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Scholarly debate will be stifled after Knoedler

Abstract Expressionism experts forced to watch what they write and say

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Freedman's lawyer argued that AbEx artists like Jackson Pollock were not given to good record-keeping. Photo: Arnold Newman/Getty Images

The case against the now-defunct Knoedler gallery and its former director Ann Freedman, accused of knowingly selling inauthentic works by some of the greatest Abstract Expressionist painters, has riveted the New York art world. It has also ensnared leading art historians—many of whom gave testimony during the trial or were cited in court papers—who had been asked to give, or who were said to have given, their opinion on the works

that turned out to be fakes.

Never before has the business of art authentication been so closely examined under oath. Never before have experts, and the catalogues raisonnés they produce, been shown to be so essential—or so vulnerable to lawsuits and public criticism.

In the wake of the high-profile trial, many say that the implications for scholarly debate are grave. There are fears that experts will retreat from authentication and that pressure will be put on those preparing catalogues raisonnés, the authoritative lists of known works by artists that are traditionally compiled by independent art historians. “If we can no longer define what the extent of the body of work is, we can no longer determine the artist’s achievement,” says Robert Storr, the former dean of the Yale University School of Art.

The trial showed the extent to which Ann Freedman sought scholarly backing when selling the works, which did not have watertight provenance. “At the crux of the Knoedler case is the abiding power of the catalogue raisonné,” says David Anfam, one of 12 experts cited by Freedman as having “viewed” a work purportedly by Rothko that turned out to be fake.

As authentication boards shut down and art historians go quiet, inclusion in a catalogue raisonné is becoming the only reliable way to affirm authenticity. Catalogues of works on paper by Sam Francis, Mark Rothko and Robert Motherwell are under way; all three artists were imitated by the painter of the Knoedler works, Pei Shen Qian. Meanwhile, the first catalogues raisonnés of Joan Mitchell, Ad Reinhardt, Helen Frankenthaler and Willem de Kooning are being prepared.

“The Knoedler case is almost certain to have a gagging effect at the workaday level on anyone preparing catalogues raisonnés,” says Anfam, the author of Rothko’s catalogue. “If you fear that perfectly honest casual remarks may be twisted to bear upon authenticity in a way that they were never intended to, then this alone will tend to silence scholarly discourse and debate.”

In 1995, a collector sued the Pollock-Krasner Foundation because he believed that a work he owned should be included in the artist’s catalogue raisonné. (The case against the foundation was dismissed.) Some worry that such cases will become more common. One board member of a major artist’s foundation predicts that catalogues will become the focus of lawsuits because collectors may sue if works are excluded.

The risks for authenticators have risen along with prices. Two very similar works by Rothko sold for \$3.6m at Sotheby’s in 1989 and for \$7.2m at Christie’s in 2003 (both were records at the time). In February, the hedge-fund manager Ken Griffin reportedly paid \$500m in a private sale for two works by De Kooning and Pollock.

With prices at these levels, litigation can be cost-effective. Alex Ross, the managing editor of the Isamu Noguchi catalogue raisonné, says: “The good news/bad news for us is that Noguchi isn’t making a hundred million dollars at auction... if it’s Pollock or Rothko, you can just see people doing the calculations.”

Some believe that the definitive catalogue has already fallen victim to these pressures. “People are saying, ‘Well, it’s a work in progress’... you can feel the backpedalling happening,” says Richard Grant, the director of the Richard Diebenkorn Foundation, which is due to publish the artist’s definitive catalogue in May. Both the Noguchi and Roy Lichtenstein catalogues raisonnés are now available online only (presumably so that they are easy to amend). Other foundations promise forthcoming volumes, implying that nothing is finished. “Maybe the traditional catalogue raisonné will turn into something else... but what that will be remains to be seen,” says Katy Rogers, the president of the Catalogue Raisonné Scholarship Association.

The scholar Stephen Foster has intentionally avoided labelling his comprehensive study of Franz Kline’s work as a catalogue raisonné. “Increasingly, doing a catalogue raisonné has become a clerk’s job, which is not something I want to spend my time doing,” Foster says. In his opinion, catalogues raisonnés have become tighter, less academic and less interesting because everyone needs to play it safe.

The lawyer Peter Stern of the firm McLaughlin & Stern says that he is “not aware of any case where a reputable expert has lost [a lawsuit] in the US”. But he says that “many more experts have been threatened with lawsuits than you might think”. He would advise scholars to avoid offering unsolicited opinions.

Nevertheless, some maintain that speaking up is worth the risk. “It will deter people who are trying to push the fakes across, and it is a way of letting your colleagues know that there is a problem,” says Jack Flam, the president of the Dedalus Foundation, which represents the Motherwell estate.

Communication among experts is vital to ensure that our understanding of 20th-century art continues to grow. Robert Storr says that if René Magritte’s vache period paintings—which the Surrealist intentionally painted in an uncharacteristic style—were discovered today, an open discussion of their merits would be impossible. “Once upon a time, one could look at a work of art discovered in someone’s attic and say, ‘This could be the beginning of something’,” he says.

How easy is it to fake the Abstract Expressionists?

The Chinese artist Pei Shen Qian singlehandedly copied a wide array of Abstract Expressionist artists, including Mark Rothko, Jackson Pollock and Robert Motherwell, producing canvases that were sold by the Knoedler gallery as the real thing. What made the paintings so convincing?

- 1. Modern materials:** some of the materials that the Abstract Expressionists used remained commercially available in the 1990s and early 2000s. The FBI alleges that Qian used masonite, a favourite material of the New York School, from old furniture bought at flea markets. Meanwhile, sophisticated forensic technologies had not been developed when the first Knoedler fakes surfaced.
- 2. Unreliable records:** the former Knoedler director Ann Freedman's lawyer told the jury in the trial in February that the Abstract Expressionists were a hard-drinking, "messy, unpredictable" group. "Keeping careful records was not the first thing on their minds," he said.
- 3. A good story:** the Knoedler fakes came with an elaborate backstory that involved an anonymous Swiss collector and the gallery assistant David Herbert. Samuel Sachs, the president of the Pollock-Krasner Foundation, called the tale "almost as clever as the fakes themselves".
- 4. Technical virtuosity:** some say it is possible for a skilled painter to imitate the Abstract Expressionists' signature styles. (After all, every famous painter had a bad day.) Qian, who studied at the Art Students League in New York in the 1980s, had books on the movement and auction catalogues in his Queens apartment, according to the FBI.
- 5. Lots of material:** many of the Abstract Expressionists were prolific, which makes the discovery of a previously unknown work all the more conceivable. *J.H.*

Draft law could protect scholars

Could new legislation convince art authenticators to speak up? The New York State Legislature is due to reconsider a bill that seeks to protect art experts from what it describes as "frivolous" lawsuits. The proposed legislation aims to make owners, auctioneers and dealers think twice before bringing lawsuits against art historians simply because they do not like their opinions. The bill would enable experts to recover their legal fees (as well as those of expert witnesses) if they win—but only if a judge allows it. The bill rolls back some protections offered by the original proposal in 2014, including a guarantee that victorious authenticators could recover their fees. The new version passed by a vote of 61 to one in the Senate in June 2015 but failed to pass the State Assembly. Both bodies are expected to reconsider the bill within the next five months.

