherwise indicated, all references to the Gold arrest are from this document.

79. *Id.*

80. Berlin streets may be located at [http://www.berlin.de/stadtplan/\\_html/index.html](http://www.berlin.de/stadtplan/_html/index.html) (last visited Aug. 16, 2007).

81. Gold, *supra* note 78.

82. *Id.*

83. *Id.*

84. *Id.* The German text reads:

Der Jude Julius Ignatz Gold hatte eine Walther-Pistole mit 6 Schuss Munition im Besitz. In den Händen der Juden bildet die Waffe eine Gefahr für die öffentliche Sicherheit. G. hat die Waffe am 13.2.32 dem 105. R. (jetzt R. 112) angemeldet. Colisle, Pol. Hw.

85. See Central Database of Shoah Victims’ Names, [http://www.yadvashem.org/wps/portal/IY\\_HON\\_Welcome](http://www.yadvashem.org/wps/portal/IY_HON_Welcome) (last visited Aug. 16, 2007).

### C. THE ARREST OF ALOIS ADLER

The arrests of Flatow and Gold were not isolated incidents. An orchestrated campaign against Jewish firearm owners was afoot. Another arrest report and referral to the Gestapo like the above was issued from Police Station 113 in Berlin, SW 68, on October 3, 1938.<sup>86</sup> Station 113 was a kilometer west from Station 106, where the above arrests were made, and was also in the Kreuzberg district.<sup>87</sup>

Alois Adler was born in Vienna, Austria, in 1884, and lived at SW 11, Saarlandstraße 52, in Berlin's Kreuzberg district.<sup>88</sup> Although his "Political affiliation" is listed as "Allegedly none," this form is stamped at the top with an oversized "J"—meaning Jew.<sup>89</sup> The "crime scene" was at his home address, and "Weapons found" included only a "double-barreled hunting shotgun."<sup>90</sup>

Under "Criminal act (include pertinent statutory sections)," the arresting police officer wrote only: "Subversive attitude of a Jew," without citing any statute.<sup>91</sup> The statement of facts reads:

Adler, a former Austrian Jew, always was obstreperous. His behavior showed that he has the attitude of a public enemy. At the slightest provocation, he immediately turned to the Consulate. In order to avoid being found in possession of weapons during a house search, he left his hunting rifle with a representative, Albrecht Kriener, at the address of Blücher Street 1 in Berlin SW 61. When Adler was taken to the police station and asked about weapons, he confessed to this. The rifle, including an extra barrel, has been secured at the police station for the time being.

Adler has been arrested because of his attitude as a public enemy.<sup>92</sup>

The police already were familiar with Adler, as noted, because of his repeated complaints with the Austrian Consulate. Perhaps he was an Austrian businessman who objected to Nazi harassment. The police may have known that he possessed a firearm from the registration records, by conducting a house search, or perhaps through some informer. Alerted that the police knew he was a Jew with a firearm, he refused to comply with the

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86. Alois Adler, *Bericht über einen polit. Vorfall*, 4.9.38 [hereinafter Adler]. A Rep PrBrRep. 030/21620 Bd. 5 Haussuchungen bei Juden 1938–39 (FB Bd. 5), Landesarchiv Berlin. Unless otherwise indicated, all references to Adler are to this report.

87. *See supra* note 58, at 12–13.

88. Adler, *supra* note 86.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

Nazi confiscation order.<sup>93</sup> He secreted his hunting gun with a friend, the arrest report states, “in order to avoid being found in possession of weapons during a house search . . . .”<sup>94</sup>

It may have been that the police were searching the houses of Jews who had registered firearms, or were for other reasons thought to possess firearms, but who had not surrendered them at a police station. The report also makes clear that Jewish gun owners had friends—“Aryans,” possibly gun owners themselves, who were not Nazis and were willing to risk hiding firearms for their Jewish friends.<sup>95</sup> Such “Aryans” doubtlessly got unwelcome visits from the Gestapo.

The arresting officer who filled out this report contradictorily called the weapon both a shotgun and a rifle, although the double barreled gun may have included a shotgun barrel and a rifle barrel.<sup>96</sup> Unlike the Flatow and Gold arrest reports, the officer did not explicitly allege that a weapon in the hands of a Jew is a danger for public security.<sup>97</sup> Adler had only five Reichsmark on his person.<sup>98</sup>

The arrest form was signed by Deputy Police Chief Biense, who noted that Adler was jailed from 12:15 p.m. to 1:20 p.m.<sup>99</sup> By order of Police Chief Gaster, the case was referred to the Gestapo.<sup>100</sup> It is not known how long the Gestapo detained this Jew whose “crime” was possession of a hunting gun.

Other than this arrest report, no information could be found on the identity or fate of Adler, other than that he still resided at the same address in the 1939 census, which listed his descent as “JJJJ,” i.e., all four grandparents were Jewish.<sup>101</sup> His name does not appear in the Holocaust victim’s central database maintained by Yad Vashem.<sup>102</sup>

### III. “THE ARMS WERE REGISTERED”

As First Sergeant Colisle noted in Flatow’s arrest report, “The arms were registered at Police Station 13 on January 26, 1932. Written

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93. *Id.*

94. Adler, *supra* note 86.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Adler, *supra* note 86.

101. See Ergänzungskarten, *supra* note 46.

102. See Central Database of Shoah Victims’ Names, *supra* note 85.

confirmation is there.”<sup>103</sup> He also wrote that “Gold had registered this weapon on February 13, 1932, at Police Station 105 . . . .”<sup>104</sup> Indeed, that seems to be the most likely reason why the police knew that they possessed firearms and were able to confiscate them.

In 1928, the Weimar Republic enacted the Law on Firearms and Ammunition, which required licenses issued by the police authorities for the acquisition of firearms and the carrying of firearms.<sup>105</sup> Depending on the laws of the various States before that enactment, registration of firearms or other forms of police records on firearm owners may or may not have existed.

The above law was amended in 1931 to authorize the German States to require the registration of all firearms and other weapons as follows:

The highest State authorities or their delegates may order that in their jurisdiction, the possession of firearms and ammunition regulated by the Law on Firearms and Ammunition, as well as of slashing and thrusting weapons . . . , must be registered with the police authorities.<sup>106</sup>

Next, the decree authorized the police to confiscate all weapons if deemed necessary, which would have been practical only in regard to those persons who had dutifully registered them:

Weapons and ammunition found in a jurisdiction in which an order under paragraph (1) has been issued may, if the maintenance of public security and order (*öffentlichen Sicherheit und Ordnung*) so requires, be taken into police custody during the validity of this Chapter. The possessor must deliver them to the police authority on demand. The duty to surrender arms may also be extended to items that by their nature are not weapons, but which in the circumstances may be used as weapons.<sup>107</sup>

Any person who failed to register weapons or who failed to surrender them on demand, or who was found in possession of weapons he should have registered or surrendered, was subject to imprisonment for “not less than three months,” with no maximum.<sup>108</sup>

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103. Alfred Flatow, *supra* note 2.

104. Gold, *supra* note 78.

105. *Gesetz über Schußwaffen und Munition, Reichsgesetzblatt* 1928, I, 143; *see* § 10(1) (acquisition permit), § 15 (license to carry).

106. Vierte Verordnung des Reichspräsidenten zur Sicherung von Wirtschaft und Finanzen und zum Schutze des inneren Friedens [Fourth Decree of the Reich President on the Protection of the Economy and Finance and on the Defense of Civil Peace] vom 8. Dezember 1931, Achter Teil, Kapitel I, *Reichsgesetzblatt*, I, S. 699, 742, at § 1(1) [hereinafter Vierte Verordnung].

107. *Id.* § 1(2).

108. *Id.* § 1(3).

The potential for misuse of the registration records was acknowledged by none other than Dr. Joseph Wirth, the Reich Minister of the Interior, who wrote to the State governments in early 1932:

In this context I would hereby like to draw the attention of the State governments to the secure storage of the lists of persons who have registered their weapons. Precautions must be taken that these lists cannot, in local disturbances, fall into the hands of radical elements. For this purpose, it is recommended that the lists not be stored in single police precincts or at similar local places, but be secured in the custody of the respective central districts.<sup>109</sup>

The above did not anticipate that an extremist, radical party would seize power, and that the lists of registered weapon owners would fall into their hands because they were the new government. When the Nazis took power just a year later, they became the masters of the lists of firearm owners, regardless of whether stored at local police stations or in the central districts.

As to the immediate effect of the registration requirement, a government official in Königsberg, capital of East Prussia, was quoted as privately stating that “the tightened emergency decree on arms registration has actually had an effect like hitting water, since only the decent and peaceable members of the public have registered arms, while nothing has been registered by the radical elements.”<sup>110</sup> The radical elements were, of course, the Nazis and the Communists.<sup>111</sup> The German Association of Gun Makers and Dealers wrote to the Reich Interior Minister that the new arms regulations disarmed the law-abiding population while the smugglers and black market traffickers provided radicals with arms.<sup>112</sup>

When the ultimate radical element—the Nazis—came to power in 1933, they had available the firearm registration lists and license records to identify, disarm, and arrest opponents, principally Social Democrats and other political enemies, and, to a lesser extent, Jews.<sup>113</sup> Prussian Minister of the Interior Hermann Göring ordered that all governmental heads and the

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109. RMI to Landesregierungen 8.2.32 Massnahmen gegen Waffenmissbrauch. BA Lichterfelde, R 1501/125940 Gesetz über Schußwaffen und Munition Bd. 4 1931–32, 416–17.

110. Letter from Rudolf Reger (gunsmith) to Reich President Hindenburg 3.3.32. BA Lichterfelde. R 1501/125941 Gesetz über Schußwaffen und Munition Bd. 5 1932–33, S. 4–5.

111. See HANS MOMMSEN, *THE RISE AND FALL OF WEIMAR DEMOCRACY* Ch. 12 (Univ. of North Carolina Press 1996).

112. Letter Reichsverband Dt. Büchsenmacher, Waffen- u. Munitionshändler eV to RMI 4.8.32 Schusswaffengesetz. BA Lichterfelde. R 1501/125941 Gesetz über Schußwaffen und Munition Bd. 5 1932–33, S. 374–372.

113. See Halbrook, *supra* note 31, at 493–503.

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Berlin Police Chief “immediately register the holders of firearm licenses on special lists and then send these lists to the municipal government.”<sup>114</sup>

Massive search-and-seizure operations were conducted to confiscate arms from perceived enemies of the Nazi regime. Some raids were notorious because of the identities of the targets. In one instance, Nazi storm troopers raided the apartment of the widow and son of former Weimar Republic President Friedrich Ebert, a Social Democrat.<sup>115</sup> They searched “for hidden arms, but found only a revolver belonging to Herr Ebert, which he handed to them together with a permit that had expired. With these the Nazis marched off.”<sup>116</sup> In another instance, “Charging that Professor Albert Einstein had a huge quantity of arms and ammunition stored in his secluded home in Caputh, the National Socialists sent Brown Shirt men and policemen to search it today, but the nearest thing to arms they found was a bread knife.”<sup>117</sup>

House-to-house searches were conducted in Jewish neighborhoods.<sup>118</sup> “A large force of police assisted by Nazi auxiliaries raided a Jewish quarter in Eastern Berlin, searching everywhere for weapons and papers.”<sup>119</sup> The raid was in the *Scheunenviertel* (Barn District), where Jewish homes were searched and, according to Hitler’s chief newspaper: “During the very extensive search, the search details found a whole range of weapons. Further, a large amount of subversive printed material was confiscated.”<sup>120</sup>

When coming to power in 1933, the Nazis consolidated existing records identifying persons by ethnicity, including Jews.<sup>121</sup> The year 1935 saw the enactment of the Nürnberg Laws, which more exactly defined Jews and deprived them of citizenship rights.<sup>122</sup> The ability to keep and to access records quickly about Jews as well as all others was facilitated by the IBM punch card technology utilized by the *Deutsche Hollerith Maschinen Gesellschaft (Dehomag)*.<sup>123</sup> Births and marriages, including religion, were key punched by officials.<sup>124</sup>

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114. Der Pr.Min.d.Inn. to Reg. Präs. 15.2.33 Inhaber von Waffenscheinen listenmäßig zu erfassen. BrLHA, Pr. Br. Rep. 3B Reg. Frankfurt/O I Pol/1877 Waffenscheine 1933–42.

115. *Nazis Raid Home of President Ebert’s Widow*, N.Y. TIMES, Mar. 15, 1933, at 11.

116. *Id.*

117. *Nazis Hunt Arms in Einstein Home*, N.Y. TIMES, Mar. 21, 1933, at 10.

118. *Raid on Jewish Quarter*, N.Y. TIMES, Apr. 5, 1933, at 10.

119. *Id.*

120. *Gross-Razzia im Scheunenviertel*, VÖLKISCHE BEOBACHTER, Apr. 5, 1933.

121. GÖTZ ALY & KARL HEINZ ROTH, *THE NAZI CENSUS: IDENTIFICATION AND CONTROL IN THE THIRD REICH* 73 (Edwin Black & Assenka Oksiloff trans., Temple Univ. Press 2004).

122. For a legal treatise with the pertinent laws and regulations, see Bernhard Lösener und Friedrich A. Knost, *Die Nürnberger Gesetze* (Verlag Franz Vahlen 1936).

123. EDWIN BLACK, *IBM AND THE HOLOCAUST: THE STRATEGIC ALLIANCE BETWEEN NAZI*

Dr. Werner Best, chief legal advisor and second in command to the Gestapo, issued a directive in late 1935 stating:

With regard to the issuing of weapons permits to Jews, the regular police authorities must always obtain the opinion of the *Geheimen Staatspolizei* [Gestapo or Secret State Police] authorities on the political reliability of the individual requestor. I request that the following be heeded:

In principle, there will be very few occasions where concerns will not be raised regarding the issuance of weapons permits to Jews. As a rule, we have to assume that firearms in the hands of the Jews represent a considerable danger for the German people. Therefore, in the future, an extreme measure of scrutiny will have to be applied to the question of political reliability of the requestor in all cases where an opinion needs to be given about the issuance of weapons permits to Jews. Only in this way will we be able to prevent numerous Jews from obtaining firearms and causing danger to the German population.<sup>125</sup>

The above suggests that police records on applicants to acquire or carry firearms and on firearm registrants showed ethnicity or religion, including the status of being Jewish.<sup>126</sup> Even if firearm registration records did not identify Jews, it became an easy matter to correlate those records with census records which did identify Jews.<sup>127</sup> This became simpler when the requirement passed in July 1938 that all Jews register with the authorities.<sup>128</sup>

Looking at the three arrest records examined here, police knew from the weapon registration records that Flatow and Gold possessed firearms. Police also knew from the same or other records that they were Jewish.

Adler was an Austrian, and he may well have been in Austria in 1931 when the Weimar Republic decreed its firearm registration scheme. The *Anschluss* or annexation of Austria by Germany had only taken place in March 1938.<sup>129</sup> It is not known when Adler became a resident of Berlin, at which time he may or may not have registered his hunting gun. That he may have done so is suggested by the fact that police searched his house for weapons, and when no one was found, they arrested and interrogated

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GERMANY AND AMERICA'S MOST POWERFUL CORPORATION 188 (Random House 2001).

124. *Id.* at 197.

125. Betr.: Erteilung von Waffenscheinen an Juden, Preußische Geheime Staatspolizei, B.Nr. I G - 352/35 (16. Dezember 1935). DCP 0072, BA R 58/276.

126. Even in the United States today, one's "race" must be disclosed on the federal form required to acquire a firearm from a licensed dealer. 27 C.F.R. § 478.124(c).

127. ALY & ROTH, *supra* note 121, at 73.

128. *Reichsgesetzblatt* 1938, I, S. 922.

129. WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH* Ch. 11 (Simon & Schuster 1988).

him about weapons, inducing a confession.<sup>130</sup> No indication exists that police searched every Jewish house for weapons and took every adult Jew to the police station to question them about weapons.

Thus, through existing police records generated by the laws and decrees of the Weimar Republic, the Nazi regime was able to correlate the registration lists of firearm owners and Jews and, having identified Jews who possessed arms, to confiscate their weapons and arrest them. Just weeks after the above arrests, the pogrom known as the Night of the Broken Glass took place in which thousands of Jews would be disarmed and placed in concentration camps.<sup>131</sup> Jews thereby could not use arms to resist the coming deprivations, deportations, and eventual genocide.

#### IV. THE ARMS SEIZED

As noted, Flatow and Gold were both arrested on October 4, 1938, which was one day after Flatow's 69th birthday. Flatow's arrest report stated that he possessed a "revolver with 22 rounds of ammunition [and] 2 pocket pistols," which suggests that the ammunition was only for the revolver and that no ammunition was found for the pistols.<sup>132</sup>

The 1931 law authorized jurisdictions to require registration not only of firearms, but also of various hand weapons.<sup>133</sup> The arrest report records confiscation from Flatow of hand weapons which had apparently also been registered in 1932, including a "dagger [*Dolch*]" and "31 knuckledusters [*Schlagringe*]," also known as brass knuckles.<sup>134</sup> Thirty-one of these devices would have been rather heavy to carry, especially by the sixty-nine year old Flatow, and why he possessed them is mysterious. Perhaps they were left-over inventory of items for sale at his bicycle shop. Back in the last days of the Weimar Republic, one never knew when street fighting between extremists would break out, and a simple hand weapon could come in handy to defend oneself. Indeed, knuckledusters were issued to some Weimar police agencies, including to women police.<sup>135</sup>

It seems implausible that the elderly Flatow possessed the registered weapons as head of some anti-Nazi group to engage in a street brawl with

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130. As the arrest report states: "In order to avoid being found in possession of weapons during a house search, he left his hunting rifle with a representative, Albrecht Kriener . . . . When Adler was taken to the police station and asked about weapons, he confessed to this."

131. READ & FISHER, *supra* note 32.

132. Alfred Flatow, *supra* note 2.

133. Vierte Verordnung, *supra* note 106.

134. Alfred Flatow, *supra* note 2.

135. JOHN R. ANGOLIA & HUGH PAGE TAYLOR, UNIFORMS, ORGANIZATION & HISTORY OF THE GERMAN POLICE 129 (R. James Bender Publishing 2004).

police armed with firearms. Perhaps they were used innocuously as hand weights for exercise by student gymnasts, similar to today's "heavy hands," or as martial arts weapons for exercise.

One can imagine Berlin Jews standing in line to surrender weapons to the police. Perhaps it took ten minutes for Sergeant Weiser to process Flatow, collect his weapons, and write the arrest report, then Gold was next. The fact that the police arrested both men and turned them over to the Gestapo could have meant that they were discovered through the registration records, but had not obeyed an announcement that Jews must surrender arms. Or it may have reflected the official attitude that any Jew with a weapon – even if both the weapon and the Jew were lawfully registered – was dangerous to the state, and that the Jewish gun owner needed to be arrested and interrogated by the Gestapo.

As noted, Gold turned in only a Walther pistol with six rounds of ammunition, suggesting that it was his personal weapon which he perhaps discreetly kept or carried loaded with these six cartridges for self defense. The police report did not state the model of the pistol. In World War I, German servicemen acquired numerous civilian pistols, and large numbers of Walthers were sold, particularly the Model 4 in 7.65 mm.<sup>136</sup> The Model 1 pocket pistol had been carried by many German officers.<sup>137</sup> Gold, who was 25 years old when the war ended in 1918, could have acquired the pistol in service. In 1929, Walther introduced the Model PP pistol, and shortly thereafter the more compact model PPK.<sup>138</sup> Maybe Gold turned in one of these popular Walther pistols.

Finally, Adler possessed only a "double-barreled hunting shotgun," also described as a "rifle" with "an extra barrel."<sup>139</sup> Adler was Austrian, and Austrian gunmakers crafted very fine and expensive double guns of this type.<sup>140</sup> German gunmakers produced similar fine hunting guns.<sup>141</sup> The Nazis obviously felt that any firearm, including hunting shotguns and rifles, was a danger to the state when possessed by a Jew.<sup>142</sup>

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136. Wolfgang Finze & Philip Pai, *Mangel-Erscheinungen*, VISIER: DAS INTERNATIONALE WAFFEN-MAGAZIN, July 2006, at 136, 142.

137. About Walther, *see* <http://www.waltheramerica.com/webapp/wcs/stores/servlet/CustomContentDisplay?langId=-1&storeId=10002&catalogId=13102&content=10002> (last visited Nov. 2, 2008).

138. *Id.*

139. Adler, *supra* note 86.

140. *See* HANS E. PFINGSTEN & GEORGE A. HOYEM COMPLS., GERMAN AND AUSTRIAN GUNMAKERS TRADE CATALOGS (Armory Publications, n.d.) (reprint of catalogues dating from 1914 to 1935).

141. *Id.*

142. Adler, *supra* note 86.

## V. A “SPECIAL OPERATION” AGAINST JEWISH GUN OWNERS

Under the type of police intervention, the above arrest forms indicated “Special Operation” (*Sonderaktion*) instead of routine patrol.<sup>143</sup> Was this an orchestrated police campaign to disarm all Jews in Berlin? The literature on *Reichskristallnacht* suggests that the Nazis were making ready for a major new action against the Jews, which was evidenced by the vast expansion of concentration camps in the previous months and their ability to absorb some 20,000 Jews during that pogrom.<sup>144</sup> Equally significant evidence of an invigorated anti-Jewish campaign was the special operation which sought to confiscate firearms from Jews in order to render them defenseless from attack.<sup>145</sup>

The Nazis found just the incident they needed on November 7, 1938, when Herschel Grynszpan, a 17-year old Polish Jew, shot and mortally wounded Ernst vom Rath, the third secretary in the German Embassy in Paris.<sup>146</sup> Grynszpan was despondent because his parents were among thousands of Polish Jews deported from Germany who became stranded at the border with Poland, which refused to accept them as they were no longer regarded as Polish citizens.<sup>147</sup> The Nazis would use this tragedy as the excuse to unleash an unprecedented pogrom against the German Jews.

The above Special Operation involving Flatow and other Berlin Jews was not initially reported in the highly censored German press.<sup>148</sup> But with the shooting at the Embassy in Paris, on the morning of November 9, German newspaper headlines reported variously “Police Raid on Jewish Weapons,”<sup>149</sup> “Armed Jews,”<sup>150</sup> “Berlin’s Jews were Disarmed,”<sup>151</sup>

143. *E.g.*, Alfred Flatow, *supra* note 2.

144. *See* SCHWAB, *supra* note 32, at 24–25; READ & FISHER, *supra* note 32, at 68.

145. A comprehensive search of the literature in English and German on *Reichskristallnacht* did not reveal a single source which mentioned the disarming of Jews before the pogrom. Read and Fisher misread the date the disarming began, but otherwise correctly observed: “The police had, in fact, already taken precautions to ensure that the Jews could not fight back effectively. On November 8, they had begun disarming Jews, removing anything that could be used for protection from every Jewish household.” READ & FISHER, *supra* note 32, at 64, 260 (citing *Völkische Beobachter*, Nov. 9, 1938 (citing statistics of weapons seized)); *see infra* notes 149–54 and accompanying text.

146. *See* SCHWAB, *supra* note 32, at 1–6.

147. *Id.* at 59–76.

148. No reference to the subject could be found in a search of issues of *Der Völkische Beobachter* dated Oct. 1–Nov. 8, 1938.

149. *Razzia auf Judenwaffen*, DER ANGRIF, Nov. 9, 1938, at 14.

150. *Bewaffnete Juden*, FRÄNKISCHE TAGESZEITUNG, Nov. 9, 1938, at 2.

151. *Berlins Juden wurden entwaffnet*, BERLINER MORGENPOST, Nov. 9, 1938.

“Disarming the Berlin Jews,”<sup>152</sup> and “Surrender of Weapons by Jews in Berlin, A Measure by the Police President.”<sup>153</sup> The articles all contained substantially the same text as follows:

In view of the Jewish assassination attempt in the German Embassy in Paris, Berlin’s Police President made known publicly the provisional results so far achieved, of a general disarming of Berlin’s Jews by the police, which has been carried out in recent weeks.

The Police President, in order to maintain public security and order in the national capital, and prompted by a few individual incidents, felt compelled to disarm Berlin’s Jewish population. This measure was recently made known to Jews by police stations, whereupon – apart from a few exceptions, in which the explicit nature of the ban on possession of weapons had to be articulated – weapons until now found by the police to be in the possession of Jews who have no weapons permit were voluntarily surrendered.

The provisional results clearly show what a large amount of weapons have been found with Berlin’s Jews and are still to be found with them. To date, the campaign led to the taking into custody of 2,569 stabbing and cutting weapons, 1,702 firearms, and about 20,000 rounds of ammunition.

Upon completion of the weapons campaign, if a Jew in Berlin is found still to possess a weapon without having a valid weapons permit, the Police President will, in every single case, proceed with the greatest severity.<sup>154</sup>

The Berlin Police President, Count Wolf Heinrich von Helldorf, apparently announced the above results the day before.<sup>155</sup> As noted, the “general disarming of Berlin’s Jews by the police” being carried out in the previous weeks – the net in which Flatow and other Jewish firearm owners had been caught – was now made public because of the wholly unrelated shooting by a Polish Jewish teenager at the Paris Embassy.<sup>156</sup> The implication was that, because of the act of a single foreign Jew in a foreign country, no German Jew could be trusted with a firearm.<sup>157</sup>

While the “few individual incidents” were not specified, disarming the entire Jewish population was necessary to maintain “public security and order” (*öffentliche Sicherheit und Ordnung*).<sup>158</sup> Helldorf was thus invoking

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152. *Entwaffnung der Berliner Juden*, DER VÖLKISCHE BEOBACHTER, Nov. 9, 1938.

153. *Waffenabgabe der Juden in Berlin*, BERLINER BÖRSEN ZEITUNG, Nov. 9, 1938, at 1.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

the very power granted by the 1931 Weimar firearm-registration decree which provided: “Weapons and ammunition . . . may, if the maintenance of public order and security so requires, be taken into police custody . . . . The possessor must deliver them to the police authority on demand.”<sup>159</sup> So the police knew that Jews such as Flatow and Gold possessed firearms because of the Weimar registration requirement, and the Weimar confiscation power made the seizures legal, even if the arms were registered. Police President Helldorf had merely to find that it was necessary for “public security and order.” In short, the Nazi government relied precisely on the legal authorizations decreed by the Weimar Republic.

The order to surrender weapons was “made known to Jews by police stations,” which could have been carried out in a variety of ways.<sup>160</sup> The police located and notified some Jewish weapon owners from the firearm registration records,<sup>161</sup> discovered others through interrogations and house searches,<sup>162</sup> could well have been assisted by informants, and may have posted notices in locations such as the Jewish Quarter, the *Scheunenviertel* (Barn District) in the east of the Spandauer Vorstadt.<sup>163</sup>

The result was that “weapons until now found by the police to be in the possession of Jews who have no weapons permit were voluntarily surrendered.”<sup>164</sup> This seems to be belied by the broad statement in the previous sentence that the Police President “felt compelled to disarm Berlin’s Jewish population,” not just Jews with no weapons permit.<sup>165</sup> Flatow and Gold had their weapons duly registered.<sup>166</sup> Of course, it is possible that additional weapons permits were required even for registered weapons. After all, Werner Best’s 1935 Gestapo directive declared that “there will be very few occasions where concerns will not be raised regarding the issuance of weapons permits to Jews.”<sup>167</sup>

Notably, there were “a few exceptions, in which the explicit nature of the ban on possession of weapons had to be articulated”<sup>168</sup> – perhaps a polite euphemism for the arrest and turning over to the Gestapo of Jews

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159. Vierte Verordnung, *supra* note 106, at § 1(2).

160. See *Waffenabgabe der Juden in Berlin*, *supra* note 153 and accompanying text.

161. The Flatow and Gold arrest records verify this.

162. The Adler arrest record exemplifies this.

163. ARNT COBBERS, ARCHITECTURE IN BERLIN, THE MOST IMPORTANT BUILDINGS AND URBAN SETTINGS (Jaron Verlag 2002), <http://www.berlin.de/tourismus/sehenswuerdigkeiten.en/00055.html> (last visited Aug. 16, 2007).

164. See *Waffenabgabe der Juden in Berlin*, *supra* note 153 and accompanying text.

165. *Id.*

166. See *supra* notes 56 and 84 and accompanying text.

167. See *supra* note 125 and accompanying text.

168. See *supra* note 153 and accompanying text.

such as Flatow and Gold, whose firearm registrations should have been considered a “weapons permit” as referenced above. Of course, the police could have revoked these registrations causing them no longer to have a valid weapons permit, and thus, in Kafkaesque fashion, justifying their arrest. The weapon ban definitely “had to be articulated” to Jews such as Adler, who sought to keep secret his weapon with an apparent “Aryan” friend.<sup>169</sup>

The announcement declared “what a large amount of weapons have been found with Berlin’s Jews,” noting the confiscation of “2,569 stabbing and cutting weapons, 1,702 firearms, and about 20,000 rounds of ammunition.”<sup>170</sup> The edged weapons could have been anything from kitchen knives to bayonets left over from the Great War. Assuming that the statistics were reliable, the number of weapons did not indicate the number of weapon owners.<sup>171</sup> Gold had a pistol and Adler had a long gun, but Flatow had a pistol and two revolvers, not to mention a dagger and thirty-one knuckledusters (which were blunt weapons, not cutting and stabbing weapons).<sup>172</sup>

As to the “about 20,000 rounds of ammunition,” one can imagine petty Nazi functionaries counting each cartridge.<sup>173</sup> That amounts to only just over ten rounds per firearm – a low number suggesting that many firearms may have been inherited or war souvenirs not kept functional with cartridges for ready use. Firearms possessed for hunting or sporting use would have needed far more cartridges for practice and use, although firearms kept for self defense may have only enough cartridges needed to load the weapon.

To illustrate, Flatow had “1 revolver with 22 rounds of ammunition, [and] 2 pocket pistols” with no ammunition mentioned.<sup>174</sup> “Gold was in possession of one Walther pistol with 6 rounds.”<sup>175</sup> No ammunition was recorded in relation to Adler, who had sought to keep his weapon a secret, and could have been more successful secreting his ammunition.

The announcement concluded that, “if a Jew in Berlin is found still to possess a weapon without having a valid weapons permit, the Police President will, in every single case, proceed with the greatest severity.”<sup>176</sup>

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169. *Waffenabgabe der Juden in Berlin*, *supra* note 153.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *See supra* note 57 and accompanying text.

175. *See supra* note 84 and accompanying text.

176. *See supra* note 155 and accompanying text.

Since they had been arrested and turned over to the Gestapo, presumably Flatow, Gold, and Adler had been treated with such severity. And speaking of severity, the entire Jewish community of Germany would be attacked the following day, *Reichskristallnacht* (Night of the Broken Glass).<sup>177</sup>

Further background information puts the above in context. This was a period in which Nazi Germany was seizing Jewish assets and expelling Jews from Germany.<sup>178</sup> Helldorf extorted money from Jews seeking to emigrate.<sup>179</sup> Bella Fromm, Berlin socialite and Jewess, noted in her diary on September 1, 1938:

The president of police, Count Helldorf, has an enormously profitable racket. He seizes the passports of such emigrants as are still well off and sells the passports back to them for whatever sum he can get. In some instances as much as two hundred and fifty thousand marks.

They pay it. No price is too much if it's liberty one is buying.<sup>180</sup>

Beginning with his diary entry of October 1 through the next month, Nazi Propaganda Minister Joseph Goebbels recorded numerous lengthy meetings with Helldorf.<sup>181</sup> The October 12th entry read: "Helldorf gives me a report on the status of the Jewish operation in Berlin. It continues as scheduled. And the Jews now gradually withdraw."<sup>182</sup> If seizing their assets gave them incentive to flee, seizing their weapons must have made the Jews who possessed arms feel particularly insecure and threatened.

On November 8, Helldorf drove to Munich with Goebbels.<sup>183</sup> Goebbels noted about the then-overriding event:

In Paris, the Polish Jew Grynszpan [*sic*] has shot the German diplomat vom Rath in the Embassy and wounded him severely. As revenge for the Jews. Now however the German press cries out . . . . In Hesse big anti-Semitic rallies. The synagogues are burned down. If one could now for once release the popular fury!<sup>184</sup>

November 9 was the "*Tag der Bewegung*" (Day of the Movement), when Hitler gave his annual speech in Munich to commemorate the

177. READ & FISHER, *supra* note 32.

178. MILLER, *supra* note 68, Ch. 3; SAUL FRIEDLÄNDER, NAZI GERMANY AND THE JEWS: VOL. I, THE YEARS OF PERSECUTION, 1933–1939 177, 257–63 (1997).

179. See BELLA FROMM, BLOOD & BANQUETS: A BERLIN SOCIAL DIARY 280 (Carol Publ'g Group 1990).

180. *Id.*

181. *Die Tagebücher von Joseph Goebbels*, Teil I Aufzeichnungen 1923 – 1941, Band 6 August 1938 – Juni 1939, Herausgegeben von Elke Fröhlich 124 (K.G. Saur München 1998).

182. *Id.* at 142.

183. *Id.* at 176–77.

184. *Id.* at 178 (Nov. 9, 1938 entry).

anniversary of his failed 1923 Beer Hall Putsch.<sup>185</sup> Vom Rath's condition worsened, noted Goebbels in his diary, adding: "Helldorf has completely disarmed the Jews in Berlin. They will have to get prepared for a lot more."<sup>186</sup> While Helldorf's disarming of the Berlin Jews had only that morning been made public in the newspapers, it had undoubtedly been a major point of discussion and planning between Goebbels, Helldorf, Hitler, and the rest of the Nazi hierarchy.<sup>187</sup> Now that the Jews were defenseless, as Goebbels added above, they would have to endure escalating hardship.<sup>188</sup> And it would begin that very night.<sup>189</sup>

## VI. NIGHT OF THE BROKEN GLASS

Vom Rath's death was reported on the evening of November 9, at which time Hitler authorized Goebbels to give the orders for the pogrom known as the Night of the Broken Glass or *Reichskristallnacht*.<sup>190</sup> Among the instructions were: "All Jewish stores are to be destroyed immediately by SA men in uniform"; "Jewish synagogues are to be set on fire immediately"; "the Führer wishes that the police do not intervene."<sup>191</sup> The following instruction would ensure the success of the attacks as well as achieve an ultimate goal: "All Jews are to be disarmed. In the event of resistance they are to be shot immediately."<sup>192</sup>

Similarly, on behalf of Gestapo Headquarters in Berlin, SS Standartenführer Heinrich Müller sent this message on the night of November 9 to every state police bureau in Germany: "If, during the actions about to take place, Jews are found in possession of *weapons* the most severe measures are to be applied. The special task units of the SS as well as the general SS may be employed for all phases of the operation."<sup>193</sup>

185. READ & FISHER, *supra* note 32, at 64.

186. "Helldorf läßt in Berlin die Juden gänzlich entwaffnen. Die werden sich ja auch noch auf einiges andere gefaßt machen können." *Die Tagebücher von Joseph Goebbels*, *supra* note 181 (Nov. 10, 1938 entry).

187. *Id.*

188. *Id.*

189. *Id.*

190. See READ & FISHER, *supra* note 32, at 64–66; SCHWAB, *supra* note 32, at 20.

191. SCHWAB, *supra* note 32, at 22.

192. *Id.*

193. "Sollten bei den kommenden Aktionen Juden im Besitz von Waffen angetroffen werden, so sind die schärfsten Massnahmen durchzuführen. Zu den Gesamtaktionen können herangezogene werden Verfügungstruppen der SS sowie Allgemeine SS." Gestapo II Mueller, An alle Staph Steller und Stapoleitstellen, in *Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg*, vol. 25, at 377 (original German version); READ & FISHER, *supra* note 32, at 68.

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Beginning in the early morning hours of November 10, Nazis attacked Jewish shops, homes, and synagogues, breaking windows, trashing furniture, and setting fires.<sup>194</sup> When the newspapers hit the stands, the following blasted out:

Jews Forbidden to Possess Weapons

By Order of SS Reichsführer Himmler

Munich, November 10 [1938]

The SS Reichsführer and German Police Chief has issued the following Order:

Persons who, according to the Nürnberg law, are regarded as Jews, are forbidden to possess any weapon. Violators will be condemned to a concentration camp and imprisoned for a period of up to 20 years.<sup>195</sup>

News of the terrible events unfolding was described only in foreign newspapers. The *New York Times* reported: "Nazis Smash, Loot and Burn Jewish Shops and Temples Until Goebbels Calls Halt."<sup>196</sup> In Berlin and throughout Germany, thousands of Jewish men, particularly prominent leaders, were taken from their homes and arrested.<sup>197</sup> The *Times* account reported the arms prohibition as follows:

*Possession of Weapons Barred*

One of the first legal measures issued was an order by Heinrich Himmler, commander of all German police, forbidding Jews to possess any weapons whatsoever and imposing a penalty of twenty years confinement in a concentration camp upon every Jew found in possession of a weapon hereafter.<sup>198</sup>

The destruction was carried out by *Rollkommandos* (wrecking crews) under the protection of uniformed Nazis or police.<sup>199</sup> However, the people at large generally did not participate, and most appeared to be gravely disturbed by the attacks.<sup>200</sup> Some members of the public helped Jews leave their stores unmolested, but citizens who protested against the attacks on Jews were threatened and silenced by the *Rollkommandos*.<sup>201</sup>

194. *Nazis Smash, Loot and Burn Jewish Shops and Temples Until Goebbels Calls Halt*, N.Y. TIMES, Nov. 11, 1938, at 1.

195. *Völkische Beobachter*, Nov. 10, 1938, at 1; *Berliner Börsen Zeitung*, Nov. 10, 1938, at 1; *Der Angriff*, Nov. 10, 1938, at 7; see also Joseph Walk, *Das Sonderrecht für die Juden im NS-Staat* (1981).

196. *Nazis Smash*, *supra* note 194, at 1.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

The pogrom spilled over into Austria, about which the *Times* reported: “Thousands of Jews had their dwellings searched for concealed arms, documents and money. The police claim to have found quantities of them . . . .”<sup>202</sup>

The Swiss newspaper *Neue Zürcher Zeitung* reported from Berlin on November 11 under the headline “Numerous Arrests?” the following:

Last night the Gestapo started to arrest Jews in Berlin and in other German cities. Most of those arrested were respected Jewish personalities. At a reception for the press, the Reich Minister for Propaganda [Goebbels] denied that there had been any arrests; when asked again later, however, [his office] said that the arrests had been made in connection with Himmler’s decree prohibiting Jews from owning arms. The explanation given was that the Jews had retained weapons even though the Chief of the German Police in his latest decree had threatened to punish them with protective detention of 20 years.<sup>203</sup>

Memoirs of the event by Jewish victims reported that persons conducting searches announced that they were looking for weapons.<sup>204</sup> Victor Klemperer served honorably in Germany’s armed forces during World War I and retired as a university professor in 1935.<sup>205</sup> A resident of Dresden, his acclaimed diary includes the following description of a search for weapons and arrest of a Jew during *Reichskristallnacht*:

On the morning of the eleventh[,] two policemen accompanied by a “resident of Dölzchen.” Did I have any weapons? — Certainly my saber, perhaps even my bayonet as a war memento, but I wouldn’t know where. — We have to help you find it. — The house was searched for hours . . . . They rummaged through everything, chests and wooden constructions Eva had made were broken open with an ax. The saber was found in a suitcase in the attic, the bayonet was not found. Among the books they found a copy of the *Sozialistische Monatshefte* (Socialist Monthly Magazine—an SPD theoretical journal) [ . . . ] this was also confiscated.<sup>206</sup>

A “good natured and courteous” young policeman took Klemperer’s statement and stated that they would have to go to the court building at Münchner Platz, adding: “There’s nothing to fear, you will probably (!) be back by evening.”<sup>207</sup> Klemperer asked if he was under arrest. “His reply

202. *Vienna’s Temples Fired and Bombed*, N.Y. TIMES, Nov. 11, 1938, at 2.

203. *Neue Zürcher Zeitung*, Nov. 13, 1938, at 2.

204. See Halbrook, *supra* note 31, at 518–25.

205. VICTOR KLEMPERER, *I WILL BEAR WITNESS 1933–1941* xi, xiv (Martin Chalmers trans., The Modern Library 1999).

206. *Id.* at 275.

207. *Id.*

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was good-natured and noncommittal, it was only a war memento after all, I would probably be released right away.”<sup>208</sup> At the court building, a policeman copied Klemperer’s statement.<sup>209</sup> After some waiting, a magistrate with a Party badge made out a certificate of discharge, without which Klemperer would be arrested again.<sup>210</sup> “At four o’clock I was on the street again with the curious feeling, free – but for how long?”<sup>211</sup>

On November 11, Interior Minister Frick promulgated the *Verordnung gegen den Waffenbesitz der Juden* (Regulation Against Jews’ Possession of Weapons).<sup>212</sup> Its preamble recites that it was issued pursuant to § 31 of the 1938 Weapons Law, which in turn empowered the Interior Minister to issue “the necessary legal and administrative regulations for the implementation and fulfillment of this Law.”<sup>213</sup> Section 1 of the new regulation provided:

Jews (§ 5 of the First Regulations of the German Citizenship Law of November 14, 1935 . . .) are prohibited from acquiring, possessing, and carrying firearms and ammunition, as well as cutting or stabbing weapons. Those now having in their possession weapons and ammunition must at once surrender them to the local police authority.<sup>214</sup>

As to the property, § 2 stated: “Weapons and ammunition found in a Jew’s possession will be forfeited to the Reich without compensation.”<sup>215</sup> As to the person in violation, § 4 provided: “Whoever willfully or negligently violates the provisions of § 1 shall be punished with imprisonment and a fine. In especially severe cases of deliberate violations, the punishment is imprisonment in a penitentiary for up to five years.”<sup>216</sup> The regulation was applicable in Germany, Austria, and the Sudetenland.<sup>217</sup>

There were about 550,000 Jews in those jurisdictions.<sup>218</sup> The number of Jews arrested during the rampage may have reached 30,000 males, aged 16 to 80.<sup>219</sup>

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208. *Id.*

209. *Id.*

210. *Id.*

211. KLEMPERER, *supra* note 205, at 275–76.

212. *Reichsgesetzblatt* 1938, I, 1571. Printed in *Berliner Borsen Zeitung*, Nov. 12, 1938, 12.

213. *Id.*

214. *Id.* § 1.

215. *Id.* § 2.

216. *Id.* § 4.

217. The regulation was widely noticed in the English-speaking press. *E.g.*, *Jews Pay for Nazi Damage*, *TIMES* (London), Nov. 14, 1938, at 12a; *Ban on Firearms for Jews*, *BOSTON GLOBE*, Nov. 12, 1938.

218. SCHWAB, *supra* note 32, at 25.

Despite the threats, some Jews still did not surrender their firearms.<sup>220</sup> A Berlin Jewish scientist told a reporter how at 6:00 a.m. on November 12, a Nazi official in a brown uniform and four assistants in mufti took him from his home, only to order him back home.<sup>221</sup> He related that while many of his friends who were arrested were not so lucky, the home of one was searched for weapons by six men, who broke the china and smashed furniture.<sup>222</sup> The scientist related: “Only one thing they had missed – an old army revolver which was lying in a drawer of a table in my friend’s bedroom. That rusted weapon, probably fired for the last time in 1918, might have gotten him twenty years in a concentration camp.”<sup>223</sup>

The American Consulate in Stuttgart, headed by Samuel W. Honaker, reported to U.S. Ambassador Hugh R. Wilson in Berlin on November 12 that “the Jews of Southwest Germany have suffered vicissitudes during the last three days which would seem unreal to one living in an enlightened country during the twentieth century . . . .”<sup>224</sup> He described the horrors of November 10, from the torching of synagogues before daylight to the midnight arrests.<sup>225</sup> He continued:

So great had become the panic of the Jewish people in the meantime that, when the Consulate opened after Armistice Day, Jews from all sections of Germany thronged into the office until it was overflowing with humanity, begging for an immediate visa or some kind of letter in regard to immigration which might influence the police not to arrest or molest them. Women over sixty years of age pleaded on behalf of husbands imprisoned in some unknown place . . . . Men in whose homes old, rusty revolvers had been found during the last few days cried aloud that they did not dare ever again to return to their places of residence or business. In fact, it was a mess of seething, panic-stricken humanity.<sup>226</sup>

Honaker learned that “practically the entire male Jewish population of the City of Stuttgart, ranging from the age of eighteen to sixty-five years,

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219. *Id.*

220. *Jew Charges Nazi Wrecked Home of Friend*, CHICAGO TRIBUNE, Nov. 13, 1938, at 2b.

221. *Id.*

222. *Id.*

223. *Id.*

224. Honaker, *Anti-Semitic Persecution in the Stuttgart Consular District*, Nov. 12, 1938, U.S. National Archives, Microfilm Series LM 193, No. 23, 862.4016, at 408–15. Reprinted in THE HOLOCAUST, VOL. 3, THE CRYSTAL NIGHT POGROM 183–84 (John Mendelsohn ed. Garland 1982); see also CHRISTOPH STRUPP, OBSERVING A DICTATORSHIP: AMERICAN CONSULAR REPORTING ON GERMANY, 1933–1941, *Bulletin of the German Historical Institute*, Issue 39, at 79 (Fall 2006).

225. Honaker, *supra* note 224.

226. *Id.*

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has been arrested by authorities representing the police.”<sup>227</sup> On the 11th, some of the prisoners were taken to Welzheim, a concentration camp in Württemberg.<sup>228</sup> Many people believed that the action was planned and not spontaneous.<sup>229</sup> “The vast majority of the non-Jewish German population, perhaps as much as 80 per cent, has given evidence of complete disagreement with these violent demonstrations against the Jews.”<sup>230</sup>

From Paris and Geneva appeared the headline: “The anti-Semitic Measures of the Reich,” with the following under the caption “Premeditated Destruction”:

To illuminate the recent events one now better understands the special liabilities imposed on the Jews in recent times. Events since last June make clear the obvious methods of their measures. They have simplified the destruction. One method was to confiscate their arms from them, rendering the operation without danger. The other demanded from them a formal declaration of assets (currency, jewelry, pieces of furniture, carpets), which facilitated the confiscation thereof. All was ready.<sup>231</sup>

A month after the pogrom, the Gestapo in Munich issued a memorandum to the police, commissars, and mayors concerning the regulation requiring Jews to surrender all weapons.<sup>232</sup> Likely reflecting Gestapo directives throughout Germany, it explained how the regulation was to be implemented:

All weapons of all kinds in the possession of Jews are forfeited to the Reich without payment of compensation and must be surrendered.

This includes all firearms including alarm (starter) pistols and all cutting and stabbing weapons including those with a fixed blade if like a dagger.

Requests by emigrating Jews to have their weapons returned to them shall not be granted.

A list shall be made of all weapons that belonged to Jews and the list shall be sent to this office by January 5, 1939. The weapons shall be well packaged and, if in small numbers, sent as parcel, and if in larger numbers, by freight.

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227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Jour-Echo de Paris* (quoted in *Journal de Geneve*, Nov. 16, 1938 at 8).

232. Geheime Staatspolizei Staatspolizeileitstelle München, An Polizeipräsidium München et al., Betreff: Waffenablieferung durch Juden. 19 December 1938. BHStA, B.Nr. 39859/38 II G Ma.

Because this will have to be reported to the Gestapo office in Berlin, this deadline will absolutely have to be observed.<sup>233</sup>

## VII. CONCLUSION

Over a period of several weeks in October and November 1938, the Nazi government disarmed the German Jewish population. The process was carried out both by following a combination of legal forms enacted by the Weimar Republic and by sheer lawless violence. The Nazi hierarchy could now more comfortably deal with the Jewish question without fear of armed resistance by the victims.

It may be tempting to argue that the possession of firearms by the German Jews would have made no difference, either in the 1938 pogrom or later in the Holocaust, when the majority were deported and then eradicated in death camps. Yet this fatalistic view ignores that the Nazis themselves viewed armed Jews as sufficiently dangerous to their policies to place great emphasis on the need to disarm all Jews. In 1938, it was by no means certain that Jewish armed resistance movements could not develop, and even less certain that individual Jews would not use arms to resist arrest, deportation, or attacks by the Nazis.

Even after the Final Solution calling for the eradication of European Jewry was adopted in early 1942,<sup>234</sup> the Nazis feared individual armed resistance sufficiently to search the homes of Jews to be deported for weapons. A mid-1942 Gestapo directive to the Police President in Rostock concerning the deportation of Jews to the East ordered: "Before the Jews leave, their apartments must be searched for weapons, ammunition, explosives, poison, money, jewelry, etc."<sup>235</sup>

For the deportees, the Nazis continued their mania for seizure of any weapons held by Jews. Alfred Hartmann recalled about Jews sent to the Milbertshofen barracks camp near Munich, a staging area for deportation to more deadly camps: "After their arrival at the camp and assignment to individual barracks, Gestapo members collected the luggage of the Jews and searched it for weapons, jewelry, etc."<sup>236</sup>

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233. *Id.*

234. Wannsee Protocol, Jan. 20, 1942, *available at* <http://www.yale.edu/lawweb/avalon/imt/wannsee.htm>.

235. Geheime Staatspolizei, Evakuierung von Juden nach den Osten, 6.7.1942, RG-14.006\*01, B.Nr. II B 2 - 326/42 g, copy from Rostock city archives in United States Holocaust Memorial Museum, Washington, D.C.

236. ANDREAS HEUSLER & TOBIAS WENGER, KRISTALLNACHT: GEWALT GEGEN DIE MÜNCHNER JUDEN IM NOVEMBER 1938 184 (Buchendorfer Verl. 1998).

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Is there a larger lesson to learn from the experiences of the liberal Weimar Republic decreeing firearms registration, and the Nazi regime using the records to disarm the Jews? While this does not foretell what *will* happen, it demonstrates what *can* happen. Contemporary prohibitionists may argue that this would never happen again anywhere in the world, whether in Europe, Asia, Africa, or the Americas, especially in the United States. Consistent adherents of a “Never Again!” policy – which assumes that what has happened in history, could again happen – would seek policies to help ensure that it does not indeed occur again.

That brings us back to Alfred Flatow. What if he – and an unknown number of other Germans, Jews and non-Jews alike – had not registered his firearms in 1932? Or if the Weimar Republic had not decreed firearm registration at all? What if the Nazis, when they took power in 1933 and disarmed social democrats and other political enemies, or when they decided to repress the entire Jewish population in 1938, did not have police records of registered firearm owners? Can it be said with certainty that no one, either individually or in groups small or large, would have resisted Nazi depredations?

One wonders what thoughts may have occurred to Alfred Flatow in 1942 when he was dying of starvation at the Theresienstadt concentration camp. Perhaps memories of the 1896 Olympics and of a better Germany flashed before his eyes. Did he have second thoughts, maybe repeated many times before, on whether he should have registered his revolver and two pocket pistols in 1932 as decreed by the Weimar Republic? Or whether he should have obediently surrendered them at a Berlin police station in 1938 as ordered by Nazi decree, only to be taken into Gestapo custody? We will never know, but it is difficult to imagine that he had no regrets.