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ART MUSEUM DEACCESSIONING:  
CONFLICT BETWEEN MUSEUM PROFESSIONALS, DONOR INTENT, THE  
PUBLIC, AND LIVING ARTISTS

By

Megan Elizabeth Kociscak  
B.F.A., College of Visual Arts, 2009

A Thesis  
Submitted to the Faculty of the  
College of Arts and Sciences of the University of Louisville  
In Partial Fulfillment of the Requirements  
For the Degree of

Master of Arts

Department of Art History  
University of Louisville  
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May 2013

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A Thesis Approved on

April 22, 2013

By the following Dissertation Committee:

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John Begley  
Thesis Director

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Christopher Fulton

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Thomas Maloney

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## ABSTRACT

### ART MUSEUM DEACCESSIONING : CONFLICT BETWEEN MUSEUM PROFESSIONALS, DONOR INTENT, THE PUBLIC, AND LIVING ARTISTS

Megan Elizabeth Kociscak

April 22, 2013

This research looks at current issues involved in the deaccessioning of works of modern and contemporary art in American art museums. In May of 2012 the Speed Art Museum in Louisville, Kentucky deaccessioned three sculptural works made by the artist Petah Coyne. This research aims to explore the issues that arose during this deaccessioning project of these three works and to discover how the staff at the Speed Museum addressed such issues. Of particular interest for this research are the issues that surround the deaccessioning process for works made by artists whom are still alive. Additional cases of deaccessioning, which caused controversy and informed the practices utilized by the Speed Museum staff are also discussed in their relation to serving individual donors and the general public.

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## INTRODUCTION TO DEACCESSIONING

Deaccessioning is the process by which art museums remove works of art from their collections. Deaccessioning is a very thorough process that must be undertaken carefully by museum staff and board members in order to satisfy ethical guidelines put forth by professional museum organizations such as the American Alliance of Museums (AAM) and the Association of Art Museum Directors (AAMD). Such guidelines exist for the process of deaccessioning because there are many ethical and legal issues that can arise during its proceedings. Once an object has been formally accessioned into a museum's collection, the museum must assume all responsibility for the safe-keeping of that object. When a museum wants to remove a work from its collection it must be formally deaccessioned if the institution wants to remain an accredited and reputable museum. This is done to ensure that the removed object continues to be cared for properly and that the removal of the object does not interfere with the best interests of the donor (if the object was donated), the public (whom the museum aims to serve), and the artist of the work (if he or she is still working). If the process of deaccessioning is not carefully undertaken by museum staff, legal action can be taken against the museum in the interest of donors, the public, or the artist. In order to illuminate how a diverse range of issues can arise in deaccessioning, I will first briefly describe how the typical American art museum began out of the collections of individuals and how this particular history relied on liberal accessioning policies, which contributed to the accumulation of

unrefined museum collections. I will then describe how such unrefined collections create the desire of museums to deaccession, and how various controversies arise out of this deaccessioning.

Accessioning in short is the acquisition of additional property. In the case of art museums, accessioning refers to the addition of a work of art into a museum's existing permanent collection. Certain steps must be taken in order for an object to be accessioned properly. A museum should not simply just add an object into their collection without correctly and thoroughly documenting where the object came from, how the museum received it, and how it fits into the mission of the museum. However, this was not necessarily always the case. When American museums began developing in the late 1800s and early 1900s most did not have clear missions and thus had very liberal acquisition policies. In order to accumulate a collection of objects fairly quickly, museums took in basically whatever they could get, largely depending on donations from individuals or private companies in exchange for tax benefits and/or philanthropic recognition. In contrast to the majority of large European museums, which stem from royal collections and continue to be maintained, funded and run by government organizations, American museums depend on the individual and are incorporated as private institutions with a public role in accordance with the United States tax policy to encourage support of public institutions. As stated in Sara Tam's article, *In Museums We Trust*:

Individual impetus is the driving force behind American Museums. Individuals create museums by developing the mission, financing the facility and operations, and building the museum collection from their personal collections and new purchases. A museum's mission, approach,

and style all reflect the vision of an individual or a private group of founders, which makes each museum's character unique.<sup>1</sup>

This passage shows how individual interest, taste, and philanthropic efforts lie at the foreground of the American museum and its respective collection. Contrary to popular belief, only a small percentage of American museums receive federal funding of any kind, and with the current weak economy that percentage continues to decline.<sup>2</sup> The most common source of funding for museums from the government is the National Endowment for the Arts (NEA). The NEA provides funding to individual museums through grants, which are awarded in various categories. It also provides funding to state art agencies and regional arts organizations, which allocate funds to museums in their respective regions.<sup>3</sup> The NEA also utilizes the AAM guidelines when determining the dispersal of grant funds. However, most of the funding for American museums comes from private donors.

Early museum collections generally stem from one individual's personal collection and grow mainly through the donation of works by other individuals. With a variety of distinct individuals donating in accordance with their own distinct, personal interests came a vast array of different types of objects. Museums undergoing growth without clear goals quickly accumulated clusters of objects that resembled more closely the vestige of a pawn shop rather than a cohesive, mission guided collection. Yet, because museums relied on outside individual donations so heavily in order to build a collection,

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<sup>1</sup> Sara Tam, "In Museums We Trust: Analyzing the Mission of Museums, Deaccessioning Policies, and the Public Trust," *The Fordham Urban Law Journal*, Vol. 39, Issue 3 (2012): 849-901.

<sup>2</sup> "Facts," *AAM*, n.p., n.d. Web. 2 Mar. 2013.  
<<http://www.aam-us.org/about-museums/facts>>

<sup>3</sup> National Endowment for the Arts, *Annual Report*, 2011.  
<<http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>>

it was important for them to maintain cordial relations with such individuals and the overall public. Museums often accepted works even if they did not necessarily want them in the collection, for fear of potentially offending the source of the donation and stifling future opportunities for better, more valuable gifts. For these reasons, over time, American museums eventually ran into the issue of owning too many undesirable, and often times, culturally insignificant objects. Additionally, some objects that were expected by museum staffs to gain societal importance and monetary value instead ended up losing significance. With limited and dwindling storage space and minimal funds for the safe handling and conservation of objects (not to mention general operating costs), excess objects transformed from conceivable assets into liabilities. When museums began to realize they could no longer sustain or further develop a cohesive and meaningful collection with so many extraneous objects in their care, they began to think of ways to refine their collections, and the concept of deaccessioning arose.

While museums maintain that the deaccessioning of works is essential to the cultivation of respectable and cohesive collections, the goals of the museum often conflict with the goals of other stakeholders involved in the process. In the following chapters five important cases of museum deaccessioning will be explored. These cases address the issues of carrying out donor's intent, providing the public with accessibility to works of art donated for the public, and respecting the career of the living artist, as well as highlight some of the legal issues involved in deaccessioning.

## CHAPTER 1

### CURRENT GUIDELINES FOR DEACCESSIONING

Having briefly described how and why American museums have accumulated unrefined collections that no longer satisfy the goals of the museums, an explanation of the standardized guidelines for deaccessioning currently in place is necessary. First, the importance of professional museum organizations including the American Alliance of Museums (AAM) and the Association of Art Museum Directors (AAMD), along with why setting these standards is crucial to the success of American museums will be discussed. Secondly, the benefits to museums that follow the guidelines set by these organizations will be described. Thirdly, the details of one of the first cases that brought attention to the deaccessioning controversy in the United States in the 1970s will be discussed. The description of this landmark case serves to illuminate how the understanding of the complications in deaccessioning remains vital for museums today.

The AAM and AAMD are very similar in many ways. They both aim to improve the quality of museums in the United States. According to the AAM website, the mission of the AAM is “to nurture excellence in museums through advocacy and service.”<sup>4</sup> It claims to do this through its three main strategies, which include: (1) Developing standards and best practices, (2) Providing resources and career development, and (3)

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<sup>4</sup> “About Us,” *AAM*, n.p., n.d. Web. 2 Mar. 2013.  
<<http://www.aam-us.org/about-us> >

Advocating for museums to thrive.<sup>5</sup> In comparison, the AAMD's mission is to "increase the contribution of art museums to society, promote the vital role of art museums throughout North America and advance the profession by cultivating leadership and communicating standards of excellence in museum practice." It engages in similar strategies as the AAM in order to achieve this mission, including: (1) establishing and maintaining standards of professional practice, (2) serving as forum for the exchange of information and ideas, (3) acting as an advocate for its member art museums, and (4) being a leader in shaping public discourse about the arts community and the role of art in society.<sup>6</sup> The biggest difference between the two organizations is that the AAM serves all types of collecting institutions, including: art museums, history museums, science museums, zoos, aquariums, and botanical gardens among others. The AAMD is a much smaller organization (with 221 museums represented compared to AAM's over 21,000 museum members) that is concerned solely and selectively with art museums. The AAMD is made up mainly of the directors of accredited art museums and explores issues that pertain specifically to the position of the art museum director. For this reason I will generally refer more predominantly to the guidelines of the AAMD rather than the AAM when specifically discussing art related issues, although both are important in establishing best practices guidelines.

In order to be an art museum of first rank in the United States, a museum should be a registered member of the AAM and its director a member of AAMD. According to

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<sup>5</sup> "About Us," *AAM*, n.p., n.d. Web. 2 Mar. 2013.  
<<http://www.aam-us.org/about-us>>

<sup>6</sup> "Mission," *AAMD*, n.p., n.d. Web. 2 Mar. 2013.  
<<https://aamd.org/about/mission>>

the AAM, accreditation provides the following benefits to museums:

As the museum field's mark of distinction, accreditation offers high profile, peer-based validation of your museum's operations and impact. Accreditation increases your museum's credibility and value to funders, policy makers, community and peers. Accreditation is a powerful tool to leverage change and helps facilitate loans between institutions.

In order to become accredited members of the AAM, museums must fulfill certain eligibility requirements and adhere to strict guidelines that determine the current code of ethics for museums. There are specific guidelines set up to facilitate ethical practices for many tasks and processes within the museum. For the purpose of this paper, however, I will only discuss the guidelines relating to the processes of accessioning and deaccessioning.

Because museums have a responsibility to their respective donors and to the public at large, the simple removal or disposal of an object in a collection is not acceptable. According to the AAMD, there are several acceptable reasons why removing works from a particular collection might be considered. Such reasons include:

- A. The work is of poor quality and lacks value for exhibition or study purposes.
- B. The work is a duplicate that has no value as part of a series.
- C. The museum's possession of the work may not be consistent with applicable law, *e.g.*, the work may have been stolen or illegally imported in violation of applicable laws of the jurisdiction in which the museum is located or the work may be subject to other legal claims.
- D. The authenticity or attribution of the work is determined to be fraudulent and the object lacks sufficient aesthetic merit or art historical importance to warrant retention.
- E. The physical condition of the work is so poor that restoration is not practicable or would compromise the work's integrity or the artist's intent.
- F. The work is no longer consistent with the mission or collecting goals of the museum.
- G. The work is being sold as part of the museum's effort to refine and improve its collections, in keeping with the collecting goals reviewed and approved by the museum's Board of Trustees or governing body.

- H. The museum is unable to care adequately for the work because of the work's particular requirements for storage or display or its continuing need for special treatment.<sup>7</sup>

While there are several acknowledged and acceptable reasons for deaccessioning a work from a collection, there are often underlying issues that make the process much more difficult than it appears on the surface. Such issues that can interfere with the removal of a work vary from object to object, depending on the nature of the object, where the object came from, and the object's relationship to the public audience.

The process of deaccessioning works of art from a collection is a lengthy and complicated one. Many people must approve the motion to remove a work from a collection before it can be sold or transferred. Curators and museum staff first identify the work to be removed and explain why the work is not necessary or beneficial to the museum in accordance with AAM and AAMD deaccessioning policy guidelines. Museum staff and affiliated parties must thoroughly research and review all documentation relating to the identified work, including records of prior ownership, explanations of expressed donor intent for the object, any commitments made by the institution to the donor, the condition of the work, and the current position of the artist who made the work (if he or she is still living), to make sure the removal of the object does not break any stipulations that could raise controversy or legal action against the museum. Generally an additional third-party expert is required to visit the museum, evaluate the work, and provide his or her opinion on the quality of the specific work and its relevance to the individual museum. Additional scholarly evaluations on the artist and

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<sup>7</sup> "Standards and Practices: AAMD Policy on Deaccessioning," *AAMD*, 9 June 2010. Web. 2 Mar. 2013. <<https://aamd.org/standards-and-practices>>



similar works must also be considered, as well as the relevance of the object to the existing collection and future collecting goals of the institution. Then the curators present the case to the director of the museum. If the curators receive his or her approval, they present the case along with the director to the Board of Trustees. If the board decides to approve the removal of the object, a neutral third-party seller, such as an auction house, is often be utilized in order to avoid any conflict of interest in the sale. Additionally, the museum is required to inform the public of the works it plans to deaccession by publishing the names of the works on the museum's website before such works can be sold.<sup>8</sup>

Issues arise in the process of deaccessioning when outside parties feel that the removal of a particular object or group of objects by a specific museum undermines the best interest of the donor, the public, or the artist who made the work. The most common type of controversy to date in deaccessioning occurs when the desire of the museum to remove an object from its collection conflicts with the original donors wishes for the object or group of objects. Often when an object is donated to a museum, restrictions are applied to that donation. The donor of an object can control what happens to the object in the future, provided such details are agreed upon at the time of donation. The donor can limit the manner in which the object is exhibited, how often the object is exhibited, if the object can be loaned, if the object can be sold, and whom or what institutions it can be loaned or sold to. Additionally, if the object is allowed to be sold, the donor can regulate how the proceeds from that sale will be used by the museum. Donations made with such stipulations are referred to as restricted gifts.

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<sup>8</sup> "Standards and Practices: AAMD Policy on Deaccessioning," *AAMD*, 9 June 2010. Web. 2 Mar. 2013. <<https://aamd.org/standards-and-practices>>

Now I will describe a specific case of museum deaccessioning, which caused controversy between the largest art museum in the United States, a donation made with restrictions by a deceased donor, and the public in New York City in 1972. This particular case was instrumental in making visible the issues of deaccessioning that continue to arise today.

## CHAPTER 2

### THE METROPOLITAN MUSEUM CASE: 1970

In the fall of 1970 a painting by the prodigious Spanish painter, Diego Velazquez came up for sale at Christies auction house in London. The Metropolitan Museum of Art in New York desperately wanted the painting. However, it did not have enough cash on hand and wanted to be discreet about its finances, so Douglas Dillon, the president of the museum, along with Thomas Hoving, the museum's director, devised a plan to purchase the work through a third party. The third party chosen was a prominent art dealer in New York, Wildenstein & Co. This particular dealer was chosen because it had enough cash on hand to buy the painting and because involving them in the purchase eliminated the competition they posed to the Met. It was reported that the firm also wanted to buy the Velazquez but did not want to compete with the museum, and that the firm bought the painting to sell to the Met without incurring an additional fee to the museum.<sup>9</sup> At the time of the sale the Museum's finances were in less than great condition and it appeared the president and director wanted to avoid the anticipated objections to the use of funds to purchase the new extravagant work.

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<sup>9</sup> John Canaday, "Metropolitan Was Buyer of \$5.5 Million Velazquez," *New York Times*, 13 May (1971): 1.  
<<http://query.nytimes.com/mem/archive/pdf?res=F60C11FC355F127A93C1A8178ED85F458785F9>>

The painting, *Juan de Pareja*, which depicts Velazquez's assistant and was first exhibited in the Pantheon in 1650 was sold in November of 1970,<sup>10</sup> but its purchase was not announced by the museum until May 12<sup>th</sup> of the following year. The painting sold for \$5,544,000, which was then a record selling price for a single work of art. Wildenstein technically owned the painting for the six months prior to its purchase, but Hubert von Sonnenburg, the Met's chief conservator had been continuously working on it during that period.<sup>11</sup>

Dillon and Hoving claimed that the extravagant purchase of the Velazquez painting was a good decision by the museum and was beneficial to the public because of the reputation of the artist and the fact that works by this artist very rarely ever come up for sale. The next available Velazquez painting for sale after *Juan de Pareja* was sold through Christie's in 1999 for roughly \$8 million (and later sold again through Sotheby's in 2007 for a record-breaking \$17 million).<sup>1213</sup> According to a statement written by Dillon and Hoving:

The painting of Juan de Pareja by Velazquez is among the most important acquisitions in the Museum's history. Not a formal portrait but a rare, un-commissioned one, it is a work of genius, in its subtlety of brushwork and coloring, freshness of characterization, and depth of insight and sympathy.<sup>14</sup>

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<sup>10</sup> Sue Chen, "Art Deaccessions and the Limits of Fiduciary Duty," *Art Antiquity and Law*, 14.2 (2009) : 103-111.

<sup>11</sup> John Canaday, "Metropolitan Was Buyer of \$5.5 Million Velazquez," *New York Times*, 13 May (1971): 1.

<<http://query.nytimes.com/mem/archive/pdf?res=F60C11FC355F127A93C1A8178ED85F458785F9>>

<sup>12</sup> "Long Missing Velazquez to be Sold," *CNN*, 29 Jan. 1999.

<<http://www.cnn.com/US/9901/29/velazquez.01/index.html>>

<sup>13</sup> "Record For Velázquez at \$17 Million Set at Sotheby's," *ArtDaily*, 5 July (2007): n.p.

<[http://www.artdaily.com/section/news/index.asp?int\\_sec=2&int\\_new=20872#.UUAa617R3ww](http://www.artdaily.com/section/news/index.asp?int_sec=2&int_new=20872#.UUAa617R3ww)>

<sup>14</sup> Thomas Hoving, "Juan de Pareja by Diego Velazquez," *The Metropolitan Museum of Art Bulletin*, 29.10 (1971):1.

The Velazquez painting has been considered one of the most important works in the museum's collection, which now includes over two million pieces.

Although Dillon insisted on multiple occasions that the painting had been purchased with funds that were donated to the museum over fifty years ago and were specifically intended to be used for the purchase of new works of art, an article published in the *New York Times* in February of 1972 suggested otherwise.<sup>15</sup> The article, written by John Canaday, ignited a slew of arguments, which materialized in printed text in the *New York Times'* art section. Canaday reported that in order to finance the museum's new purchases, the Metropolitan had been secretly selling works from the modern art collection, and that he had found an indication of intent by the museum to sell an additional six master paintings. Canaday's article pointed to four main areas of contest: (1) the Met sold works privately and secretively, (2) the sale of works could breach previous agreements with the donors, (3) the works of art intended for sale were subsidized with public funds and, thus, were public property, and (4) the removal of works from a collection reflected current tastes that were likely to change in time.<sup>16</sup> The four issues raised by Canaday will now briefly be discussed in order to illuminate how such issues affected this particular deaccessioning case at the Metropolitan. In later chapters, these same issues continue to arise in the contemporary deaccessioning debates.

Hoving responded to Canaday's initial accusations by stating that five of the six

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<sup>15</sup> Karl E. Meyer, "The Deaccessioning Controversy," in *Law, Ethics and the Visual Arts*, (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 1273-1274.

<sup>16</sup> John Canaday, "Very Quiet and Very Dangerous," *New York Times*, 27 Feb (1972): D21  
<<http://select.nytimes.com/gst/abstract.html?res=F20C16FF3F5E127A93C5AB1789D85F468785F9>>

paintings mentioned would not be sold (although years later Hoving admitted he planned to sell the works and removed the paintings from the deaccessioning list in response to the criticism brought about by Canaday)<sup>17</sup> and that the Met's dealings were nothing out of the ordinary for an institution of its stature. At the time of this case, it was common that when a museum wanted to sell a painting they would sell it privately and quietly through a process similar to a silent auction with invited bidders and private dealers.<sup>18</sup> The public was not often necessarily informed about sales of works until long after the sales were final. Hoving defended the actions of the museum by stating that the Met was not a library or an archive, but a business whose success was dependent on quality rather than quantity. He added that the sale of works was necessary for the betterment of the collection and that some of the museum's most valued acquisitions were made possible only through the sale of "inferior examples."<sup>19</sup>

Despite Hoving's insistence that the Metropolitan would not sell major works of art, it was revealed almost simultaneously that two very famous paintings had, in fact, been sold to finance the purchase of the Velazquez. These paintings included Vincent Van Gogh's *The Olive Pickers* and Douanier Rousseau's *Monkeys in the Jungle*.<sup>20</sup>

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<sup>17</sup> Thomas Hoving, *Making the Mummies Dance* (New York: Simon & Schuster, 1993) 297.

<sup>18</sup> Hugh Genoways, *Museum Administration: an introduction* (California: Alta Mira Press, 2003) 223-246.

<sup>19</sup> Thomas Hoving, "Very Inaccurate And Very Dangerous," *New York Times*, 5 March (1972): D21, D28.

<<http://select.nytimes.com/gst/abstract.html?res=F40F16FE3C5A137A93C7A91788D85F468785F9>>

<sup>20</sup> John Canaday, "Metropolitan Sells Two Modern Masterpieces in an Unusual Move; Metropolitan Museum Sells Two Masterpieces First Time, *The New York Times*, Sept. 30 (1972): n.p.

<<http://select.nytimes.com/gst/abstract.html?res=FB0E16FE3E5F117B93C2AA1782D85F468785F9>>

Together the two works were sold for \$1.45 million.<sup>21</sup> Just as the Velazquez had been purchased secretly and not announced until six months later, the two paintings aforementioned were sold to Marlborough Galleries nearly six months before Hoving admitted to their sale. It was reported that Hoving only acknowledged that sale of the works because they had surprisingly been relisted in the market for resale. In contradiction to Dillon's previous insistence in May of 1971 that the Velazquez painting was purchased with funds that were donated to the museum over fifty years ago and were specifically intended to be used for the purchase of new works of art, Hoving admitted in September of 1972 that a portion of the sales of Vincent Van Gogh's *The Olive Pickers* and Douanier Rousseau's *Monkeys in the Jungle* had, in fact, been used to pay for Velazquez's *Juan de Pareja*. Again, Hoving defended the actions of the museum by contending that the sale of the works ultimately improved the value of the collection.<sup>22</sup>

Canaday also raised the issue that the sale of a number of the works that were sold conflicted with the requests of the donor. It was eventually revealed that the Met had secretly sold or traded over fifty paintings that had been bequeathed to the museum by the late Adelaide de Groot.<sup>23</sup> Karl E. Meyer describes this situation in his essay *The Deaccessioning Policy*:

While alive, Miss de Groot had been courted by many museums, but around 1950 she was persuaded to leave the Metropolitan the bulk of her

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<sup>21</sup> Karl E. Meyer, "The Deaccessioning Controversy," in *Law, Ethics and the Visual Arts*, (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 1273-1274.

<sup>22</sup> John Canaday, "Metropolitan Sells Two Modern Masterpieces in an Unusual Move; Metropolitan Museum Sells Two Masterpieces First Time, *The New York Times*, Sept. 30 (1972): n.p.  
<<http://select.nytimes.com/gst/abstract.html?res=FB0E16FE3E5F117B93C2AA1782D85F468785F9>>

<sup>23</sup> Karl E. Meyer, "The Deaccessioning Controversy," in *Law, Ethics and the Visual Arts*, (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 1273-1274.

collection – which, the Metropolitan’s representatives apparently told her, was too important to be dispersed. She died in 1967 at the age of ninety-one, and her wish, expressed in her will even if not in terms that were legally binding, was that the Metropolitan give to other museums in New York or Connecticut any works it did not want. Five years later, the collection had been dispersed, and among the de Groot pictures that had been returned to private hands were works by Modigliani, Bonnard, Beckman, Leger, Dufy, Degas, Renoir, Redon, Toulouse-Lautrec, Picasso, and Gris.<sup>24</sup>

From this passage it is obvious that of the utmost importance to de Groot was that her donated works remain accessible to the public. However, the Met blatantly disregarded her request and removed many important works from the public domain. According to Hoving, he was aware of de Groot’s request that the Metropolitan not sell works from her bequest, but because the subsequent phrase “without limiting in any way the absolute nature of this bequest” was included in her will, the museum was free to ignore the request.<sup>25</sup>

Thirdly, Canaday claimed that works of art in public collections were public property. He implied that when an institution, such as the Met, deaccessions works of art from its collection and sells those works to private buyers, that institution is, in effect, stealing works from the public. When someone donates a work of art to a public institution, he or she receives a large tax deduction for that year. The size of the tax deduction can range from the full fair market value of the work, as determined by an approved third party, to a percentage of the value of the work. The amount of the tax deduction a donor can receive depends on several factors, including: the location of the

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<sup>24</sup> Karl E. Meyer, “The Deaccessioning Controversy,” in *Law, Ethics and the Visual Arts*, (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2007), 1273-1274.

<sup>25</sup> Sue Chen, “Art Deaccessions and the Limits of Fiduciary Duty,” *Art Antiquity and Law*, Vol. 14, Issue 2 (2009) :103-111.



donation (different states have different laws), the type of charity the work is being donated to, and the intended use of the work of art by the charity, among other details.<sup>26</sup> Canaday asserted that when a wealthy individual receives a tax exemption for donating a work of art, those lost tax funds must be made up from other public sources. Canaday wrote:

...the millions of dollars in taxes saved by wealthy donors must be brought in from other sources. In effect, the public buys (even though not given the privilege of selecting) the works of art thus donated. By any ethical standard, the public owns them. When such works are sold, the seller violates a fiduciary trust....<sup>27</sup>

Once a work of art is donated to a public institution it should remain public property, otherwise the public basically loses the tax money that would otherwise be generated by the donors of such works for no apparent reason. Additionally, if a work is donated to one public institution and sold to a private buyer who then donates that work again to another public institution, the public loses those tax funds twice for the same work. Such unethical dealings could threaten the future of available tax deductions for donors, which could cause a decrease in future donations. Tax exemptions for art donations to public institutions can be very positive because they give incentive for wealthy collectors to build up public collections and give public access to works that would otherwise be inaccessible.<sup>28</sup>

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<sup>26</sup> "Professional Tax and Estate Planning Notes," *New York Community Trust*, 2013. Web. 27 Feb. 2013.  
<<http://www.nycommunitytrust.org/ProfessionalAdvisors/ProfessionalTaxEstatePlanningNotes/ContributionsOfArt/tabid/571/Default.aspx>>

<sup>27</sup> John Canaday, "Very Quiet and Very Dangerous," *New York Times*, 27 Feb. (1972)  
<<http://select.nytimes.com/gst/abstract.html?res=F20C16FF3F5E127A93C5AB1789D85F468785F9>>

<sup>28</sup> John Canaday, "Very Quiet and Very Dangerous," *New York Times*, 27 Feb. (1972)

Lastly, Canaday raised the issue of taste and claimed that it was not necessarily true that something considered to be of little value at a given time would not increase in value at a later time. The former chief curator at the Louvre museum in Paris, Germain Bazin, wrote about this idea in his book *The Museum Age*, which was published previously in 1967:

Endeavoring to create more space, American museums went to the extreme of selling less popular works – an adventurous practice, because a revolution in taste might very well restore to fashion works formally considered demodé. It is quite conceivable that the Barbizon painters, many of whose works the Metropolitan Museum sold as a ‘surplus’ a few years ago, might return to vogue one day.<sup>29</sup>

For example, during the 1950s when Impressionist paintings were not similarly appreciated as they are now, the Art Institute of Chicago sold several Impressionist paintings in order to raise the funds to buy an Italian Renaissance painting by Jacopo Tintoretto with the intent of upgrading the collection. However, it was later revealed that the Italian work was painted by Tintoretto’s workshop rather than by the artist himself and had little market value. Around the same time as this determination, Impressionist paintings increased in popularity around the world and their market values greatly increased.<sup>30</sup>

As these four issues raised by Canaday came to light, an influx of adverse criticism flooded the Metropolitan museum, its practices, and its Director, Thomas Hoving (who had previously been criticized for his preoccupation with high publicity and blockbuster

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<<http://select.nytimes.com/gst/abstract.html?res=F20C16FF3F5E127A93C5AB1789D85F468785F9>>

<sup>29</sup> Bazin Germain, *The Museum Age*, New York: Universe Books (1967) reprinted in *Law, Ethics and the Visual Arts* (2007) : 720.

<sup>30</sup> Karl E. Meyer, “The Deaccessioning Controversy,” in *Law, Ethics and the Visual Arts*, (Maryland: Kluwer Law International, 2007), 1273-1274.

exhibitions).<sup>31</sup> As a result, the New York state Attorney General launched a seven-month investigation into the dealings of the museum and eventually mandated that the museum agree to the following stipulations:

1. Whenever a work of art valued at more than \$5,000 has been deaccessioned by the museum, notice of such action, at least 15 days before disposition, will be given to the Attorney General, specifying the restrictions, if any, applicable to such work.
2. Whenever it is proposed to deviate from restrictions, whether mandatory or predatory, placed on a work by its donor, notice will be given to the donor or his heirs and the Attorney General. If the restriction is mandatory, no deviation will be possible without appropriate court proceedings.
3. No Work of art valued at \$10,000 or more will be disposed of within 25 years after receipt if the donor or his heirs or legal representatives object. This policy applies whether or not the gift is subject to restrictions of any kind.
4. No work of art valued at more than \$25,000 which has been on exhibition in the museum within the preceding 10 years will be disposed of until 45 days public notice has been given.
5. All future sales of work valued in excess of \$5,000 will be at public auction.<sup>32</sup>

In addition, the museum was required to publish in its annual report the total cash proceeds from art sales each year along with an itemized list of all deaccessioned objects valued at more than \$5,000 each.<sup>33</sup>

This particular controversy illuminated the interior processes of museums in the 1970s to the general public and spurred public interest in accessioning and

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<sup>31</sup> John Hess, "The Grand Acquisitors; Thomas Hoving and the Metropolitan Museum," *The New York Times*, April 7, 1974.  
<<https://select.nytimes.com/mem/archive/pdf?res=F30A10F8385515738DDDAE0894DC405B848BF1D3>>

<sup>32</sup> John, Merryman, et al., *Law, Ethics and the Visual Arts*, Frederick, Maryland: Kluwer Law International, 2007, 1275-1276. Print.

<sup>33</sup> Robin, Pogrebin, "The Permanent Collection May Not Be So Permanent," *The New York Times*, Jan. 26, 2011.  
<[http://www.nytimes.com/2011/01/27/arts/design/27sell.html?\\_r=0](http://www.nytimes.com/2011/01/27/arts/design/27sell.html?_r=0)>

deaccessioning practices in museums across the country. It helped to bring the possible issues in deaccessioning to the public consciousness. Since then the choices made by museum boards and staff regarding art deaccessions have been scrutinized and criticized, resulting in the adoption of the best practices guidelines by the professional museum associations.<sup>34</sup>

New York state currently has the most laws in place for museum deaccessioning. The New York Board of Regents has regulated the sale of artwork for the past five years. In December of 2008 it implemented emergency regulations, which allow the board to prohibit the sale of art works for proceeds intended for general museum operational expenses.<sup>35</sup> Across the country the attorney general of each state has the authority to decide when ethics are breached and may intervene if necessary in the deaccessioning processes of individual institutions (as in the case with the Metropolitan) but this rarely happens. Museums mainly operate on a peer review basis. Professional museum organizations, such as AAM and AAMD can revoke a museums accreditation when deaccession proceeds are used improperly or the process is not done in accordance with guidelines. The revocation of accreditation could cost the museum's Director and board members their jobs, as well as cause a decrease in future funding and donations to the museum.<sup>36</sup>

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<sup>34</sup> Sue Chen, "Art Deaccessions and the Limits of Fiduciary Duty," *Art Antiquity and Law*, Vol. 14, Issue 2 (2009):103-111.

<sup>35</sup> Robin Pogrebin, "Bill to Halt Certain Sales of Artwork May Be Dead," *New York Times*, Aug. 10, 2010. Web 17 Mar. 2013.

<<http://www.nytimes.com/2010/08/11/arts/design/11selloff.html>>

<sup>36</sup> Sue Chen, "Art Deaccessions and the Limits of Fiduciary Duty," *Art Antiquity and Law*, Vol. 14, Issue 2 (2009):103-111.

### CHAPTER 3

#### LEGAL ISSUES

The typical American art museum is an autonomous institution organized and operated as a charitable trust and non-profit institution, not as a government institution as in most European countries. This means that the authority to act as a museum falls to each museum's governing board individually. Due to the non-profit status, the actions of the governing board are limited and the museum is legally obligated to observe a charitable and public purpose. However, the terms that dictate how to satisfy this public obligation are very broad and each dispute over the ethics of a museum's actions must be dealt with on a case-by-case basis. For example, as you have already read, the court legally imposed a set of stipulations onto the Metropolitan Museum of Art in 1972, but these stipulations only legally apply to that specific museum, not to all museums in the United States.

The attorney general of each state has the authority to decide when ethics are breached and may intervene if necessary in the deaccessioning processes of individual institutions, but this rarely happens because museums mainly operate on a peer review basis. However, when legal charges are filed against museums or involving museums for their deaccessioning plans or actions, the legal system must then make the final determination of whether or not the museum has the legal right to sell such works from its collection. In deaccessioning cases the main role of the legal system is to clarify the

ownership of the works in question. In the cases discussed in the following chapters, after lengthy deliberations, the courts eventually decided that the museums had legal ownership of the works and therefore had the legal right to sell those works if they chose to do so. As a general rule, legally it is probable that a museum will be given the right to dispose of its property in any way it chooses, unless a valid document strictly demanding otherwise is available.<sup>37</sup>

Trust law generally governs donations of art to public institutions. An individual's will is an example of a private trust. However, in each of the cases discussed in this paper, and whenever a work of art is donated to a public museum that has the primary goal of serving the public, the public implicitly becomes the beneficiary of the trust. Because of this these private trusts are also public trusts. According to the Princeton University dictionary, public trust is defined as a trust created for the promotion of public welfare and not for the benefit of one or more individuals. It must be created for charitable, religious, educational, or scientific purposes.<sup>38</sup>

Every trust consists of four distinct elements. Unless all of these elements are present, a court cannot enforce an arrangement as a trust. These four elements include: (1) an intention of the settlor to create the trust, (2) physical subject matter, (3) a trustee or a group of trustees, and (4) a beneficiary. In simple terms, the person who creates the trust is the settlor. The person who holds the property for another's benefit is the trustee. The person (or group of people) who benefits by the trust is the beneficiary. The property that comprises the trust is the subject matter.

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<sup>37</sup> John, Merryman, et al., *Law, Ethics and the Visual Arts*, Frederick, Maryland ; Kluwer Law International, 2007, 874. Print.

<sup>38</sup> Princeton University wordnet. Web. 15 Apr. 2013. <<http://wordnet.princeton.edu/>>

The settlor must intend to impose enforceable and measurable duties on a specified trustee to deal with the named property for the benefit of another third party. The trustee can be any person who has the legal capacity to take, hold, and administer property for the benefit of the beneficiaries. Nonresidents of the state in which the trust is to be administered can be trustees. A corporation or legal partnership can act as a trustee, however, unincorporated groups, such as labor unions generally cannot. The property specified must physically exist and be verifiable at the time the trust is created and throughout its existence. Any property that can be freely transferred by the settlor can be held in trust, including patents and copyrights. Any person or group of people legally capable of taking and holding legal title to property can be a beneficiary of a trust, including unincorporated groups. However, when a group of people is named as the beneficiaries of a trust, if the members of that group are not definitely ascertainable, the validity of the trust depends on how the court interprets the meaning and scope of that group. If the court is unable to distinguish a particular group, the trust can be deemed invalid.<sup>39</sup>

Issues commonly arise in the museum world when trustees decide that in order to provide for the best interest of the museum and its collection, or to keep the institution financially viable and self-sustaining, they must break the terms of a particular trust. In such an event, there is a doctrine known as the doctrine of administrative deviation. This doctrine can be granted by the courts to the trustees in order to surpass any opposing charges from parties related to the settlor or the beneficiaries that arise from the breach of the trust. This doctrine permits the trustee to deviate from the intent of the settlor and to

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<sup>39</sup> Thomas Gallanis, "The New Direction of American Trust Law," *Iowa Law Review*, 97.1 (2011): 216-218. Print.

act in a manner at odds with the interests of the beneficiaries if circumstances not known or anticipated by the settlor arise and have the ability to defeat or substantially impair the accomplishment of the purposes of the trust.<sup>40</sup> For example, as trustees, the board members and the director of Fisk University were able to sell paintings that had been donated to the school from Georgia O’Keeffe with the stipulation that no works ever be sold from the collection with the claim that if the school could not sell such works to raise money, the college would have to close. The board claimed that if the college was forced to close, all of the works in the collection would be sold, instead of only a select few, and therefore it was in the best interest of the collection to sell those works.

It has also been legally determined by the courts that the donor’s intent to keep works of art together or in a specific location do not legally have to be honored because of the wording in the contracts that were signed at the time of donation (as in the case of Adelaide de Groot’s will and her donation to the Met). In cases such as this that question the museum’s commitment and loyalty to its donors, the courts have the ability to determine that the particular language in a document like a will indicates something other than what was actually intentionally meant by the settlor.

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<sup>40</sup> Thomas Gallanis, “The New Direction of American Trust Law,” *Iowa Law Review*, 97.1 (2011): 223. Print.



## CHAPTER 4

### THE MUSEUM'S VIEW

Now that I have explained the current regulations for deaccessioning in the United States, I will describe the specific reasons why museum professionals maintain that deaccessioning is a positive and necessary operation for them to continually execute. I will provide a specific case of museum deaccessioning in which the institution claims to have been improved through the implementation of deaccessioning. After explaining these views that support museums' freedom to deaccession works, in the following chapters I will describe how these views often conflict with the interests of three separate parties, which are also imperative to the success of modern and contemporary art museums. These groups include; (1) donors who donate specific individual works of art or groups of works of art to a particular museum and are still living or have living family members or living fiduciaries of their wills (2) the public who visits a particular museum and has a vested interest in receiving continuous access to the works of art in that museum's collection, and (3) living artists whose efforts physically produce the works of art in the collections, whose careers have the possibility of shifting along with the museum's treatment of such works, and who have a vested interest in the museum's retention or disposal of their works.

The mission of a museum (as referred to of AAMD's deaccessioning guidelines) is instrumental in determining what should and should not be included in the museum's

collection. A museum's mission statement provides support for the museum's retention or disposal of works, provided the mission statement adequately reflects the goals of the museum. The mission statement of a museum corresponds to the scope of objects that can or should be collected and represented by that museum. For museums that have been in existence for several decades or more, the scope of what they can realistically and comprehensively collect often shifts from broad to narrow and must be filtered down to allow for a more sophisticated collection of their chosen areas of concentration. Therefore, it is not uncommon for a museum to reevaluate and redefine its mission and corresponding collection and to deaccession works, which it deems no longer imperative to the concentration of the museum. The removal of works of art from a museum's collection can be beneficial to that museum for several important reasons, the most prominent including; (1) the removal of a work can reduce the amount of space needed for storage, and thus reduce expenses, and (2) the funds gained from the sale of one work can be used to purchase a different work deemed more imperative to the mission of that museum. For these reasons, the AAMD's policy on deaccessioning maintains that, "Deaccessioning is a legitimate part of the formation and care of collections and, if practiced, should be done in order to refine and improve the quality and appropriateness of the collections, the better to serve the museum's mission."<sup>41</sup>

The average museum in the United States typically has on view in exhibitions only 7% of their collection at a given time. The remaining 93% of the objects must be stored in an appropriate storage facility and different mediums require different storage conditions. Proper storage facilities must be temperature regulated as well as moisture

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<sup>41</sup> "Standards and Practices: AAMD Policy on Deaccessioning," *AAMD*, 9 June 2010. Web. 2 Mar. 2013. <<https://aamd.org/standards-and-practices>>

and light regulated in order to prevent damage to the works. As collections have grown in size over time for most museums, more storage space is needed to ensure the care and safety of works owned by those museums. Because storage space is limited in size and is often expensive, museums periodically sort through their holdings to determine what objects are worthy of retention in relation to the cost of that retention and the shifting goals of the museum. If a museum has a fixed amount of storage space but wants to continue to accumulate new objects, it must also remove some objects in order to accommodate the new accessions.

A recent case that illuminates how the prevalence of the high costs of storage contributes to the desire of the regional museum to deaccession works involves the Speed Art Museum in Louisville Kentucky and three large-scale sculptures made by the artist Petah Coyne. This case is discussed in detail in Chapter 7 on Living Artists. There is overlap between the views of separate parties in each of the cases that will be described in the following chapters. Although the cases I will discuss are organized into the interests of donors, the public, and living artists, in each I will also include the pro-deaccessioning view of the museum.

Some might argue that museums should not continue to purchase such large-scale works or works made of non-traditional materials that demand certain unique or additional storage conditions. It is true that the long-term costs to store such works often create a stress on the institution's operating budget. The cost to store and maintain a work over time can accumulate to eventually outweigh the market value of the object. However, if public American museums refused to buy such works, all of those works would end up in countries overseas or in private hands. This would put the United States

in an artistically inferior position in relation to other countries. The economies of cultural centers in the United States that benefit from artistic industry such as New York City, Chicago, and Los Angeles would suffer and tourism to these places would greatly decline. American contemporary artists might migrate abroad, as well, creating something of a cultural void in the United States. The contemporary art market has continued to grow both abroad and in the United States, despite the economic fluctuations of the last decades. In 2013 in the month of November alone combined sales at Sotheby's and Christie's (international art auction houses) reached over \$787 million. If American artists stopped producing contemporary works or moved overseas, a large portion of that market that generally reenters the American economy would most likely land elsewhere. This would also result in a large portion of the United States' cultural heritage being exported and lost to the American public.

## CHAPTER 5

### THE PUBLIC'S VIEW

Because members of the museum's surrounding community can often develop a sense of identification with specific works of art that it has had regular access to in the past, disputes can arise within a particular community over the deaccessioning of works of art by museums. Members of a community who support a given museum begin to feel they are entitled to have access to works of art in that museum's collection. Works of art can become a part of the identity of a community and reflect its values, interests and assets.

Works in a museum's collection are often thought to be held by the museum in trust for the public. But this is not necessarily always the case. According to Donn Zaretsky's brief article in *Art in America*, "The AAMD position—by expressly sanctioning the sale of works—itself acknowledges that objects in museum collections are not actually held "in trust".<sup>42</sup> While public museums do have a responsibility to serve the public, sometimes the views of how to best serve the public differs among those who run the museums and those who visit the museums. Conflicts arise when a museum wants to deaccession a work of art which other individuals or groups of people find important to

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<sup>42</sup> Donn Zaretsky, "Opinion: AAMD Rules Need To Be Deaccessioned," *Art In America*, 97.4 (2009): 28. Academic Search Premier. Web. 2 Mar. 2013.

that location for various reasons. Perhaps this issue is best described in the case of Randolph College.

Conflicts can also arise when a museum removes works from its collection and from public access without compensating for that removal by providing another benefit to the public. For example, the Clyfford Still museum sold four paintings by Still just before the opening of the museum in November 2011 to strengthen the endowment after years of financial struggle. Because the museum did not purchase additional works with the money gained from the sale, some members of the Denver public felt shortchanged because they had just lost access to four paintings and seemingly gained nothing in return. For example, Christopher Knight, an arts writer for the Los Angeles Times wrote an article on the Clyfford Still Museum, in which he brought up the point that because the museum took those paintings away from the public, it should reciprocate that loss by eliminating or reducing the admission fee for public visitors. According to Knight:

In fact, my sole complaint about the museum is its needless \$10 admission fee. Ironically, it's the kind of institutional tactic that put Still off the art world. Denver raised almost \$32 million for this magnificent project but fell short on establishing a \$25 million operations endowment. An unfortunate decision to sell four paintings at auction earlier this month resulted in record-breaking prices, which will yield an endowment of \$85 million to \$95 million -- three to four times the goal. To compensate for what the public lost in forfeiting those paintings, the museum should drop the admission charge.<sup>43</sup>

More information on this case of the Clyfford Still Museum's deaccessioning of four paintings can be found in Chapter 6 on the Donor's View.

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<sup>43</sup> Christopher Knight, "Art Review: Denver's Clyfford Still Museum," *LA Times*, 20 Nov. 2011. Web. 5 Mar. 2013.  
<<http://latimesblogs.latimes.com/culturemonster/2011/11/art-review-denvers-clyfford-still-museum.html>>

## THE RANDOLPH COLLEGE CASE

In 2007 Randolph-Macon College, then a 116-year-old women's only college, located in Lynchburg Virginia, was suffering from financial difficulty. The small liberal arts school, which opened in 1891 had been dipping into its endowment rather heavily in the past few years to cover general operating expenses.<sup>44</sup> In the 2006-07 fiscal year, the school spent \$12.2 million or 10.2 percent of its endowment. It is generally recommended that an institution only spend 5 percent each year.<sup>45</sup> The college was put on warning by its accreditor, the Southern Association of Colleges and Schools in January of 2007 and told it could lose its accreditation because of its failure to show financial stability. In the remainder of that year, however, donations rose 123 percent.<sup>46</sup>

In order to alleviate the financial burden, the school's trustees made the decision to make the college co-educational by the year 2011 and to change its name to Randolph College. Additionally, they planned to sell four paintings from the Maier Museum of Art, the college's art museum, which owns over 3,500 paintings, drawings, prints, and photographs in its collection and is estimated to be worth around \$100 million combined. These four paintings included; (1) Rufino Tamayo's *Troubador*, which was painted in

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<sup>44</sup> Daniel Grant, "No Sale For Trustees," *Art & Antiques*, 31.2 (2008): 23. Academic Search Premier. Web. 31 Mar. 2013.

<sup>45</sup> Stephanie Cash, "Selling Art To Fund Operations," *Art In America*, 96.4 (2008): 35. Academic Search Premier. Web. 31 Mar. 2013.

<sup>46</sup> Erin Strout, "Struggling Colleges Debate The Propriety Of Selling Their Art," *Chronicle Of Higher Education*, 53.39 (2007): A23. Academic Search Premier. Web. 31 Mar. 2013.

1945 and estimated to be worth \$2-\$3 million, (2) George Bellows' *Men of the Docks*, which was painted in 1912 and estimated to be worth \$25-\$35 million, (3) Edward Hicks' 1849 *Peaceable Kingdom*, estimated at \$3-\$4 million, and (4) Ernest Martin Hennings' *Through the Arroyo*, estimated to sell for between \$1-\$1.5 million. The Bellows painting is cited as the pride and joy of the school as it was the first masterpiece purchased by the college in 1920 when students and other locals raised the \$2,500 to buy the work.<sup>47</sup> The three American works were planned to be sold through Christie's auction house in New York on November 29, 2007 in an American paintings sale, and Tamayo's *Troubadour* in the Latin American sale on November 19th.<sup>48</sup> The money brought in from the expected sale of these works was going to be used to revive the college's dwindling endowment.<sup>49</sup> According to the AAMD's policy on deaccessioning in relation to college art museums, "Deaccessioning and disposal from the art museum's collection must never be for the purpose of providing financial support or benefit for other goals of the university or college or its foundation. In no event should the funds received from disposal of a deaccessioned work be used for operations or capital expenditures."<sup>50</sup>

On October 1<sup>st</sup>, 2007 the four paintings slated for sale were taken abruptly out of the museum and packaged to be sent to Christie's. The museum's director, Karol Lawson was unaware of the plans to sell the paintings at the time they were taken by a group of campus police, security guards, a lawyer, and the president of the college, John

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<sup>47</sup> Eve Conant, "A Shot Through the Art," *Newsweek Magazine*, Oct 9, 2007

<http://www.thedailybeast.com/newsweek/2007/10/09/a-shot-through-the-art.html>

<sup>48</sup> Daniel Grant, "No Sale For Trustees," *Art & Antiques*, 31.2 (2008): 23. Academic Search Premier. Web. 31 Mar. 2013.

<sup>49</sup> Associated Press, "Rufino Tamayo Painting Sells for 47.2M, Setting Latin American Art Record," *New York Daily News*, May 29, 2008.

<sup>50</sup> "Standards and Practices: AAMD Policy on Deaccessioning," *AAMD*, 9 June 2010. Web. 2 Mar. 2013. <<https://aamd.org/standards-and-practices>>



Klein.<sup>51</sup> However, controversy on the school's decision to sell the works soon spread both inside and outside of the college's community. Lawson resigned the very next day on October 2<sup>nd</sup>.<sup>52</sup> Laura Katzman, a tenured faculty member and the director of the college's museum-studies program also resigned on principle and stated that any sale of art that raises funds for the institution's operating budget would violate the code of ethics of her profession. According to Katzman, "Selling art is problematic for a number of reasons. It diminishes the gem that distinguishes Randolph-Macon. The collection strengthens the college, gives us cultural leverage, and it's a laboratory for us."<sup>53</sup>

Prior to the date of the auctions in which the college's painting were to be sold, a group of nineteen individuals with a prior connection to the college (including former students, professors, and other faculty) attempted to sue the college on the grounds that they were each individual beneficiaries of a public trust that should prevent the sale of works of art from the college's collection. The plaintiffs claimed that due to the circumstances under which the paintings had been acquired and displayed by the museum, the paintings belonged to them as members of that particular community and must remain accessible to them.<sup>54</sup> They argued that the works were donated to this specific institution for the sole purpose of benefiting the education of women and that no sales proceeds should be used for the benefit of coeducation. Anne

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<sup>51</sup> Eve, Conant, "A Shot Through the Art," *Newsweek Magazine*. Oct 9, 2007  
<<http://www.thedailybeast.com/newsweek/2007/10/09/a-shot-through-the-art.html>>

<sup>52</sup> Daniel Grant, "No Sale For Trustees," *Art & Antiques*, 31.2 (2008): 23. Academic Search Premier. Web. 31 Mar. 2013.

<sup>53</sup> Erin Strout, "Struggling Colleges Debate The Propriety Of Selling Their Art," *Chronicle Of Higher Education*, 53.39 (2007): A23. Academic Search Premier. Web. 31 Mar. 2013.

<sup>54</sup> Gilbert Schill, and Jacob Rooksby, "Colleges as Collectors: Questions to Ask When Buying and Selling Artworks," *Chronicle of Higher Education*, 12 Sept. 2009.

Yastremski, a 2005 alumna and member of the plaintiff group stated, "The art wouldn't be sold if the school wasn't going co-ed." She also said that the money raised from the sale of the paintings would most likely be used to hire athletic coaches for incoming male students and to make up for an expected loss of alumnae support from female alumnae due to the influx of male students.<sup>55</sup> Another alumna from the graduating class of 1964, Gail Ballou, said, "The college is wasting our cultural asset in order to compensate for years of mismanagement of the finances."<sup>56</sup>

The college's art collection began in 1907 when the all-female graduating class raised the money for a portrait of the college president to be painted. The college has seriously been collecting American art since 1920.<sup>57</sup> The permanent collection at the museum includes works by such artists as Thomas Eakins, Georgia O'Keeffe, George Bellows, Thomas Hart Benton, Mary Cassatt, and Edward Hopper among many others. The Maier Museum is also an accredited member of the American Association of Museums, and thus is required to adhere to certain guidelines regarding the sale of artwork, if it is to retain such accreditation. According to the AAM and AAMD policies, the funds gained from the sales of art from a museum are to be used only to strengthen the collection, not for the operating budget of the institution.<sup>58</sup> According to the New York Times, The AAMD even issued a statement condemning the college's decision to

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<sup>55</sup> Daniel Grant, "No Sale For Trustees," *Art & Antiques*, 31.2 (2008): 23. Academic Search Premier. Web. 31 Mar. 2013.

<sup>56</sup> Erin Strout, "Struggling Colleges Debate The Propriety Of Selling Their Art," *Chronicle Of Higher Education*, 53.39 (2007): A23. Academic Search Premier. Web. 31 Mar. 2013.

<sup>57</sup> Carol Vogel, "Inside Art," *New York Times*, 156.53955 (2007): E26.

<sup>58</sup> Erin Strout, "Struggling Colleges Debate The Propriety Of Selling Their Art," *Chronicle Of Higher Education*, 53.39 (2007): A23. Academic Search Premier. Web. 31 Mar. 2013.

sell the works in order to raise money to boost the endowment.<sup>59</sup>

College officials countered that they had the right to sell the works because they were all either donated as gifts without restrictions or were purchased with college funds without restrictions and were thus assets of the institution. The trustees also argued that the main purpose and mission of the college is to educate students as best they can using the limited resources in their control, not to hold their art collections inviolable to the deprivation of the institution's overall well-being. However, they also acknowledged that owning such works of art and displaying them on campus undoubtedly plays an important role in carrying out the college's mission.<sup>60</sup>

The Virginia Supreme Court ordered the college to postpone the sale of the works but held the plaintiffs responsible for raising \$1million to be posted in bond to cover any possible financial losses of the College. Despite two time extensions to come up with the money the group remained short. However, they continued with their lawsuit, which went to trial on May 27, 2008.<sup>61</sup> It was eventually concluded by the court that the college did have the right to sell the paintings as they saw fit. The attempted litigation, though, brought much attention to the controversy between museums and the audiences they are meant to serve, and the opposing alumna group hoped that the bad publicity and the condemnation of the proposed sale by the AAMD and other professionals would stop the

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<sup>59</sup> Randy, Kennedy, "Art Professionals Protest College's Planned Sales," *The New York Times*, 157.54089 (2007): B8

<sup>60</sup> Gilbert Schill, and Jacob Rooksby, "Colleges as Collectors: Questions to Ask When Buying and Selling Artworks," *Chronicle of Higher Education*, 12 Sept. 2009.

<sup>61</sup> Stephanie Cash, "Selling Art To Fund Operations," *Art In America*, 96.4 (2008): 35.

sale from going through.<sup>62</sup>

The George Bellows painting has been officially deaccessioned from the Maier Museum but has not yet been sold. Randolph College loaned the work to the National gallery in Washington, D.C. for a retrospective of the artist in 2011 and 2012.<sup>63</sup> Edward Hicks' *Peaceable Kingdom* sold at Christies in New York on September 25, 2008 for \$2,797,500, which was less than was expected.<sup>64</sup> Rufino Tamayo's *Troubadour* sold in May of 2008 at Christies for \$7.2-million, which was more than double the auction house's estimate. This sale set a world auction record high for Latin American Art surpassing the previous \$5.6 million record in 2006 for Frida Kahlo's *Roots*.<sup>65</sup>

This case illuminates how the mission of the educational institution conflicts with the mission of the college-affiliated art museum. Because the main purpose of the college is to educate students, the college's board may determine that it is in the best interest of the college as a whole to sell works of art from the museum's permanent collection in order to finance the needs of other departments of the institution. However,

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<sup>62</sup> Daniel Grant, "No Sale For Trustees," *Art & Antiques*, 31.2 (2008): 23. Academic Search Premier. Web. 31 Mar. 2013.

<sup>63</sup> Lee Rosenbaum, "Men of the Docks Revisited: Bellows Cast Off by Randolph College Temporarily Resurfaces at National Gallery," *Arts Journal*, June 11, 2012.

<[http://www.artsjournal.com/culturegrill/2012/06/men\\_of\\_the\\_docks\\_revisited\\_bel.html](http://www.artsjournal.com/culturegrill/2012/06/men_of_the_docks_revisited_bel.html)>

<sup>64</sup> "Sale 2030, Lot 11:Edward Hicks," *Christie's*, n.p., n.d., Web. Accessed April 1, 2013. <http://www.christies.com/lotfinder/paintings/edward-hicks-1835-1840-peaceable-kingdom-5118409-details.aspx?from=searchresults&intObjectID=5118409&sid=c6bbfa4a-9863-4dea-bb9a-1bf5570cb084>

<sup>65</sup> Associated Press, "Rufino Tamayo Painting Sells for 47.2M, Setting Latin American Art Record," *New York Daily News*, May 29, 2008. <http://www.nydailynews.com/latino/rufino-tamayo-painting-sells-7-2m-setting-latin-american-art-record-article-1.326798>

if the museum board or director does not have the authority to adhere to the professional policy guidelines, the museum should not be accredited by the AAM.

The Maier Museum of Art had a history of serving a particular public; one made up of female students and academics. The changing mission of the college enabled the school board to elect to sell paintings in the museum's permanent collection for the benefit of implementing coeducation into the school. This decision to sell works of art made the local female community feel as though the school board was taking their own cultural heritage away from them and selling it in order to provide accommodation for male students. For a community that prided itself on promoting the higher education of females for decades, such a decision seemed detrimental to the strength and identity of the community.

## CHAPTER 6

### THE DONOR'S VIEW

While American museums do aim to serve the general public, most of the resources museums depend on to keep their doors open do not come from public funds but instead from private sources. In the United States individuals (or private institutions or companies) contribute a large portion of the works that comprise public collections from their own private collections. According to the AAMD, “More than 90% of the art collections held in public trust by America’s art museums were donated by private individuals.”<sup>66</sup> Individuals also contribute a large portion of the funding used to purchase additional works for those public collections, even if it is the museum that seemingly hands over the money.

Because of this important role of the individual in public museums, individuals have more power over the works in a collection than may be expected for public institutions. One positive aspect to this is that museums have the ability to be more personalized to fit the goals and needs of the community in which the museum stands. This can also result in a broader range of collections across the country and increase revenue from tourism. However, because individual donors are important to the livelihood of American museums, individual donors expect to have control over their

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<sup>66</sup>“Art Museums, Private Collectors, and the Public Benefit,” *AAMD*, Jan. 2007, Web. <<https://aamd.org/sites/default/files/document/PrivateCollectors3.pdf>>

works after they are donated. This can cause a strain over time on the resources of the museums. In times of financial crises, many museums may not be able to uphold previous agreements to donors.

The increase in controversy surrounding deaccessioning may cause individual donors to think twice before donating works of art to a museum unless a formal agreement outlining the future of such works is in place. Adam Meyerson, the president of the Philanthropy Roundtable, an association dedicated to protecting benefactors' interests, said, "A respect for donor intent is essential for philanthropic integrity... However, you're not serving donor intent if you go bankrupt."<sup>67</sup> Both the AAMD and the AAM frown upon the deaccessioning of works that were donated with restrictions that would prohibit their deaccessioning. However, it is not expressly forbidden in the policies of these organizations. For example, the AAMD's policy states, "Museums should notify the donor of a work, when practicable, under consideration for deaccessioning and disposal. Circumstances may warrant extending similar courtesy to the heirs of a donor." According to this policy, donor intent should be given consideration and preference. However, donor stipulations and restrictions do not exclusively prohibit practices that contradict such intent.

However, such specific stipulations from donors may also cause museums to turn away more gifts. If a museum is prohibited from being able to sell a work in the future, it must carefully consider the possible resources that may be required in the future to

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<sup>67</sup> Patricia Cohen, "Museums Grapple With the Strings Attached to Gifts," *New York Times*, 162.56038 (2013) : C1,C7. Web. 15 Feb. 2013.  
<[http://www.nytimes.com/2013/02/05/arts/design/museums-grapple-with-onerous-restrictions-on-donations.html?ref=patriciacohen&\\_r=0](http://www.nytimes.com/2013/02/05/arts/design/museums-grapple-with-onerous-restrictions-on-donations.html?ref=patriciacohen&_r=0)>

preserve that work of art before agreeing to accession it. Such resources would inevitably take away from those needed to pursue additional goals of the museum. In the following chapters I will discuss two recent cases in which donor's intent has been compromised. The following two cases discussed examine two American art institutions dedicated to American art that have received substantial media attention over the past decade. These cases serve to illuminate some of the issues relating to donor intent that museums must undergo when considering to deaccessioning and sell works of art in their collections.



## THE CLYFFORD STILL MUSEUM CASE

The Clyfford Still Museum, which is solely devoted to exhibiting and preserving the work of the American Abstract Expressionist painter, Clyfford Still, recently received much attention due to its sale of four large-scale paintings.

Clyfford Still was an American artist born in North Dakota in 1904. During his lifetime Still was represented for a number of years by Peggy Guggenheim's Art of This Century gallery and the Betty Parsons gallery. However, in 1951 Still began to cut ties with the social art scene. He pulled all of his works from the commercial New York galleries to represent himself and personally sell his own works. Still was known for being quite antisocial and held a tight grasp on where and how his works were shown. For example, Still turned down three separate invitations to show his work at the Venice Biennale. According to Sobel, the Director at the Clyfford Still museum:

Still believed there was an ideal way to experience his art. In most instances, he would rather it not be seen at all than to be seen inappropriately. To him, the ideal way would be to see it in groups, and not distracted by the work of other artists. I don't think he felt this right was due only to him. There's been a mischaracterization of Still as having a huge ego, that he felt he was better than anyone else. He felt everyone else played the game, giving in to the commercial side, to the art world as an entity, different than the world of the artist. He was going to do it differently.<sup>68</sup>

Though Still disagreed with the commercialism of the art world, his love for art endured.

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<sup>68</sup> Leah Ollman, "Clyfford Still's Will is Executed with Denver Museum," *Los Angeles Times*, 20 Nov. 2011. Web. 7 Mar 2013.  
<<http://articles.latimes.com/2011/nov/20/entertainment/la-ca-clyfford-still-20111120/2>>

Still and his second wife, Patricia, left New York and moved to Maryland in 1961, where he continued to paint for years. Still described his refined and secluded work process as being, "in aloneness and with ruthless purpose." In 1980 Clyfford Still died of cancer and left behind his life's work that had been accumulating in the large storage space and barn near his home in Maryland. Because Still had been so protective of his works, he had amassed a collection of over 2,000 paintings and works on paper.<sup>69</sup> It is estimated that during Still's lifetime he only sold or gave away around 150 works. Most notably he donated small groups of paintings to the Albright-Knox Art Gallery in Buffalo, the Marlboro gallery in New York, the San Francisco Museum of Modern Art, and the Metropolitan Museum of Art in New York.<sup>70</sup>

In Still's will he stipulated that his entire estate and life's work should be given in its entirety to an unspecified American City willing to build (or assign) and run a permanent museum dedicated solely to the exhibition and safe-keeping of his work.<sup>71</sup> Patricia was to select the city at her discretion. However, Patricia was equally particular in finding the right home for her late husbands' work, and she denied requests for Still's oeuvre for over two decades, including the City of Denver's first attempt. Denver's mayor at the time, John Hickenlooper stated, "she (Patricia) got the sense that it would be an appendage to the Denver Art Museum, which was completely unsatisfactory. So we

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<sup>69</sup> Leah Ollman, "Clyfford Still's Will is Executed with Denver Museum," *Los Angeles Times*, 20 Nov. 2011. Web. 7 Mar 2013.

<<http://articles.latimes.com/2011/nov/20/entertainment/la-ca-clyfford-still-20111120/2>>

<sup>70</sup> Carol Kino, "Abstract Expressionist Made Whole," *The New York Times*, Nov. 17, 2011.

<[http://www.nytimes.com/2011/11/20/arts/design/clyfford-still-museum-in-denver.html?pagewanted=all&\\_r=1&](http://www.nytimes.com/2011/11/20/arts/design/clyfford-still-museum-in-denver.html?pagewanted=all&_r=1&)>

<sup>71</sup> "About the Museum," *Clyfford Still Museum*, n.p., n.d.,. Web. 2 Mar. 2013.

<<https://www.clyffordstillmuseum.org/museum>>

made clear that [the museum] would be a completely independent institution with complete autonomy."<sup>72</sup> It was not until 2004, twenty-four years after the death of Still, that Patricia agreed to turn over the collection to the city of Denver with the understanding that the city would build a brand new museum to house the collection and be dedicated solely to his work, and that the museum would never sell or lend any of the art.<sup>73</sup>

In 2005 Patricia died, additionally leaving her own estate to Denver in her thirty-page will. Patricia's estate included additional works by Still and his complete archives, including letters, sketchbooks, manuscripts, photographs, and additional items. In total approximately 825 paintings and 1575 works on paper by Clyfford Still were donated to the City of Denver by the Stills, representing 94 percent of the works produced in the artist's lifetime.

In 2009 construction began to erect the new museum. However, during construction the financial climate withered, causing a slight reduction in the building size and a delay to the museum's opening by a year. In order to strengthen the endowment of the museum, the city of Denver decided to sell four paintings from Patricia's estate. This sale directly violated the donor's intent that no works be separated from the entire Still collection.

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<sup>72</sup>Leah Ollman, "Clyfford Still's Will is Executed with Denver Museum," *Los Angeles Times*, 20 Nov. 2011. Web. 7 Mar 2013.

<<http://articles.latimes.com/2011/nov/20/entertainment/la-ca-clyfford-still-20111120/2>>

<sup>73</sup>Carol Kino, "Abstract Expressionist Made Whole," *The New York Times*, Nov. 17, 2011.

The city of Denver argued that it had to violate its namesake's wishes in order to fulfill them, and in 2011, six years after Patricia Still died, when fund-raising for the museum had slowed, Denver received court permission to auction four of the paintings.<sup>74</sup>

On Nov. 9, 2011 at Sotheby's auction house in New York, all four paintings were sold. The market for Still's work has evidently been growing, as they rarely come up for sale. In the past decade, only eleven works by Still have been offered for sale at auction, whereas Mark Rothko's works (another American Abstract Expressionist painter) have come up for sale over one-hundred times during the same period.<sup>75</sup> Together the paintings were expected to sell for \$71.5 million, but ended up reaching a total of \$114 million. A single telephone bidder bought two of the paintings including, 1949-A-No. 1 at \$61.6 million (estimated at \$35 million), and PH-1033 at \$19.6 million (estimated at \$15 million). A third painting, 1947-Y-No. 2 was estimated to sell for up to \$20 million and sold for \$31.4 million. The fourth painting by Still, PH-351 made in 1940 sold for \$1.2 million, just under its \$1.5 million estimate. Still's later works are valued higher than the earlier works and his breakthrough was thought to have occurred in 1944 when he painted his first Abstract Expressionist work.<sup>76</sup> The previous highest price ever paid at auction for a Still work was \$21.2 million. After the sale, Christopher Hunt, the president of the board of the Clyfford Still Museum, exclaimed his content for the high prices paid

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<sup>74</sup> Patricia Cohen, "Museums Grapple With the Strings Attached to Gifts," *New York Times*, 162.56038 (2013) : C1,C7. Web. 15 Feb. 2013.

<[http://www.nytimes.com/2013/02/05/arts/design/museums-grapple-with-onerous-restrictions-on-donations.html?ref=patriciacohen&\\_r=0](http://www.nytimes.com/2013/02/05/arts/design/museums-grapple-with-onerous-restrictions-on-donations.html?ref=patriciacohen&_r=0)>

<sup>75</sup> Kelly Crow, "Sotheby's Sells Group of Clyfford Still Paintings for \$114 Million," *The Wall Street Journal*, 10 Nov. 2011. Web. 9 Feb. 2013.

<<http://online.wsj.com/article/SB10001424052970204224604577028531443041436.html>>

<sup>76</sup> Christopher Knight, "Art Review: Denver's Clyfford Still Museum," *LA Times*, 20 Nov. 2011. Web. 5 Mar. 2013.

<<http://latimesblogs.latimes.com/culturemonster/2011/11/art-review-denvers-clyfford-still-museum.html>>

for Still's art. He said that the sale "confirms Clyfford Still's rightful place as a leader" in 20th century art.<sup>77</sup>

Nine days after the sale of the four works, on November 18, 2011 the brand new, two-story, 28,500 square-foot museum, designed specifically to complement Still's works by Brad Cloepfil of Allied Works Architecture, opened to the public. General visitors are charged an admittance fee of ten dollars per person.

Clyfford Still has two living daughters from his first wife, Lillian. The daughters, Sandra Still Campbell and Diane Still Knox, both remain co-executors of their father's estate. Neither have publicly commented on the sale of their father's four paintings. Sandra, the youngest of the two girls, seems more concerned with the overall reception of her father and his works than the sale. She said, "Dad didn't need anybody to tell him what he was about. He didn't like being analyzed, and now he's going to be analyzed to death.... Look at the paintings, that's all I'm asking. Dad had more faith in the viewer than what is written about the work."<sup>78</sup>

This case exemplifies how the wishes of the donor may not be honored over time. Even when deals are made and certain stipulations are agreed upon between a donor and a museum, unforeseen or unaccounted for circumstances may render those agreements ineffectual. In this case, the main ethical dilemma lies in the fact that the city of Denver actively pursued Patricia Still in order to acquire the Still collection and was only granted that collection on the condition that all of the works remain together. While the city

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<sup>77</sup> Kelly Crow, "Sotheby's Sells Group of Clyfford Still Paintings for \$114 Million," *The Wall Street Journal*, 10 Nov. 2011. Web. 9 Feb. 2013.

<<http://online.wsj.com/article/SB10001424052970204224604577028531443041436.html>>

<sup>78</sup> Carol Kino, "Abstract Expressionist Made Whole," *The New York Times*, Nov. 17, 2011.

<[http://www.nytimes.com/2011/11/20/arts/design/clyfford-still-museum-in-denver.html?pagewanted=all&\\_r=1&](http://www.nytimes.com/2011/11/20/arts/design/clyfford-still-museum-in-denver.html?pagewanted=all&_r=1&)>

agreed to uphold Clyfford and Patricia Still's wishes in 2004, it neglected that agreement seven years later. While it may be true that the museum's endowment was weakened by a difficult economic climate, and that it required additional revenue for operating expenses, the sale of the four paintings brought in nearly four times the amount that was needed. Perhaps the museum should have sold one only painting instead of four.

## THE FISK UNIVERSITY CASE

At Fisk University in Nashville Tennessee stands a two-story 19<sup>th</sup> century Victorian building known as the Carl Van Vechten Gallery. This gallery was established in 1949 when the famous American painter, Georgia O’Keeffe, donated a collection of 101 works to the University. The collection includes 71 modernist paintings, prints, and drawings first collected by O’Keeffe’s late husband and prolific American photographer, Alfred Stieglitz. Additionally included in the collection are five anonymous 19<sup>th</sup> century wooden sculptural works, nineteen photographic works by Stieglitz himself, and four paintings by O’Keeffe. This donated group of works was named the Alfred Stieglitz Collection of Modern American and European Art and has been installed as the permanent exhibition on the university gallery’s main floor for over five decades.<sup>79</sup>

Fisk University was founded in 1866 and has historically been a predominantly black institution. Georgia O’Keeffe particularly chose to give the Stieglitz collection to Fisk in recognition of the school’s mission to educate blacks at a time when most other

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<sup>79</sup> “The Carl Van Vechten Gallery,” *Fisk University*, n.p., n.d., Web. 27 Mar. 2013. <<http://www.fisk.edu/CampusLife/FiskUniversityGalleries/CarlVanVechtenGallery.aspx>>

Southern universities remained segregated.<sup>80</sup> O'Keeffe specifically stipulated (as stated in her will) at the time of her donation that the collection not be sold or broken up.<sup>81</sup>

In 2005 the university announced its plans to sell two paintings from the Stieglitz collection, including O'Keeffe's famous *Radiator Building-Night, New York* painted in 1927 and Marsden Hartley's *Painting No. 3* made in 1913. The school planned to use the expected \$20 million in proceeds for new buildings, faculty positions, to strengthen the endowment and to increase security for the remaining works of art in the collection.<sup>82</sup> However a two-year-long court battle over this ended in the court's ruling that the school could not sell the works.<sup>83</sup>

However in 2012, the University sold a 50 percent stake in this collection to the Crystal Bridges Museum of American Art in Bentonville, Arkansas, which was founded in 2005 by the Walmart heiress, Alice Walton (who was also previously interested in buying half of Randolph College's art collection). This agreement allows the new Crystal Bridges Museum to display the Alfred Stieglitz collection at its facility in Arkansas for two out of every four years and to be offered the first opportunity to buy the remaining 50 percent of the Stieglitz Collection if it ever goes up for sale. In return Crystal Bridges

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<sup>80</sup> Randy Kennedy, "Despite Foes, Buffalo Museum Makes \$18 Million in Auction," *The New York Times*, 21 March 2007. Web. 22 March 2013.

<[http://www.nytimes.com/2007/03/21/arts/design/21albr.html?\\_r=0](http://www.nytimes.com/2007/03/21/arts/design/21albr.html?_r=0)>

<sup>81</sup> "Answer of the Attorney General in Georgia O'Keeffe Foundation (Museum) v. Fisk University," *Office of the Attorney General and Reporter Robert E. Cooper, Jr.* n.p., 28 Sept. 2009, Web. 29 Mar. 2013.

<<http://www.tn.gov/attorneygeneral/cases/fisk/fiskresponse.pdf>>

<sup>82</sup> Phil Sweetland, "Arts, Briefly; Fisk University to Sell O'Keeffe Painting," *The New York Times*, 8 Dec. 2005.

<<http://query.nytimes.com/gst/fullpage.html?res=9A04E2DA1031F93BA35751C1A9639C8B63>>

<sup>83</sup> Theo Emery, "Tennessee: University Cannot Sell Artwork, Judge Says," *New York Times*, 14 June, 2007. Web. 2 Apr. 2013.

<<http://www.nytimes.com/2007/06/14/us/14brfs-nashville.html>>



must give Fisk University \$30 million. Additionally, Walton has pledged an additional \$1 million to improve the exhibition quality of Fisk's Carl Van Vechten Gallery.<sup>84</sup>

Fisk University officials said it needed to partially sell the collection in order to avoid closure of the entire school. They added that the University could no longer afford the annual cost of \$131,000 to display the works in the Stieglitz collection without the influx of such a large sum of cash.<sup>85</sup> The deal had been debated inside and outside of courtrooms for seven years before it was eventually approved. The Tennessee Attorney General, Robert Cooper, opposed the deal on the grounds that it could potentially stifle future donations from private collectors because the desires of the donor (O'Keeffe) were not being upheld. Cooper issued statements in August, September, and October of 2010 after the Chancery Court first denied Fisk's proposal to sell the works. One such statement read:

While the Court acknowledged that Fisk University is facing financial difficulties, the Court found no precedent that would allow an institution to sell a charitable gift to generate money for the institution. We are grateful the Court agreed that this unique collection of art belongs in Nashville and that the proposed sale would undermine future charitable giving in this state. We hope all those in our community who care about the future of this collection and Fisk University will join us in seizing this opportunity provided by the Court to look for constructive and creative alternatives.<sup>86</sup>

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<sup>84</sup> Randy Kennedy, "Despite Foes, Buffalo Museum Makes \$18 Million in Auction," *The New York Times*, 21 March 2007. Web. 22 March 2013.

<[http://www.nytimes.com/2007/03/21/arts/design/21albr.html?\\_r=0](http://www.nytimes.com/2007/03/21/arts/design/21albr.html?_r=0)>

<sup>85</sup> Jennifer Schuessler, "ARTSBEAT; Court Approves Sale Of O'Keeffe Collection," *The New York Times*, 25 Apr. 2012, Web. 29 Mar. 2013.

<<http://query.nytimes.com/gst/fullpage.html?res=9804EED61039F936A15757C0A9649D8B63>>

<sup>86</sup> "Georgia O'Keeffe Foundation (Museum) v. Fisk University," *Office of the Attorney General and Reporter Robert E. Cooper, Jr.* n.p., n.d., Web. 29 Mar. 2013.

<<http://www.tn.gov/attorneygeneral/cases/fisk/fisk.htm>>

In 2010 the Davidson County Chancery Court in Nashville ruled that Fisk could go through with the 50 percent sale of its collection at \$30 million, but only if \$20 million of the proceeds went back into an endowment to support the art collection. The university appealed this ruling and stated that under these circumstances the sale would leave the school more financially vulnerable than before. Fisk's chairman, Robert W. Norton, commented about the ruling, "The order will result in an excessive endowment for the art collection while ignoring the need to endow Fisk's outstanding academic programs for which it has received national recognition."<sup>87</sup>

The Georgia O'Keeffe Museum in Santa Fe, New Mexico represents O'Keeffe's estate and also tried to stop the sale from going through. Saul Cohen, the president of the O'Keeffe Museum argued that it should take possession of the entire collection donated by O'Keeffe if Fisk violated any of the terms of her donation. O'Keeffe Museum officials also said that \$30 million was a bargain price for a 50 percent share in such an invaluable collection.<sup>88</sup> The O'Keeffe Museum sued to block the sale with Walton but eventually dropped the suit and negotiated a settlement in which it would buy *Radiator Building-Night, New York* (1927), a key O'Keeffe work in the collection for \$7.5 million.<sup>89</sup> Courts

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<sup>87</sup> Robin Pogrebin, "Fisk University Plans to Appeal Ruling on Stieglitz Art Sale," *The New York Times*, 1 Dec. 2010. Web. 22 Mar. 2013.  
< <http://artsbeat.blogs.nytimes.com/2010/12/01/fisk-university-plans-to-appeal-ruling-on-stieglitz-art-sale/>>

<sup>88</sup> Shaila Dewan, "Court Removes an Obstacle for Fisk University in Struggle Over Stieglitz Art Sale," *New York Times*, 15 July 2009. Web. 21 Mar. 2013  
< <http://artsbeat.blogs.nytimes.com/2009/07/15/court-removes-an-obstacle-for-fisk-university-in-struggle-over-stieglitz-art-sale/>>

<sup>89</sup> Theo Emery, "O'Keeffe Museum Asks Court to Stop Art-Sharing Deal by University in Tennessee," *New York Times*, 7 Oct. 2007. Web. 21 Mar 2013.  
< <http://www.nytimes.com/2007/10/17/arts/design/17fisk.html?pagewanted=print>>

also eventually ruled that The Georgia O’Keeffe Museum could not legally block the sale of an art collection donated to another institution by its namesake.<sup>90</sup>

In 2012 the 50 percent sale of the Stieglitz Collection to the Crystal Bridges Museum was approved first by the Davidson County Chancery Court in Nashville and then upheld by the Tennessee Supreme Court. The legal battle for Fisk’s Stieglitz Collection was over.

This case study depicts how the mission of a university conflicts with the mission of the university art museum. The main purpose of the university is to educate students, and thus the school board determined that it was in the best interest of the school to sell works of art from the permanent collection in order to finance other needs of the institution, even though that sale violated the donor’s wishes. Georgia O’Keeffe specifically donated the Stieglitz collection of art works to Fisk University in order to support the mission of educating black students in the United States. Now, after the partial sale of the collection to the Crystal Bridges museum, that very collection is under the control of Alice Walton. Prospective donors who are considering donating works of art to college art museums should be made well aware that their intent for their donation made to such a museum could instead be used for other purposes.

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<sup>90</sup> Shaila Dewan, “Court Removes an Obstacle for Fisk University in Struggle Over Stieglitz Art Sale,” *New York Times*, 15 July 2009. Web. 21 Mar. 2013

## CHAPTER 7

### THE LIVING ARTIST'S VIEW

After describing how the public, individual donors, and museums all have an invested interest in the practice of deaccessioning, there is yet another party that must often be considered when deaccessioning works of contemporary art. The fourth party that can strongly be affected by deaccessioning is the living artist. Additional issues arise when works made by living artists are involved and exchanged. Institutional collectors of contemporary art often have a responsibility to protect the living artist and the respectability of his or her career. The well-being of the living artist must be taken into consideration by the institution when deciding to buy or sell works by such artists.

When museums purchase or accept donations of works made by artists who are still working and producing works of art, they should take into consideration how the accession of such a work will affect the career of that artist. Specifically the museum must consider if they plan to keep that work in their collection for an extended period of time. If a museum wants to remove a work of art from its collection that was created by an artist whom is still living, they should consider how the deaccessioning of that work may negatively affect the career of that artist. The sale of contemporary art often has an effect on the market value of other works created by that same artist. For example, if an artist's work is removed from a museum's collection and sold at auction for a low price, the overall market value for the other works available by that same artist may decrease.

For an artist that has several works of art for sale simultaneously around the same time, a considerable amount of value stands to potentially be lost. Additionally, if an artist is trying to sell new works, and old works suddenly become available for sale, the artist ends up in competition with himself or herself. Instead of purchasing a new work, which the artist would receive pay for, one could then elect to purchase an old work by that same artist sold by a museum at auction. In this case the artist would not receive pay, and the money that he or she would have gained from the sale of his or her work instead goes to the museum. This may be beneficial to the museum in short term, but could be detrimental in the long term. If an artist is unable to sell work and thus gain the resources, which allow him or her to continue to produce work, that artist may be rendered unable to create future works. If artists cannot support their processes for creating works (and be able to purchase materials and studio space etc.) they will stop producing works and the entire contemporary art institution will eventually be rendered obsolete.

When a large and reputable museum sells a living artist's work, it can also be damaging to that artist's overall reputation, which can also stifle future opportunities for that artist to create work in the future. Institutions that focus primarily on modern and contemporary art need to establish and hold up strong positive relationships with living artists, otherwise they will develop a negative reputation among such artists. If contemporary artists feel threatened by museums, they could avoid selling their work to such institutions or even avoid loaning works for temporary exhibitions. However, it is beneficial for the artist to remain represented by a public institution rather than a private collection, because the museum offers more exposure and access to the work of the artist. In this way it is crucial for the development and future of the visual arts that artists and

museums works together and support each other. The representation by a public institution can serve as a marker that the artist's work is, in a consensus, culturally valuable on a grand scale. The purchase of one's work by a public institution is a milestone in that artist's career, and such purchases should not be taken lightly by museum curators and directors.

For these reasons several institutions have developed policies that restrict or forbid the deaccessioning of works by living artists. One prominent American museum that will not sell any work of art made by a living artist is The Whitney Museum of American Art in New York. The Whitney Museum, among others, acknowledges that the sale of a contemporary artist's work has the potential to damage that artist's career. This is especially important for museum's with mission statements that focus on modern and contemporary art.<sup>91</sup> However, there is another option for museums like the Whitney, which allows the institution to remove an unwanted work without offending or threatening the career of the living artist. This option includes the trading of one work by a particular artist with another, more desired work by that same artist. This option has been utilized by many museums such as The Museum of Modern Art in New York and the Metropolitan Museum of Art in New York. The deaccessioning policy of the Museum of Modern Art states that the museum will not sell any work of art made by a living artist unless the funds gained from that sale will be used directly to purchase a more desirable work by that same artist.<sup>92</sup>

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<sup>91</sup> "Collections Management Policy," *The Whitney Museum of American Art*, 13 Apr. 2009. Web. 23 Apr. 2013.

<[http://whitney.org/file\\_columns/0002/6226/collection\\_management\\_policy\\_final\\_4-13-09\\_.pdf](http://whitney.org/file_columns/0002/6226/collection_management_policy_final_4-13-09_.pdf)>

<sup>92</sup> "Collections Management Policy," *The Museum of Modern Art*, 5 Oct. 2010. Web.

An example of this type of trade happened in 2010 at The Metropolitan Museum of Art. The museum exchanged an oil on canvas painting by Pat Steir titled, *The Water Series: The Port Reflected at Night in the Waterfall*, for another painting by Steir. The new painting, *Sixteen Waterfalls of Dreams, Memories and Sentiment*, was confirmed by the artist as a more exemplary example of her body of work. According to an article in *The New York Times*, Steir said it was her own idea to exchange the paintings. The artist stated, “I wanted them to have a better painting than the one they had.”<sup>93</sup>

The AAMD Policy on Deaccessioning recognizes that when deaccessioning works by a living artist special considerations may be necessary. However, the policy offers no clear guidelines for doing so and remains very vague in its wording. The policy states, “In the case of a work of art by a living artist, consideration may be given to an exchange with the artist.” The use of the word *may* here instead of *must* allows museums to act in ways not in accordance with the best interest of the artist without inciting consequences from the professional organization. The AAMD policy also states, “When a work by a living artist is deaccessioned, consideration must be given to notifying the artist.”<sup>94</sup> Again, the wording used here renders these guidelines ineffectual as this statement only enforces that notifying the artist be considered, not that the artist actually be notified.

Because of the issues in deaccessioning works of art by living artists, the role of the individual is particularly important when it comes to the exhibition of contemporary works. Individual collectors are free to buy and sell works however and whenever they

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<[http://www.moma.org/docs/explore/CollectionsMgmtPolicyMoMA\\_Oct10.pdf](http://www.moma.org/docs/explore/CollectionsMgmtPolicyMoMA_Oct10.pdf)>

<sup>93</sup> Robin Pogrebin, “The Permanent Collection May Not Be So Permanent,” *The New York Times*, Jan. 26, 2011.

<[http://www.nytimes.com/2011/01/27/arts/design/27sell.html?\\_r=0](http://www.nytimes.com/2011/01/27/arts/design/27sell.html?_r=0)>

<sup>94</sup> “Standards and Practices: AAMD Policy on Deaccessioning,” *AAMD*, 9 June 2010. Web. 2 Mar. 2013. <<https://aamd.org/standards-and-practices>>

please, unlike museums that must adhere to certain guidelines. While the sale of contemporary works could have negative effects on the market value of other works by that artist, individuals do not necessarily hold the same responsibility to living artists as do professional art museums. In regards to contemporary art, individual and private collectors can take greater risks than institutions in acquiring new art because they can sell these works more freely. An individual is less likely to suffer reciprocations from the sale of an artist's work than are museums, which must remain entangled in relationships with such artists. Perhaps individual collectors should purchase works of art for private display and loan the works temporarily to museums to exhibit for the public rather than purchase and donate works entirely to the museum.

Museums must thoroughly consider all possible conditions that could arise from the accessioning of contemporary works, especially since contemporary works vary so widely in material and are often experimental. Issues that could put considerable strain on a museum as a result of the procurement of contemporary works include, storage costs, unpredictable conservation problems from unconventional materials, and the change in market value for a particular artist for any variety of reasons. Because contemporary art is by definition new art, its long-term affect and level of importance to any given culture is likely to change even within the lifetime of the artist.



## THE SPEED MUSEUM & PETAH COYNE

The Speed Art Museum in Louisville Kentucky previously owned three large-scale, mixed-media sculptural works made by the American artist Petah Coyne. Because Petah Coyne is a lesser known artist than the modernist artists previously discussed, a brief summary of her biographical information will now be provided. Petah Coyne is an American artist who was born in Oklahoma City in 1953. She attended Kent State University and the Art Academy of Cincinnati in Ohio. Coyne has been exhibiting works since the early 1980s and is currently still working. Her first major solo exhibition took place at The Institute for Art and Urban Resources in the Long Island City neighborhood of New York City, which is now known as MoMA P.S.1 and is owned and run by the Museum of Modern Art in New York as one of the most influential contemporary art spaces in the United States. Coyne has been making mixed-media sculptures now for over three decades, although her “mixed-media” materials have changed somewhat. Most of her early sculptures (including those in the Speed Museum’s collection) were black and covered in coal dust to retain their blackness. She has since expanded her technique to create white works and muted colored works, as well. While she has always used wax to some degree, additional materials in her earlier works included recycled car parts and other found metals, clay, and hair. Her newer works incorporate artificial flowers, a variety of fabricated birds, taxidermy birds, fabric, and ribbon among other

things. Coyne's work is often described as appearing Victorian or Baroque with an abundance of decoration developed with painstaking craftsmanship and attention to detail. One such explanation of Coyne's work appeared in the exhibition catalogue accompanying the retrospective of her work at the Museum of Contemporary Art in Massachusetts. The catalogue states:

Unlike many contemporary artists who focus on social or media-related issues, Petah Coyne imbues her work with a magical quality to evoke intensely personal associations. Her sculptures convey an inherent tension between vulnerability and aggression, innocence and seduction, beauty and decadence, and, ultimately, life and death. Coyne's work seems Victorian in its combination of an overloaded refinement with a distinctly decadent and morbid undercurrent.<sup>95</sup>

Coyne's work is held in numerous public collections in the United States including; (in New York) the Whitney Museum of American Art, the Brooklyn Museum of Art, The Museum of Modern Art, The Metropolitan Museum of Art and the Guggenheim Museum of Art, along with the Museum of Contemporary Art in San Diego and Miami, and the National Museum of Women in the Arts in Washington, D.C. among many others.<sup>96</sup>

In 1990 the Speed museum purchased and acquired its first Coyne sculpture. In 1996 and additional two Coyne sculptures were donated to the Museum anonymously. However, as the museum transitioned and experienced a change in directors, the staff decided to nominate the three Coyne sculptures for deaccessioning. The Speed Art Museum has been reevaluating its collection over the past several years in order to

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<sup>95</sup> "Petah Coyne: Everything that Rises Must Converge," *Mass MoCA*. Ex. cat. (2011). <[http://www.massmocashopping.org/items/coyne\\_catalog.php](http://www.massmocashopping.org/items/coyne_catalog.php)>

<sup>96</sup> "Public Collections," *Petah Coyne, n.d.*, Web. 12 Mar. 2013 <<http://www.petahcoyne.org/>>

realign with its mission statement. The museum describes its ongoing process of deaccessioning by the following (which was posted on its website in 2012):

Since 2009, the director and curators at the Speed Art Museum have been conducting a systematic review of the museum's collection. In consultation with several nationally and internationally respected scholars and specialists, we have been physically examining, evaluating, and assessing the approximately 14,000 objects owned by the museum. This process is shedding new light on the significance of key pieces, leading to the reattribution of works, revealing collection strengths not previously fully recognized, and yielding new perspectives on the history and development of the museum's collection. The Speed has embarked on its unprecedented analysis to identify key areas for collection growth and refinement, with the goal of strengthening the museum's holdings.

As part of this process, the Speed has also identified works that are in poor condition, are of lesser quality, have been discovered to have been modified, or do not serve the museum's mission of bringing great art and people together. In the coming years, these works will be removed formally from the museum's collection in accordance with the Speed's Deaccession Policy. Deaccessioned works will be sold at public auction at Christie's or through alternative outlets, as outlined in the policy (See Appendix 1). Funds obtained from the sale of deaccessioned works will be used for the acquisition of new works of art to further strengthen the collection.<sup>97</sup>

The three Coyne sculptures owned by the Speed Art Museum ranged in height from twenty feet tall to twelve and a half feet tall. These large works raised a major issue for this particular museum because of the amount of space they took up both in storage and on display. These three works were created in succession in 1989 and were titled accordingly; *Untitled #654*, *Untitled #655*, and *Untitled #656*. However, the Speed Museum first acquired *Untitled #655* in 1990 and did not accession the additional two sculptures *Untitled #654*, *Untitled #656* until 1996. The first accessioned piece was a gift

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<sup>97</sup> "Collection Refinement and Deaccessioning," *The Speed Art Museum*, n.p., n.d., Web. 20 Feb. 2013.

<[http://www.speedmuseum.org/Collection\\_Refinement\\_and\\_Deaccessioning.html](http://www.speedmuseum.org/Collection_Refinement_and_Deaccessioning.html)>

of the New Art Collectors. The New Art Collectors is a group of museum members who participate in the selection process of choosing new works for the museum to purchase. Members in the New Art Collectors group have the option to accompany museum staff on trips to other museums, galleries, and private collections around the world in order to decide which works of art the museum should be interested in buying. The members also contribute funding to allow for the purchase of chosen works. In short, the first Petah Coyne sculpture acquired by the Speed Museum in 1990 was purchased by the New Art Collectors group as a collaboration between members of the museum, and curator of contemporary art, and the museum board. The other two sculptures were later donated to the museum by Coyne, although public records maintain the works were donated by an anonymous donor.<sup>98</sup>

Because of the large amount of space needed to exhibit these works and the confined space available for exhibitions at this particular regional museum, these works were rarely exhibited. There was only one room in the museum with ceilings high enough to hang these works. This particular room was fittingly referred to as the sculpture court and was located near the center of the museum's facility. However, this space was also the main area utilized for social gatherings and museum events. With the sculptures hanging in this space, the room was not able to be simultaneously utilized for events, which often brought in money for the museum either through a fee charged by the museum for the use of the space by a private party or by funds raised during a museum-sponsored event.

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<sup>98</sup> "Collection Refinement and Deaccessioning," The Speed Art Museum, n.p., n.d., Web 18 Apr. 2013.  
<[http://www.speedmuseum.org/docs/Deaccessioned\\_Works\\_September\\_2012\\_list.pdf](http://www.speedmuseum.org/docs/Deaccessioned_Works_September_2012_list.pdf)>

When these sculptures were not on display at the museum, they had to be stored in an off-site facility. In order to be stored properly to minimize damage to the works these sculptures had to be hung from the ceiling to prevent the bottoms from touching the ground floor. The storage space for these sculptures was thus required to be nearly thirty feet tall and cost the museum over seven thousand dollars per year. From 1990 to 2012 the museum spent a total of around \$154 thousand to store these three works. Furthermore, transporting the works from the storage facility to the museum cost an additional fee and also posed a threat to the safety of the works. Moreover, in order to maintain the calculated deep black appearance of the sculptures, coal dust had to be periodically added to the surfaces by museum staff.

These implications relating to the large size and medium of the works prompted the Speed Museum to begin the process of deaccessioning these works. While no other public institution in Kentucky owns works by Petah Coyne, some of her works are owned by private collectors in the state. One such Kentucky collector is Rev. Alfred R. Shands III. Al Shands is a retired Episcopal priest as well as an author, film producer, philanthropist and art collector.<sup>99</sup> In his personal collection Shands has three large-scale sculptures by Petah Coyne, not vastly unlike those previously owned by the Speed Museum. In the past, Shands has made several sizable donations to the Speed Museum and remains an active museum member. He has previously loaned works in his private collection to be temporarily exhibited by the museum and has designated the Speed Museum in his will as the future recipient of many of his works. It is probable that one reason the museum did not feel it imperative to keep its three Coyne works in the

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<sup>99</sup> “Milner Award,” *Kentucky Arts Council*, Web. 12 Mar. 2013.  
<[http://artscouncil.ky.gov/KentuckyArt/GA10\\_milner.htm](http://artscouncil.ky.gov/KentuckyArt/GA10_milner.htm)>

collection is because it has fairly easy accessibility to Coyne sculptures owned by Shands. These sculptures differ from those owned by the Speed in that they are predominantly white instead of black and are not covered in coal dust. They also are embedded with artificial flowers and more closely resemble Coyne's most popular works to date.

According to the AAMD's policy on deaccessioning, when removing works of art from a collection that were made by an artist still living, the museum should notify that artist before any final decisions are made. While the policy does not require that the museum receive approval from that artist, inappropriate disposal of the work could adversely affect both the museum and the artist, and it is wise to take into consideration the implications of such a deaccessioning on the artist's career.

The Speed Museum followed this guideline and involved the artist in the process of determining what to do with the three sculptures. A joint decision was made to find another public institution that had more suitable storage and exhibition space to accommodate the works and that would benefit from having such works in its collection. The museum did not want to sell these works through an open sale with an auction house because, at the time, the physical difficulties presented by the work and the expected market value for Coyne's early sculptural works would put the evaluation of her career at risk and be neither a beneficial transaction for the museum or the artist. If the works were to sell for a low price, other works by Coyne could potentially drop in value, as well.

In 2012 the Speed Museum gave the three Coyne sculptures to the Art Museum of Miami. In this particular case, the Speed museum did not gain any money to purchase

additional works for the collection through the deaccessioning of this art work. However, the transfer of the sculptures to the Miami Museum of Art strengthened the relationship between the two museums, and such a relationship could serve to benefit the Speed Museum in the future. Additionally, the Speed Museum will save a considerable amount of money over time from the price of storage it would have had to pay if it were to retain the sculptures.

This case serves as an example to illustrate some of the important issues common in the deaccessioning process in relation to works of art created by an artist whom is still living. The staff at the Speed Museum considered the artist's career and worked alongside her to come up with a solution to satisfy the needs of both parties. The artist's work remains in a credible public institution, and that work can be more effectively exhibited in its new location.

## CONCLUSION

In the case of the Speed Museum and the deaccessioning of three sculptural works by Petah Coyne, museum employees were faced with a difficult dilemma. The cost of storing the three large works put a considerable strain on the budget. However, when the sculptures were accessioned it should have been taken into consideration that they would need a large amount of storage space. Perhaps museum employees did not adequately and realistically estimate the storage costs of the works before they agreed to accession them or the cost of such storage space surpassed that cost which was expected. It is also debatable whether or not the museum should have accepted these works into its collection in the first place, knowing that exhibiting such works would be difficult due to the limited size of the exhibition space in the museum.

Because the present critical opinion perceives Coyne's later works to be more appealing, these early sculptures were deemed secondary examples. However, as John Canaday wrote in 1971, the removal of works from a collection reflects current tastes that are likely to change in time.<sup>100</sup> Tastes in art tend to change over time, especially after an artist has passed away, and it could be true that in the future Coyne's earlier works will become more meaningful and desirable than those made in the last decade that are more

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<sup>100</sup> John Canaday, "Very Quiet and Very Dangerous," *New York Times*, 27 Feb (1972): D21  
<<http://select.nytimes.com/gst/abstract.html?res=F20C16FF3F5E127A93C5AB1789D85F468785F9>>



popular currently. There is always an inherent risk involved in collecting contemporary art, as it has not yet had the chance to stand the test of time. Therefore, deaccessioning works of contemporary art poses a similar risk, as perceptions of works (especially experimental works like Coyne's) are bound to change.

In relation to taking the artist's best interests into consideration, the Speed Museum took the appropriate steps. The artist was informed and involved in the relocation of the three works, and the works were not harmed but carefully cared for and transferred to another museum with more space to accommodate the sculptures. Although public access to the works shifted locations, all three works remained in public collections rather than having been sold into private hands.

The donor was also taken into consideration to a degree here because the donor of two of the works was the artist herself. However, in the case of the first Coyne work that was accessioned into the Speed's collection and chosen by the New Art Collectors group, it is unclear if these members were fully informed and consulted in the decision to deaccession the sculpture. The members of this group collectively decided to purchase the sculpture for the museum and individually contributed both financially and intellectually to that decision. In comparison to the other cases discussed in this paper, the Speed case is the only one that did not elicit any legal action from the public or donors. This lack of adverse action indicates that the members of the New Art Collectors group did, at least reluctantly, agree with the decision to deaccession Coyne's works.

Hopefully the five cases discussed in this paper have illuminated some of the main issues in museum deaccessioning of modern and contemporary art. As the previous cases discussed have indicated, the viewpoints and best interests of each of the multiple

parties involved often conflict with each other. The process of deaccessioning works of art from museum collections is very complex and filled with nuance. The public expects to have access to public works of art. Donors expect that museums abide by the agreements made at the time of donation and that their personal intentions for the works be honored. Artists expect museums to protect the works they have created and to ensure that their works survive for future generations to view. Artists also expect that when a work of theirs is accessioned into the collection of a public institution, that institution will support a positive reputation of that work and of the artist's career, so they he or she retains the ability to continue to produce more works.

Each museum should have a thorough and detailed deaccessioning policy available in order to assist staff members in making difficult decisions when the desire to deaccession works arises. This policy should determine whether or not works by living artists should be removed at all from the collection. If the museum does not want to strictly prohibit the deaccessioning of works by living artists, guidelines on how to affectively do so without damaging the reputation of the artist should be developed.

In addition to a deaccessioning plan, each museum should have an updated accessioning plan that specifies what types of donations to accept into the collection. The accessioning policy should designate whether or not works of art with stipulations that limit how and if they can be sold in the future can be accepted into the museum's collection. Museums should not accept works of art that they do not have the resources to care for or the space to store and exhibit. Additionally, museums should not accept gifts that do not support the mission of the institution. A thorough and periodically

revised accessioning policy, when followed, has the potential to significantly minimize the difficulties for museums when of deaccessioning works in the future.

Each of the deaccessioning cases discussed herein point to the types of issues that still need to be addressed and resolved by the professional museum community. For example, the relationships between college art museums and their parent organizations should be reevaluated, and the role of the law and the courts should be more clearly determined in relationship to their implications in museum deaccessioning. Additionally, the extent to which museums must honor donor intent should be considered and standardized and the careers of living artists more thoroughly taken into account during processes of accessioning and deaccessioning.

In May of 2012 the Speed Art Museum in Louisville, Kentucky deaccessioned three large sculptural works made by the artist Petah Coyne. As part of a larger overall review of its collections, it presented a challenge to the Speed to do this adjustment responsibly, considering the numerous factors involved in any deaccessioning process, and particularly one involving a living artist. My research has determined that the Speed Museum did indeed carefully, with due diligence and considerable creative thought, arrive at an appropriate and successful conclusion for the transfer of the Petah Coyne work from its collection.

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## APPENDIX 1

### THE SPEED ART MUSEUM DEACCESSIONING POLICY

The Speed Art Museum Deaccessioning Policy  
Excerpted from the Collections Management Policy  
approved by the Board of Trustees February 21, 2011

Deaccessioning is the formal removal of a work from a museum's permanent art collection. It is normally followed by disposition of the work by sale or exchange. Deaccessioning is an ongoing professional responsibility of the museum, pursued for programmatic reasons of collection refinement. The museum's policy is to conform its deaccessioning process to the standards of the Association of Art Museum Directors as set forth in its publication, *Professional Practices in Art Museums*. Therefore, the funds received from the disposal of a deaccessioned work from the Speed Art Museum's collection shall not be used for operations or capital expenses. Such funds, including any earnings and appreciation thereon, may be used only for the acquisition of works in a manner consistent with the museum's policy on the use of restricted acquisition funds. [See also *Acquisitions Procedures*, Number 3] In keeping with AAMD recommendations such funds, including any earnings and appreciation, are tracked separately from other acquisition funds.

The museum maintains a very cautious attitude toward deaccessioning. However, under certain circumstances, as outlined below, it is appropriate for a work to become a candidate for deaccessioning.

The deaccession of works of art from the permanent collections of the Speed Art Museum must have the recommendation of the pertinent curator, the Chief Curator, and the Director. Furthermore, the recommendation must be approved by the Committee and by the Board of Trustees. Recommendations to deaccession works from the collections will be made by the Director or Chief Curator with the Director's approval to the Collections Committee. The Committee may choose not to follow the recommendations, but it may not deaccession works without the concurrence of the Director and the approval of the Board of Trustees. The following are criteria for deaccessioning and steps for the actual withdrawal and disposal.

## Criteria

Objects may be withdrawn from the permanent collection for any of the following reasons:

1. The object is deemed to be inferior or insignificant in aesthetic quality.
  2. The object is not relevant or useful to the purposes of the Museum.
  3. A better or comparable example is in the collection or may be obtained through whole or partial exchange of the object in question.
  4. The object is an exact or near duplicate of another in the collection.
  5. The condition of the object is such that repairs are not feasible or will render the object essentially false.
  6. The object is a forgery or reproduction.
  7. The Museum is unable to preserve or protect the object properly.
  8. The Museum's possession of the item is not legitimate, i.e. the work may have been stolen or illegally exported or imported in violation of applicable state and/or federal laws.
  9. The Museum's makes a fundamental change in its long-term collections policy, deciding that specific categories of art will no longer be collected by the Museum.
- Process and Guidelines for Deaccessioning

The deaccessioning process shall be as follows:

1. A written recommendation for deaccessioning is made by the Director or Chief Curator with the Director's concurrence. This recommendation is reviewed by the Registrar, Education Department, and Development Department. The written recommendation is signed by each department head upon completion of the following:
  - a. The Registrar, with advice of counsel if needed, determines legal title and any restrictions accompanying the object and advises the Director and Chief Curator on the matter.
  - b. The Education Department will review the object for its possible educational uses and advise the Director and Chief Curator.
  - c. The Development Department will review the object's donor history and advise the Director on any complications that could arise with current potential museum patrons should the work be deaccessioned at this time.
2. Outside, objective expert opinion and advice should be secured to assist the staff in its deliberations. Two outside opinions should be sought for works the value of which are estimated to be over \$100,000. Should independent expert opinion question a work's deaccessioning, a one year period of study and review along with obtaining an additional outside expert opinion will take place prior to further deaccessioning consideration.
3. For any object estimated by the Museum to be worth less than \$100,000 or any object for which the Museum is unable to estimate the value from staff research and knowledge, the written appraisal of at least one objective outside expert shall be

- obtained.
4. The Director or Chief Curator, with the Director's concurrence, will present a written proposal for deaccessioning to the Collections Committee for its approval.
  5. The Committee will vote on the proposed deaccession. If the Committee votes to deaccession, the Committee Chair will sign off on the proposal and the approval of the full Board of Trustees will be sought at the next Board meeting. The Board will vote on the proposed deaccession. If the Board votes to deaccession, the Chairman of the Board of Trustees will sign off on the proposal.
  6. If not already photographed, the object will be photographed for the museum's records before disposal.
  7. After final approval by the Committee, the museum will seek to communicate with a donor or the donor's immediate successors about the disposition of a previously donated work as a courtesy.
  8. The object is disposed of in the manner recommended to and approved by the Collections Committee and Board of Trustees. It may be offered to another museum or public institution as a restricted or unrestricted gift, sold at auction, traded for another work of art of higher quality, or sold through a reputable, established dealer. In some special cases an object may be offered as a gift back to the culturally defined group whose ancestors originally produced the work (e.g. Native American group). Except under exceptional circumstances, the name of the Speed Art Museum will be published in the auction catalogue if the work is sold at auction. Except under special circumstances in which the trustees determine otherwise the accession number will be left on the object to indicate its history.
  9. For objects valued at \$1,000 or less, the museum may elect to sell a work through its own or an outside retail sales operation.
  10. In extreme cases where no outside repository can be found for an object, where it cannot be sold due to lack of monetary value, or where an object's condition is seriously unstable or degraded, the work can be destroyed by the museum. Such destruction will be photographically documented by the museum for archival purposes.
  11. If a work has been determined to be a fake or reproduction, extra consideration should be given to the work's removal from the collection since a fake's or reproduction's appearance on the art market may prove problematic and the retention of a fake in the collection may have an educational value. In any case, a forgery should be indelibly marked as such. A reproduction shall be indelibly marked as such and shall be so described in documentation supplied to the selling agent and buyer.
  12. When a work of art by a living artist is deaccessioned, consideration may be given to notifying the artist.
  13. Upon disposal of the object, all monies realized and/or objects acquired in exchange will be reported to the Collections Committee and the Board of Trustees.
  14. The object(s) purchased with the income of the sale of deaccessioned objects that had been gifts to the museum or purchased with restricted non-endowment funds will retain the same credit line as the original gifted or purchased object, with the addition, "by exchange." Except in extraordinary cases, the newly purchased works will in the same general art historical area as the deaccessioned work.

15. If the deaccessioned work of art was acquired by purchase through an endowed acquisitions fund that is still extant the proceeds from the deaccessioned work's sale will be returned to the appropriate fund and used for future purchases in accordance with any restrictions that govern that particular fund.
16. No member of the Museum's Board of Trustees, Collections Committee, staff, or those whose association with the Museum might give them advantage in acquiring the work, shall acquire directly or indirectly a work deaccessioned by the Museum, or otherwise benefit from its sale or trade.
17. Complete and accurate records, both of deliberations resulting in disposal of collection items, e.g. written expert opinions and appraisals, board and committee minutes, and actions to accomplish disposal, e.g. correspondence, agreements, contracts, title transfers, bills of sale, receipts, etc., shall be maintained on each object removed from the collection. Such records, including photographs of each item, shall be maintained permanently by the Museum's Registrar and made a part of the history of each item affected.
18. Deaccessioning and disposal must comply with all applicable local, state, and U.S. federal laws in force at the time, and must observe any obligations incurred in connection with the acquisition of the work by the Museum.

This policy can be found online from the Speed Museum's website at  
[http://www.speedmuseum.org/docs/Deaccessioning\\_Policy.pdf](http://www.speedmuseum.org/docs/Deaccessioning_Policy.pdf)

## CURRICULUM VITAE

NAME: Megan Kociscak

ADDRESS: megankociscak@gmail.com  
6980 137<sup>th</sup> Avenue NW  
Ramsey, MN 55303

DOB: Fort Irwin, California – January 11, 1987

EDUCATION: 

- M.A., Critical & Curatorial Studies
- Graduate Certificate in Women's & Gender Studies

University of Louisville  
2010-2013

- B.F.A., Photography/Studio Art

College of Visual Arts  
2005-2009

Study Abroad: New Zealand  
2003-2004

### INTERNSHIPS & TRAINING:

Cressman Center for Visual Arts: Exhibition Assistant. KY. 2013  
Speed Art Museum: Curatorial Intern for deaccessioning. KY. 2012  
Graduate Teaching Assistant: Introduction to Art. KY. 2012  
Speed Art Museum: Curatorial Intern for contemporary art. KY. 2011  
Teaching Assistant to Dr. Fulton: Mod. Mexican Visual Culture. 2011  
Louisville Visual Arts Association: Special Events Intern. KY. 2011  
Kentucky Museum of Art & Craft: Volunteer. KY. 2011  
Walker Art Center: Volunteer Tour Guide. Minneapolis. 2009-2010  
Midway Contemporary Art: Volunteer. Minneapolis. 2009-2010  
Photography Assistant to Evan Baden. Minneapolis. 2008-2009  
CVA: Photography Lab Assistant. Saint Paul. 2006-2009  
CVA: Gallery Attendant. Saint Paul. 2006-2009

AWARDS: Hite Institute Graduate Teaching Assistantship 2012-2013  
Hite Institute Award Scholarship 2010-2012  
CVA Merit Scholarship Awards 2005-2009

PROFESSIONAL SOCIETIES: American Association of Museums  
College Art Association  
Association of Academic Galleries and Museums

EXHIBITIONS: *Culture, Cultura*. Dragon King's Daughter. KY. 2012.  
*Fire & Ice*. Louisville Visual Arts Association. KY. 2012  
*Spots of Time*. 930 Gallery. Louisville, KY. 2011.  
*Foot in the Door*. Minneapolis Institute of Arts. MN. 2010.  
*Ten Second Film Festival*. Minneapolis, MN. 2009.  
*CVA Alumni Exhibition*. College of Visual Arts Gallery. MN. 2009.  
*Inhale*. A to Z Gallery. Saint Paul, MN. 2009.  
*Exhale*. Senior Exhibition. College of Visual Arts Gallery. MN. 2009  
*Obsession*. College of Visual Arts Gallery. MN. 2008.  
Merit Scholarship Exhibition. College of Visual Arts Gallery. 2008.  
Merit Scholarship Exhibition. College of Visual Arts Gallery. 2007.  
Merit Scholarship Exhibition. College of Visual Arts Gallery. 2006.

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