

■ ■ ■ ■

2008 AHAA-sponsored CAA Sessions

Scholarly Session: The Impermanent Collection

Chairs: Laura Katzman, James Madison University, and Vivien Green Fryd, Vanderbilt University.

Laura explained in her opening remarks that in recent years a number of venerable educational institutions across the United States have faced severe financial challenges to staying viable and solvent for the future. To address such problems, the boards of these institutions are turning increasingly to their art collections as financial assets, using the proceeds from sales for operating budgets or for unrelated projects. Several of these collections are housed in museums at small liberal arts or specialized colleges—places whose missions are somewhat different from those at free-standing museums, as their main constituency is the college community even if they do serve a larger public. Many of the most visible concern American art collections—a fact connected in part to the inflated market for American paintings over the last thirty years. Major players in these controversies include Alice Walton, the Wal-Mart heiress and founder of the Crystal Bridges Museum of American Art in Bentonville, Arkansas, as well as prominent museum directors, curators, and art professors, whose activities have involved the brokering of behind-the-scenes deals that bypass the greater transparency of auction sales. Ironically, or paradoxically, artworks that were originally collected for educational purposes (not for investment) are in many cases being sold off for monies that are then channeled back into the educational (or liberal arts) mission of the institution. Laura made it clear that the chairs of the session did not intend to criticize de-accessioning, but instead to open up an arena for discussion of the larger issues raised by boards who have leveraged the art collections of their respective institutions to boost their operating budgets. She also stated that the chairs intended to focus the roundtable discussion on academic art museums and a public library (non-municipal and state museums) and not on other kinds of institutions in which de-accessioning also takes place. Finally, Laura explained that the chairs had made an effort to find a currently employed museum professional to present a paper, but found none who felt they could commit to speaking about such a sensitive topic in a professional forum. However, at the actual session, several museum professionals in the audience, whom the session chairs had not contacted, said that they would have been happy to participate.

Laura Katzman discussed the case of the Maier Museum of Art at Randolph College, explaining that in September 2007 the Board of Trustees of this school (formerly Randolph-Macon Woman's College) voted to sell at auction four paintings from the college's museum, which houses one of the pre-eminent collections of American art in the U.S. This decision, apparently intended to boost the college's financial resources in an effort to lower the annual spending rate from the endowment, set off a firestorm of controversy. Indeed, the case has propelled the college onto the national stage, attracting extensive press and capturing the attention of the art, museum, and auction house communities, those in academia and higher education, and even the general public concerned with questions of public trust. Swift and firm condemnation came from professional organizations such as the College Art Association, the Association of Art Museum Directors, and the Virginia Association of Museums. Prominent academics and museum curators have urged the college's President, John Klein, and its Board of Trustees to reverse the decision. The proposed sale, preceeded by more than two years of wide-ranging, passionate, and frequently contentious discussion, prompted three resignations from Randolph's Art Department and from Maier Museum, including Laura's. It has caused many of the Maier's donors and members and scores of the college's alumnae to withdraw financial support and to change estate plans. It has caused the non-profit group Preserve Education Choice (PEC) to file its fourth lawsuit against the college, this one aimed to prevent the sale of paintings from the Maier's permanent collection. Laura contended that the Maier Museum situation constitutes a rich, multifaceted case study that raises critical questions and implications for American art museums, and for academic art museums in particular. It also is a compelling cautionary tale of the vulnerability that college and university art museums, indeed academic museums of any

discipline, face when their parent institutions are financially challenged and turn to their collections to solve their fiscal problems.

Laura explained that two key factors are responsible for the intense response unique to the Maier Museum: the special nature of its collection and the purposeful way it was crafted. She explained that the collection began in 1907 with a focus on American art and the intention of including contemporary art for a well-rounded liberal arts education. Both the college and Lynchburg communities raised monies for acquisitions for a permanent collection. Laura passionately argued that the sale of artworks would damage the college's cultural patrimony, as the history of the collection exactly parallels the history of the college and is thus inextricably linked to its mission; that Randolph college's actions violate the Maier Museum's own administration-approved operational policies, which state that de-accessioning activity must originate from the museum director; that the college officials defied best museum practices in the manner in which they removed paintings from the Maier in order to get them to Christie's auction house in time for their November sale; and that the Randolph College Board has violated the professional code of ethics of the American Association of Museums because their plan is to use the proceeds from the art sale not to enrich the art collection but rather to boost the general operating endowment of \$153 million and to endow the salary of a future museum director.

Laura ended by raising a series of questions: How do private property rights stand up against public rights? How is ownership of artworks defined at an academic art museum where the faculty control or "own" the curriculum, according to faculty handbooks and American Association of University Professors (AAUP) guidelines? How much autonomy should academic art museums have from their parent institutions? How does the recent controversial de-accessioning activity affect the increasing professionalization of academic art museums?

Vivien Green Fryd summarized the events that have occurred with the so-called Stieglitz collection at Fisk University, Nashville, Tennessee. In 1949, three years after the death of her husband, Georgia O'Keeffe donated 101 objects to the historic African American university that were among the more than 1,000 art works Stieglitz had collected during his lifetime. According to Barbara Lynes, senior curator of the Georgia O'Keeffe Museum and the Emily Fisher Landau Director of the Georgia O'Keeffe Museum Research Center, at that time O'Keeffe and Fisk agreed to conditions for the collection, which included never selling any works from it.

In December 2005, Fisk's newest president, Hazel O'Leary, proposed through a motion with the Chancery Court of Tennessee that the university sell two works from the collection, O'Keeffe's *Radiator Building* and Marsden Hartley's *Painting No. 3*, each recently appraised by Christie's auction house at \$8.5 million. O'Leary explained that the funds would help pay for a new science building, three endowed teaching chairs, and much-needed repairs to Carl van Vechten Gallery, which houses the collection, but she failed to admit that the university's situation was dire: the endowment was depleted. At that time, the collection was placed in storage at another Nashville institution, the Frist Center for the Visual Arts. Neither the court nor the attorney general, whose office has the authority to approve or disapprove charitable arrangements, was then made aware of the donor's intention for the collection or the no-sale condition that O'Keeffe and Fisk had agreed upon in 1949.

The Georgia O'Keeffe Foundation, which was then responsible for handling the affairs of the late painter's estate, learned about Fisk's intentions in the newspapers and filed suit to block the proposed sale on the grounds that it violated the terms of the painter's bequest, in particular the no-sale condition. The judge granted the foundation standing in the case. In March 2006, the foundation dissolved, as its agreement to function for twenty years after the artist's death (in 1986) had ended, and the foundation transferred to the Georgia O'Keeffe Museum all responsibility concerning the artist's estate. Shortly thereafter, the museum requested, and the court granted, standing in the case as the representative of the artist's estate, which allowed the museum to speak for the artist.

In October 2006, the O'Keeffe Museum agreed to allow the sale of the Hartley painting on the open market, and to give Fisk \$7 million for assigning the museum ownership of *Radiator Building*, agreeing not to block the sale of the Hartley painting on the open market. In April 2007, newly appointed Tennessee Attorney General Robert Cooper tentatively approved the proposal, but imposed a 30-day waiting period on his tentative approval to discover whether anyone would come forth to allow Fisk to

become financially solvent and keep the collection. During the 30-day waiting period, no one came forward, but various dealers and individuals suggested new values for both paintings--\$20 million for the Hartley and \$25 million for the O'Keeffe. Moreover, members of the art community felt that Fisk should receive more money for *Radiator Building* than the figure proposed.

After the 30-day waiting period, the Attorney General rejected the settlement on the basis of, among other things, his new awareness of how others were valuing *Radiator Building*, arguing that the O'Keeffe Museum's offer was too low in relation to the open market. In June 2007, Davidson County Chancellor Ellen Hobbs Lyle issued an injunction barring the sale of any work from the collection. In September 2007, the O'Keeffe Museum and Fisk University reached a settlement agreement that would end the suit and its ongoing expenses, allow Fisk to keep 99 of the 101 works in the collection, allow Fisk to sell the Hartley, which would now probably bring between \$20 and \$25 million at auction, and place *Radiator Building* in the care of the museum, which agreed to raise its contribution to Fisk to \$7.5 million and to loan the O'Keeffe painting back to Fisk for four months every four years.

Just when it looked as if things had been settled, however, Lyle rejected the agreement because Alice Walton had come forward with an offer of \$30 million for half the collection and a promise to exhibit it half the time at Fisk and half at the Crystal Bridges Museum. In January 2008, Chancellor Lyle rejected the Fisk-Crystal Bridges sale/collection-sharing deal on the basis of the 1949 no-sale agreement and another condition of the gift that precluded lending works from the collection to other institutions for anything other than a retrospective exhibition. Her ruling also recognized the donor's intentions for the collection, as stated in a 1951 letter from O'Keeffe to the president of Fisk University, that indicated that if Fisk could not take care of or did not want the collection, it should return it to her so that she could find a place for it at another institution.

At the trial, which took place February 19-20, 2007, O'Leary testified that Fisk now has the money to repair its gallery so that the collection can be exhibited. The judge has just ruled that Fisk can keep and never sell the collection, and that it has until October to repair the gallery and display the work or the collection reverts to the Georgia O'Keeffe Museum with no exchange of money.

What Fisk faced is a dilemma that a number of financially beleaguered nonprofit institutions have encountered recently: What should a school or museum do when it claims it no longer has the resources to carry on and it has few alternatives to selling off priceless artworks? Do the wishes of a deceased donor trump the needs of a foundering university? Vivien concluded that Fisk is in a lose-lose situation: either it will no longer have the collection or it will no longer be able to survive. And neither Fisk nor the O'Keeffe Museum has handled this situation well.

Barbara Lynes reviewed the most pertinent conditions of the 1949 gift: that no works could be sold from it; that none could be loaned from the collection for exhibitions unless to a major retrospective, and that the collection must be exhibited intact at Fisk. She also read excerpts from letters written by O'Keeffe in 1951 to the president of Fisk, upon which Chancellor Lyle had recently based her decision to reject the Alice Walton/Crystal Bridges proposal. In these letters, O'Keeffe stated her concern about Fisk's wanting to take down part of the Stieglitz Collection, which she had installed for them in 1949, in order to hang pictures Fisk was receiving on loan from the Metropolitan Museum of Art. O'Keeffe also expressed her concern about conditions in the Van Vechten Gallery—accumulations of dust, uneven temperatures, and irregular humidity—that she felt would ruin the pictures over time. Moreover, O'Keeffe also stated that she wanted Fisk to return the collection if it did not want or could not take care of it, so that she could give it to another institution.

Alan Wallach addressed the 2005 sale of Asher B. Durand's *Kindred Spirits*, which had been bequeathed to the New York Public Library by William Cullen Bryant's daughter. The painting had been on display at the library from 1911, the year the library opened, until three years ago, when Alice Walton bought it for a reported \$35 million in a sealed-bid auction. Alan argued that by taking the painting out of the public library, the public library was taken out of the painting--in other words, it lost the meanings associated with its particular history. Alan also provided a thumbnail history of the turn-of-the-twentieth-century "robber barons" who created such institutions as the Frick Museum and the Morgan Library and who oversaw the massive expansion of the Metropolitan Museum of Art. He argued that Walton is their heir, a "Neo-Robber Baron" who is turning Crystal Bridges into a monument to her collecting and her

cultural benevolence. After her purchase of *Kindred Spirits* proved to be a public relations disaster, Walton became more of an art-world figure, joining the National Gallery's trustees' council and the New-York Historical Society's board of trustees. As part of her campaign to improve her image, she also loaned works from the Crystal Bridges collection to a host of institutions and attempted to work out arrangements in which she would share works of art with other institutions. Alan summarized the problem as having to do with the extent to which the public and the government are willing to support educational and cultural institutions. With schools, libraries, museums, and other cultural institutions increasingly desperate for cash, Alan argued, we can expect more raids on what we might regard, perhaps with misplaced optimism, as our cultural patrimony.

This session stimulated passionate responses from museum professionals (including a curator from the Crystal Bridges Museum), university professors, and other art historians in the audience, making it clear that the issues raised here are not only timely but open for continued discussion and debate. Because of this, Cécile Whiting, Professor at the University of California, Irvine, and CAA Reviews Field Editor for American Art, has requested that these issues be articulated and synthesized for that on-line journal. Consequently, Laura and Vivien are co-writing an essay that should appear online shortly at www.collegart.org.