

# IS IT "RIGHT"?

## EMERGING AUTHENTICATION EXPECTATIONS, BEST PRACTICES & NEW WAYS FORWARD IN THE WAKE OF KNOEDLER

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*“Authentication is a matter of informed and reasoned opinion ... the scholarly determination of qualitative or extrinsic opinion.... Authentication is rarely definitive or absolute.... It is subject to revision as additional information becomes available.... It is subject to disagreement among experts.”*  
—International Society of Appraisers Manual for The Core Course in Appraisal Studies.



Credit: Photograph by Ugo Mulas, Archives of American Art, Smithsonian Institution

## INTRODUCTION

There are few issues more confounding to the discipline of art appraising than the murky practices surrounding the authentication process. Authenticity is often the most critical value-driving factor, and one of the most challenging to establish with absolute certainty.

Over the past several years, the international art market has been deeply challenged by scandals and disputes over authenticity, resulting in shifting standards and expected practices for the appraiser. Reliance on eminent gallery or premiere auction house vetting is declining as a basis for assumptions of authorship. Prevailing opinions, even when rendered with advanced scholarship, in good faith and with an absence of bias or interest, are frequently based on subjective connoisseurship and incomplete provenance. Opinions are revised as new methods, technologies and sensibilities emerge. In a few high-profile cases, forensic analysis involving allegedly tampered materials, has fueled, rather than eliminated, controversy. Most critically, objective experts are increasingly skittish about rendering good-faith opinions which may later become the subject of litigation.

It is not usual for a single individual or panel to be recognized as the sole authority for a particular artist. However, the various authorities do not necessarily adhere to a single standard, and may practice a range of methods, criteria and fee arrangements particular to their industry. Authentication experts come from a variety of professions and backgrounds including academic scholars, museum curators, authentication panels, gallerists

compiling catalogues raisonné, protégés and close family members, and authorized representatives of artist estates.

In the absence of absolute or static standards, the process is inherently open to bias and interest. The appraiser must operate with the understanding that a negative opinion, correct or not, can be devastating to value, and subject the owner to financial consequences. Likewise, unsupported appraisal assumptions of authorship, if later proven to be incorrect, undermines the value conclusion, and exposes both the appraiser and the report to be discredited.

Although authorship can be difficult to establish definitively, obtaining the qualified opinions of the recognized experts brings the appraiser's practice up to the expected standard when appraising works of significant value. With an understanding of the inherent limitations and challenges, this article explores emerging professional processes, standards and expectations, and suggests best practices and procedures for the appraiser in engaging and working with qualified experts.

## EMERGING STANDARDS AND DEVELOPMENTS

### Vetting by Eminent Galleries – The Relationship Model Losing Ground

In 2011, one of New York's oldest and most revered art galleries, Knoedler & Company, closed abruptly in the wake of litigation surrounding an \$80 million forgery scandal. According to court pleadings<sup>1</sup> at least 32 counterfeit works passed through the gallery as authentic, but were in fact created by a living Chinese artist. The paintings were commissioned and sold to Knoedler & Company by a master con artist, Glafira Rosales. Rosales has since plead guilty to several counts of fraud for her role, and is, at this writing, awaiting sentencing.

In representing the works to Knoedler, Rosales claimed that the forged paintings came from the reclusive heir of a private collector, who through an agent, had built a world-class abstract expressionist collection by purchasing directly from then-living artists. It was Rosales' claim that the heir refused to allow the collector's identity to be revealed, and that provenance, including original sale documentation, could not be supplied. In promoting the works, Knoedler's director, Ann Freedman reportedly represented to buyers that the unidentified collection was known to the gallery.<sup>2</sup>

Two of the allegations raised by plaintiffs, are that Freedman did not press Rosales hard enough for documentation of confirmed provenance, and that early warnings from authenticators had been ignored. John Elderfield, an eminent art historian, and Gretchen Diebenkorn Grant, the daughter of painter Richard Diebenkorn, both testified that as early as the mid-1990s they had indicated to Freedman that works viewed at Knoedler, represented as Diebenkorns were deemed "dubious," or "not right."<sup>3</sup> Jack Flam, president of the Dedalus Foundation, dedicated to the legacy of artist Robert Motherwell, also testified that he disputed two works from the collection attributed to Motherwell in 2008. Knoedler continued to represent works from this collection for another decade.

Until the Knoedler forgery scandal, representation by a venerable gallery was considered to be a fairly reliable, if not definitive, standard for proper vetting and assumed authenticity. It would be hard to overstate how hard the

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<sup>1</sup> Browley, Graham. (2015, October 11). "Lawsuits in Knoedler Forgery Case Art Set for Trial". *The New York Times*. Retrieved from: [http://www.nytimes.com/2015/10/12/arts/design/lawsuits-in-knoedler-forgery-case-are-set-for-trial.html?\\_r=0](http://www.nytimes.com/2015/10/12/arts/design/lawsuits-in-knoedler-forgery-case-are-set-for-trial.html?_r=0)

<sup>2</sup> Cahill, John R. (2014, May 4). "An Update on the Knoedler Gallery Lawsuits." *Sothebys.com News*. Retrieved from: <http://www.sothebys.com/en/news-video/blogs/specials/art-and-law/2014/06/an-update-on-the-knoedler-gallery-lawsuits.html>

<sup>3</sup> Kinsella, Eileen. (2016, January 28). "Richard Diebenkorn's Daughter Challenges Ann Freedman's Story at Knoedler Forgery Trial". *Artnet News*. Retrieved from: <https://news.artnet.com/market/gretchen-diebenkorn-knoedler-forgery-trial-414617>

discovery that Knoedler had placed dozens of fakes, at the very high-end of the market, has shaken long-standing paradigms. Defrauded victims included sophisticated, internationally-known collectors. In part based on Knoedler's reputation, at least three proven forgeries made their way into important museum exhibitions.<sup>4</sup>

The 20<sup>th</sup> Century standard that assumes a premiere gallery or auction house would not risk long-standing reputation in exchange for short-term sales, is falling from acceptance. Appraisers should be aware that convincing, supporting confirmation by the accepted authentication experts may be emerging as an expected standard of diligence.

## The Growing Role of Forensics

Credible forensic testing is playing an increasing role in helping to support authorship opinions, linking consistent characteristics to known physical and chemical attributes for specific works and artists. Results of materials testing alone have been used to rule out works which contain compounds such as pigments or binders developed after the artist's time. Forensic conclusions should always be viewed in context with confirming provenance and available connoisseurship.

One Jackson Pollock painting remains controversial, despite forensic analysis linking a polar bear hair embedded in the painting to one found in a rug in Pollock's attic. A *New York Post* headline announced: *CSI Tests Authenticate Pollock's Final Work*,<sup>5</sup> while the *New York Times* coverage<sup>6</sup> highlights that a single piece of forensic evidence may not build a definitive case. Pollack scholar Francis V. O'Connor, co-author of the artist's definitive catalogue raisonné and former member of the now-disbanded Pollock-Krasner Foundation, refutes the work, and authorship remains uncertain.

Increasingly, forensic findings are helping to establish and rule out authorship with growing degrees of certainty. In one such recent case, Keno Auctions commissioned Jennifer Mass, Ph.D., President of Scientific Analysis of Fine Art, LLC, to compare a rare "Vaughan-style" portrait of George Washington by Gilbert Stuart to a well-known similar portrait by Stuart of Washington at Winterthur. The two paintings were examined through x-ray fluorescence and cross-section photomicroscopy. According to coverage of the Keno sale, the results showed, "compelling forensic evidence that the present painting is by Gilbert Stuart, and in a date range of 1795-1796."<sup>7</sup> Dr. Mass' detailed report is fascinating reading for the appraiser, and may be found here.<sup>8</sup>

A fuller discussion of the role of physical analysis is covered under *The Authentication Process* section of this article.

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<sup>4</sup> Panero, James. (2013, August 27). "I Am the Central Victim: Art Dealer Ann Freedman on Selling \$63 Million in Fake Paintings". *New York Magazine*. Retrieved from: <http://nymag.com/daily/intelligencer/2013/08/exclusive-interview-with-ann-freedman.html>

<sup>5</sup> Knell, Jennifer Gould. (2013, November 8). "CSI Tests Authenticate Pollock's Final Work". *New York Post*. Retrieved from: <http://nypost.com/2013/11/08/pollocks-final-work-authenticated-as-mistress-claimed/>

<sup>6</sup> Cohen, Patricia. (2013, November 24). "A Real Pollock? On this Art and Science Collide". *New York Times*. Retrieved from: [http://www.nytimes.com/2013/11/25/arts/design/a-real-pollock-on-this-art-and-science-collide.html?\\_r=0](http://www.nytimes.com/2013/11/25/arts/design/a-real-pollock-on-this-art-and-science-collide.html?_r=0)

<sup>7</sup> "American Impressionist painting brings \$245,000 at Keno Auctions Pop-Up Winter Sale" (2016, February 8, 2016). *Artdaily.org*. Retrieved from: [http://artdaily.com/index.asp?int\\_sec=11&int\\_new=84911#.Vrj0hVgrKUK](http://artdaily.com/index.asp?int_sec=11&int_new=84911#.Vrj0hVgrKUK)

<sup>8</sup> Mass, Jennifer. (2016, January 29). "Vaughan-type George Washington portrait attributed to Gilbert Stuart, c. 1795- 1796". *Scientific Scientific Analysis of Fine Art, LLC*. Retrieved from: <http://kenoauctions.com/wp-content/uploads/2016/01/Jennifer-Mass-SAFA-Report.pdf>

## **Authentication Technology - i2M Standards and Bioengineered DNA Imprinting**

The New York Times recently reported<sup>9</sup> that ARIS Title Insurance Corporation has provided \$2 Million in funding to sponsor the Global Center for Innovation for i2M Standards at the State University of New York (SUNY) at Albany. The purpose of the grant is to develop legal and technical standards for marking or identifying artworks, either at the point of creation by the artist, or for previously unmarked secondary-market works at the point of identification or authentication. In all instances, the objective is to link known information accurately and conclusively to the exact work. According to i2M Center's website<sup>10</sup>, all solutions developed under the i2M program are highly encrypted, will be measured by independent standards, function under strict protocols for privacy and security and are involve means that have no negative impact on the artwork. Outward facing aspects of the solution such as simple labels would enable the market to interact with the identified work through an outward facing App.

According to the New York Times article, one of the i2M technologies in the final stages of development is a sustainable, zero-negative impact, bioengineered DNA-based marking system, utilizing a unique synthetic imprint, which would be impossible to locate or tamper with. The cost of the bio-engineered DNA labeling system is estimated at approximately \$150 per artwork at initial introduction. These technologies, if successfully developed and widely utilized, could potentially help resolve future uncertainty.

## **Living Artists Disclaiming Authorship for Heavily Damaged Works**

Works created after 1990 have specific protections under the Visual Artists Rights Act (VARA), which allow living artists to disclaim works deemed to have been so altered or modified by damage that the original work, even if properly conserved, would no longer have integrity or meet their original intent.

A few high-profile actions have been brought by or against living-artists evoking VARA protections to reject authorship. Cady Noland disclaimed authorship for *Cowboys Milking* a slightly damaged screen-print on aluminum, persuading Sotheby's to withdraw the work from a 2011 sale, triggering a \$26 million claim.<sup>11</sup>

It is prudent to consult with living artists for approval of conservation treatment plans for significantly damaged works. This is an emerging issue with potential impact to authenticity, and should be understood by appraisers and collection managers. Chubb Personal Insurance has issued a white paper on this topic.<sup>12</sup>

## **Proposed Legal Protections for Experts**

In recognition of the serious challenge facing an art community dependent on credible opinions of authenticity, various versions of legislation to amend the New York Arts and Cultural Affairs Law have been introduced before the New York State Assemblies. The proposed amendment would protect qualified authentication experts acting in good faith, without interest or bias, from frivolous or unsubstantiated law suits. The concept of the bill has the support of the New York City Bar Association Art Law Committee and the Center for Art Law, as well as all three of the major professional personal property appraisal organizations.

In June of 2015, the New York Senate approved a version of this legislation (S1229A) that provides specific protections for art authenticators, with the aim of ensuring that only "valid, verifiable claims against

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<sup>9</sup> Mashberg, Tom. (2015, October 12). "Art Forgers Beware: DNA Could Thwart Fakes". *New York Times*. Retrieved from: [http://www.nytimes.com/2015/10/13/arts/design/developing-dna-as-a-standard-for-authenticating-art.html?ref=design&\\_r=0](http://www.nytimes.com/2015/10/13/arts/design/developing-dna-as-a-standard-for-authenticating-art.html?ref=design&_r=0)

<sup>10</sup> <https://www.i2mstandards.org/global-center-of-innovation/>

<sup>11</sup> Swick, Tracy. (2013, June 7). "Sotheby's and Jancou Battle in Appeals Court over Cady Noland Artwork" *Art In America*. Retrieved from: <http://www.artinamericamagazine.com/news-features/news/sothebys-and-jancou-battle-in-appeals-court-over-cady-noland-artwork/>

<sup>12</sup> Doyle, Laura Murphy. (2015, March 23). "The Issues Involved with Damaged Art by Living Artists". *Chubb Personal Insurance*. Retrieved from: <http://www.chubb.com/journalists/chubb20265.pdf>

authenticators are allowed to proceed in civil court.”<sup>13</sup> As of this writing, the legislation has not been approved by the New York House.

The version of amendment, referred to as the Art Authentication Protection Bill, which passed the NY Senate offers significant protection to experts found to have rendered their opinions in good faith, and excludes from protection experts with a financial interest or bias. Elements of the legislation include requiring claimants to be specific as to the facts and prove the elements by convincing evidence, and entitles the authenticator to recover reasonable attorneys' fees if he or she prevails.

There is some concern over a proposed amendment to the Bill, to exclude expert opinions from warranty claims. The concern is that this provision, if extended to gallerists, might offer a level of protection to sellers, which was not intended. However, if the amendment is adjusted, as it is expected to be, to only extend to experts without interest, this would seem to resolve this concern.

All three professional appraisal organizations have endorsed the concept of the protections in the version of the NY Senate legislation which passed in June.

## PROFESSIONAL STANDARDS FOR AUTHENTICATION EXPERTS

Appraisers should be aware of, and familiar with existing and emerging professional standards and guidelines for scholars, authenticators and technical art historians.

### **College Art Association and the Catalogue Raisonné Scholars Association Guidelines**

In 2009, the College Art Association developed Standards and Guidelines for the Practice of Art History, including guidelines for authentication and attribution.<sup>14</sup> In 2010, The Catalogue Raisonné Scholars Association (CRSA) issued guidelines for scholars asked to issue expert opinions of authenticity.<sup>15</sup> These guidelines highlight practice recommendations and the importance of adherence to ethical standards, qualifications and professional consensus of scholarship, provenance and physical documentation.

Highlights of the CAA recommendations include:

- Opinions only be rendered within areas of competence, preferably in consensus with qualified scholars and conservators.
- Art-historical documentation, stylistic connoisseurship, and technical or scientific analysis, which complement each other, are the three necessary aspects of best practices for authentication and attribution. These three aspects create a consensus of evidence.
- Reliance on specialists should be limited to those employing technologically sophisticated analytical techniques for the material analysis of objects.
- Physical examination of the work is preferable in advance of offering an opinion.
- Art historians employed by institutions consult with and conform scrupulously to the ethical standards, forms and procedures of the institution.

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<sup>13</sup> <http://legislation.nysenate.gov/pdf/bills/2015/S1229A>

<sup>14</sup> <http://www.collegeart.org/guidelines/authentications>

<sup>15</sup> <http://www.catalogueraisonne.org/CRSAGuidelines.pdf>

- Opinions of misattribution be communicated according to ethical standards, and only where specifically elicited, and where there is sufficient scholarly research and technical evidence to support the opinion.
- It is unethical for an art historian to comment publicly, or to provide an opinion of a known fake or forgery that affirms the legitimacy of its authenticity or attribution.
- It is unethical for a museum to organize or sponsor an exhibition of artworks as to which the authenticity or attribution is open to question unless the doubts are clearly indicated or the exhibition is openly devoted to assist in the determination of attributions or to presenting forgeries or misattributions.

### **Proposed International Standards for Authentication Experts**

The Authentication in Art (AiA) Congress formed in 2012 with the mission of developing meaningful international standards for authentication experts. In 2014, the Art and Law Work Group of the AiA released a seventeen-page document<sup>16</sup> proposing international guidelines for expert authenticity reports, including a recommended standard report form. The group has also developed suggested guidelines for compiling a catalogue raisonné.<sup>17</sup>

The following is a summary of AiA recommended standard ingredients for expert authenticity opinion reports.

- A full and detailed description of the work
- Identification of the client and permissible users of the report
- Disclosure of the specific authenticity question upon which the expert has been asked to render an opinion, including a statement that the opinion does not cover value or legal title
- Full disclosure of all data, facts, background materials and other information considered in forming the opinion.
- A description of the methods of analysis employed, and if applicable, those methods purposefully not used but considered and rejected as inappropriate to the circumstances of the assignment
- A description of how the methods employed support the analytical conclusions
- A description of how the applied methods correlate to the expert's academic and professional qualifications, experiences, knowledge base and skill set
- Disclosure of the specific terms of compensation
- Statement of lack of bias toward the work, the owner or interested parties
- Disclosure of the level of certainty to which the expert opinion is given
- A statement of record retention practices and standard

Appraisers should stay informed of the efforts and activities of the CAA, CRSA and the AiA, and be observant to whether experts are increasingly embracing these standards. In day-to-day practice, the appraiser faces the reality that many experts are employed by public institutions or in the university setting where compensation for opinions may be limited or prohibited.

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<sup>16</sup> <http://www.authenticationinart.org/wp-content/uploads/2012/11/Guidelines.pdf>

<sup>17</sup> <http://authenticationinart.org/pdf/Guidelines.pdf>

## FOUR COMMON PRACTICE PITFALLS FOR THE APPRAISER

### Overstepping Expertise

The appraiser should take great care in expressing conclusions, findings or suspicions which might create the impression of expertise best left in the authenticator's domain. With rare exceptions, appraisers are not qualified authenticators and should turn to the recognized expert or experts when in doubt about authorship. Recent litigation over an appraiser's disproved authentication of a Norman Rockwell painting illustrate the danger in overstepping expertise.<sup>18</sup> A valuation reliant on a wrongful or insufficiently investigated assumption of authenticity, undermines the appraiser and the report, and may subject the client to financial consequences.

Appraisers should also take great care in how recommendations are presented to the client to avoid the impression that it is the appraiser's own finding, conclusion or suspicion that the work may not be real. Works which exhibit characteristics which may cause the appraiser to suggest further inquiry are often determined to be authentic.

### Over-reliance on "Readily Apparent Identity"

Care should be taken in relying on the assumption of "readily apparent identity". Utilizing such an assumption is not a shield against the expected performance of due diligence. The standard of due diligence is generally understood to be the care a reasonable professional would exercise under similar circumstances to supply a reliable professional service and protect client interest.

Although not an exhaustive list, the following factors might be considered a minimum threshold for good cause to consider engaging an expert. A combination of these circumstances may heighten the appraiser's responsibility:

- **Potential high value:** In the absence of a set industry standard, it may be prudent for the appraiser to set a personal standard for the value at which authenticity is confirmed.
- **Uncharacteristic Features:** Appraisers are not expected to be experts in the methods of every artist they appraise. Nor is it generally within the appraiser's expertise to draw conclusions about authenticity based on physical characteristics. However, works which display obvious uncharacteristic features warrant further investigation. These include, materials which are not generally employed by the artist, unusual subjects, uncharacteristic methods, quality or style.
- **Suspicious provenance or significant provenance gaps:** The history of ownership is vague or unusual, the work was purchased through an unknown agent or a gallerist not particularly known for connoisseurship related to the artist.
- **Provenance includes discredited sellers:** The chain of ownership includes galleries or sellers with a history of weak authentication standards.
- **Obsolete authenticators:** The history of verification involves an expert who has been discredited, or is no longer considered relevant.
- **Historical significance or scholarly opinion is a factor in valuation:** If a work is confirmed, it's often useful to consult with the experts on specific value-driving market impacts. Historical significance, exhibition history, inclusion in important collections, or physical attributes may be elements outside the appraiser's expertise to fully analyze.
- **A catalogue raisonné for the artist is in process:** If a forthcoming catalog is in process, it is always critical to establish if a work is to be included. Often this information is discoverable through a simple

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<sup>18</sup> Forbes, Alexander. (2015, January 5). "Collectors Sue Gallery Over Fake Norman Rockwell". *Artnet News*. Retrieved from: <https://news.artnet.com/market/collectors-sue-gallery-over-fake-norman-rockwell-211188>

internet search. There are additional resources listed under the "How to Find the Right Authenticator" section of this article.

- **Red flags:** Any circumstance, physical feature or fact which raises concern should be explored if the value conclusion is based on authorship. For low value works by unestablished artists, the appraiser may conclude that authorship is not a critical aspect of value. If this is the case, it should be clearly disclosed in the report.

## Reliance on Insufficient Documentation

Without corroboration, documentation, or the support of expert opinion, the following criteria are not considered sufficient evidence of authorship, and should not tempt the appraiser into assuming authenticity.

- **Gallery sales:** As discussed, the fact that a painting has been placed by a prominent gallery known for scholarship, was until recently, considered fairly reliable. Indictments against once-venerable institutions have exposed forgeries and fakes at the highest end of the market. Unless the gallerist is the accepted scholar, is responsible for the artist's catalogue raisonné, or convincing provenance accompanies the sale, care should be taken in over-reliance solely on the reputation of the gallery.
- **Signatures:** The average appraiser is not qualified to make a determination regarding the correctness of a signature. Unless the appraiser is a handwriting expert, is expertly familiar with an artist's signature, or has confirming documentation, this determination is best made by the expert.
- **Auction sales:** When time allows, and the value is significant, some auction houses work hard to establish authenticity, and some offer limited guarantees. It has become increasingly common to see broad disclaimers. Inclusion of a work in an auction sale, even one of the major houses, is not proof of authorship, unless the auction house has established authenticity through recognized experts.
- **Certificates of authenticity:** Similar to undocumented gallery sales, certificates of authenticity should not be considered proof of authorship. To the contrary, in many cases, they might even be considered a "red flag." Many COAs are completely unsupported, produced primarily as a sales tool.
- **Older attributions:** The inclusion of a work in an older catalogue raisonné or monograph may not be considered definitive. Changes in attribution are not uncommon and occur based on changes in scholarship, newly discovered provenance, and disparate expert opinion. Increasingly, attributions are also changed based on forensic analysis. The present status of previously attributed works should be verified.
- **Unvetted exhibitions:** Inclusion in an exhibition can help prove authenticity if the exhibition has been curated by an expert at a major institution known to be an authority in the work of the artist. Inclusions in smaller, less well vetted exhibitions are less reliable.
- **Unconfirmed provenance:** Family history and gallery provided provenance can help in the authentication process. Statements offered by sellers and clients must be verified.

## Failure to Obtain Informed Consent

In advance of seeking authentication opinions, it is critical to explore and discuss the cost, advantages and risks with your client, and obtain your client's informed authorization.

## THE AUTHENTICATION PROCESS



*Credit: Bettmann/Corbis Images*

Authenticators employ a variety of accepted processes and methods to arrive at expert opinions. Ideally, provenance, connoisseurship and physical attributes should line up to confirm authorship.

### Connoisseurship or Scholarly Opinion

The inclusion of a work in a definitive catalogue raisonné or monograph compiled by a recognized authority is a generally accepted standard. The recognized authority can be a panel, scholar, curator, art historian, protégé, gallerist, estate representative, or close family member. Often the expert has published works related to the output, methods and practice of the artist. As discussed, authentication is based on highly informed opinion, and is not within the scope of an appraiser's expertise, unless the appraiser is also the recognized expert or scholar in the work of the artist.

Informed professional opinions are generally understood to be expressed beliefs based on highly specialized knowledge or experience, rendered with a high degree of professional certainty. It is a judgment supported by an expert's deep understanding of the artist's style and technique along with comparison of known works by the artist.

Examples of physical elements experts may consider in their analysis include:

- **Methods and technique:** Certain methods of execution and techniques may be associated with the artist. Examples include characteristic brushwork, pigments, mixed colors, and application techniques.
- **Style, quality, and precision:** The expert will make a determination as to whether the work is consistent with similar, known works by the artist.
- **Subject:** Certain subjects and genres may be exclusive to an artist's known works. Others may be inconsistent.
- **Construction and medium:** Unique materials used by an artist can sometimes support expert opinion. Increasingly, scholars are collaborating with forensic experts to confirm that the construction of the work is consistent with the time and materials employed by the artist.
- **Elements within the artwork:** Items depicted in the artwork often assist in determining the authenticity of a piece. An example would be a studio object that appears consistently in the artist's works, or a particular location.

## Physical Characteristics - Technical Art History and Forensic Analysis

Forensic analysis, also known as technical art history, is a growing discipline in the field of authentication. Careful vetting of scientists and laboratories for objectivity, credentials and relevant experience is critical to a meaningful result, as is the credibility of the materials presented for analysis. Some firms do not employ experts with terminal PhD degrees, proper background or experience. Use of less qualified experts may potentially compromise the reputation of the legitimate and valuable role of forensics in object assessment.

Physical attributes of an object may be scientifically determined by:

- Testing and analysis of mediums and grounds
- Technical analysis and identification of pigments
- Fiber sampling for date range identification
- The identification and dating of paper
- The identification and dating of the supports, including canvases, boards, and stretchers
- Analysis of handwriting and signatures
- Exhibition label authentication procedures
- Fingerprint analysis

Scientific tests employed by physical art historians include:

- X-ray fluorescence spectroscopy (XRF)
- Scanning electron microscopy with x-ray microanalysis (SEM-EDS)
- Ultraviolet and Visible light microscopy
- Fourier Transform Infrared Spectroscopy (FTIR)
- Raman spectroscopy
- X-ray microdiffraction (XRD)
- Gas chromatography-mass spectrometry (GC-MS)
- Pyrolysis gas chromatography-mass spectrometry (pyGC-MS)
- X-ray absorption near edge spectroscopy (XANES)
- Confocal X-ray fluorescence spectroscopy
- Synchrotron x-ray intensity mapping to image buried paintings
- Multispectral imaging
- Fiber Optic Reflectance Spectroscopy (FORS)

## Provenance

Works are sometimes deemed authentic based on history of ownership. Whenever there are provenance gaps or questions as the reliability of supplied provenance, it is best to also consult with experts. As in all stages of any documentation, the reputation, independence, and reliability of the individual providing verification is critical.

Examples of Supportive Provenance:

- The strongest provenance is a documented, uninterrupted chain of ownership, tracing the work back to the artist
- The artist's verified statement that a work of art is by their hand

- Confirmation provided by individuals who had direct contact with the artist and the work. Examples include the original buyer or gallery handling the work of a living artist, a witness to the artist signing the work, a spouse, relative, or an associate who has worked closely with the artist and is familiar with the work
- A living artist's authorized dealers or galleries, printer, foundry or manufacturer

## IDENTIFYING AND WORKING WITH THE PROPER AUTHORITIES

### Identifying The Proper Expert

It is critical to establish that you have identified the recognized, peer-accepted expert or experts for the artist in question. Consultation with those of lesser standing will call your process into question.

The following are some resources for identifying the appropriate expert:

- **Catalogues Raisonnés:** When a definitive catalogue or monograph exists or is in the process of being compiled, the author is often the most credible authenticator. Resources for finding catalogues include:
  - The International Foundation for Art Research (IFAR) Catalogue Raisonné database: [https://www.ifar.org/cat\\_rais.php](https://www.ifar.org/cat_rais.php)
  - The Catalogue Raisonné Scholars Association: <http://www.catalogueraisonne.org/>
  - The Association of Historians of American Art: <http://www.ahaonline.org/>
- **Curators and Museums:** Scholars responsible for curating recent exhibitions focusing on works by an artist are often considered expert in the artist's work.
- **Foundations, Estate Representatives:** Recognized foundations operating to promote and protect the artist's work and reputation are often good resources for authentication. The credibility of the foundation or representative should be confirmed.
- **Authorized Galleries:** Often a singular gallery is considered the authorized representative of the artist's estate. If the gallery does not provide authentication services, they can often provide contact information for the right expert.
- **Major auction houses:** Auction house representatives are rarely qualified to authenticate. However, the appropriate specialists at the major auction houses are often a good source for identifying the recognized experts.
- **Other appraisers:** Utilize your networking contacts with other appraisers who might have authenticated artworks by the subject artist for referral to experts they know and trust. The ISA Forum is a good resource.

### Vetting Authentication Experts for Credibility

The objectivity of an authenticator with a fee structure based on outcome should be carefully considered, particularly if unusually high fees are demanded for an opinion upon which large sums may ultimately change hands.

One of the pending lawsuits to arise from the Knoedler scandal alleges that Oliver Wick, a leading authority on Mark Rothko, was paid a \$300,000 consulting fee in 2008, for an authentication which facilitated a \$7.2 million sale.<sup>19</sup> The work was later confirmed to be one of dozens of fakes peddled by Glafira Rosales. At the time of the

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<sup>19</sup> Cohen, Patricia. (2014, April 2). "Knoedler Forgery Lawsuit Names Art Historian as Defendant". *New York Times, Artbeat*. Retrieved from: [http://artsbeat.blogs.nytimes.com/author/patricia-cohen/?\\_r=0](http://artsbeat.blogs.nytimes.com/author/patricia-cohen/?_r=0)

2008 sale, Mr. Wick was reportedly serving as a curator at the Beyeler Foundation in Basel, Switzerland, which then exhibited the Rothko. The inclusion of the work in this exhibition contributed to its credibility.

On the flip side of the risk of authenticated fakes and forgeries, is the risk of having a piece labeled a forgery that may be true. The authentication process is also complicated when conducted by those with significant holdings by the artist, the value of which may be diluted by an increase in authenticated works. This has also been the basis of actions brought against some authentication panels.<sup>20</sup>

In evaluating the independence of authenticity experts, it may be a good exercise to consider the concepts defining the USPAP objectivity test:

- Is the fee based on a predetermined result or outcome?
- Does the expert have a past, current or future interest in the work?
- Does the expert have any bias toward the work?
- Has the expert performed any previous service, as an authenticator, or in any other capacity which might impact objectivity for this assignment?

### **Preparation - Before Consulting the Authenticator**

Gather all details of the work and complete relevant research in advance. In addition to showing respect for the authenticator's time and expertise, this establishes your professionalism.

Examples of information to collect include:

- A full and complete description of the artwork, including dimensions, medium and support
- Condition or conservation reports
- Listing and photographs of inscriptions, signatures, verso details, canvas stamps, gallery and exhibition labels, frame inscriptions and markings
- Verification of exhibition and gallery labels
- Photographs, dimensions and identifying details of frames which appear to be original to the work
- Photographs of the recto, verso, signatures, inscriptions, and relevant details
- Documented sales, including auction sales
- Family history or chain of ownership, even if not fully documented
- Catalogue raisonné references, including addendums and catalogues in process
- Reference materials, including exhibition catalogs

### **Understanding the Individual Expert's Process and Practices**

There are a broad range of practices employed by recognized authentication experts, foundations and panels. It's important to establish the expert's process, fees and information needed to complete their review and provide an opinion.

The following questions help manage expectations and avoid surprises:

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<sup>20</sup> Maloney, Jennifer (2014, April 24). "The Deep Freeze in Art Authentication". *Wall Street Journal*. Retrieved from: <http://www.wsj.com/articles/SB10001424052702304279904579518093886991908>

- **In what format will your opinion be provided?** Some experts will only provide a verbal opinion, others are willing to supply a one-page letter, some will provide a complex form documenting their process and opinions in great detail. It's not usual to receive a one-line email establishing that in the expert's opinion, the work is wrong or right, or that it will, or will not, be included in a forthcoming catalog. It's good practice to understand how the opinion will be delivered.
- **Will the opinion be offered definitively?** In an effort to limit exposure and liability, the non-absolute opinion is a growing trend among experts. A foundation for one prominent abstract expressionist will "register the work" if they feel it is authentic, but will not comment on authenticity. The expert for a leading American Impressionist will simply respond, without commentary, that the work will, or will not, be included in his forthcoming catalogue. The expert for a prominent 19<sup>th</sup> Century still-life artist has an established practice of responding with "I have no comment" if he "is not aware of the work and/or cannot relate the work to the artist". These practices leave the appraiser in a difficult position. Are we to assume the work is considered authentic if "registered", inauthentic if a "no comment" is provided? The appraiser's options in such cases are limited. We may decline the assignment, seek additional opinions, draw and disclose our good-faith interpretation of the expert's intent, or some combination of these strategies. Fully disclose your efforts to establish authenticity, the limitations of the authenticator's process, associated weight given, and qualify with appropriate conditions and assumptions.
- **What is the fee for your service? Is the fee the same if the work determined not to be authentic?** The fees charged for authentication services are often driven by the ethics and practices of the authenticator's profession. Although museum staff are ethically precluded from offering opinions of value, many will offer an opinion of authenticity. Many curators consider their expert opinions to be an expected public service. It is uncommon, but not unheard of, for curators or scholars working for museums to charge a modest fee. The fees for experts in the private sector vary significantly, sometimes according to the format provided. A given expert might offer a verbal opinion without fee, but charge for a letter. Factors driving fees include related expertise, proprietary information, industry standing, experience and professional exposure.
- **Do you need to personally inspect the work or are you able to form a reliable opinion from high-resolution photographs?** Some experts are comfortable supplying an opinion by reviewing details and photographs, particularly if they have prior experience with the work. The same expert may require a personal inspection for another work with which she is less familiar. It is not uncommon for an expert to preclude a work based on photographs alone. One foundation requires the work be removed from the frame, picked up and delivered by a specific ground shipper, and will only receive items for inspection during a two-hour window on a specified date. When a personal inspection is required, understand any fees and terms, including shipping, insurance, etc.
- **What information and documentation do you need to form an opinion?** Some experts can offer an opinion based on a single photograph, others require detailed documentation, history of ownership, gallery receipts, and exhibition records.
- **What is your time frame?** Some experts charge an additional fee to expedite the report. If your assignment is time-sensitive, as most are, it's good to understand turn-around time to manage client expectations.
- **Do you deface?** Although not common, some authenticators employ the practice of defacing denied works.<sup>21</sup>

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<sup>21</sup> Masnick, Mike. (2010, January 27). "Andy Warhol Estate Accused of Defacing Authentic Warhol Artwork to Limit the Market". *TechDirt*. Retrieved from: <https://www.techdirt.com/articles/20100120/0257407830.shtml>

## CONCLUSION

Authenticity is one of the most important considerations in properly valuing a work of art. Appraisers are not expected to be, nor are we generally qualified to serve as authenticators. That role is the domain of the recognized scholars or qualified experts.

Credible opinions of authenticity should be supported by three components: scholarship, provenance and physical characteristics. Despite the growing role of forensic analysis, authentication is rarely definitive or absolute, is open to disagreement among scholars and experts, and is subject to revision as additional information and techniques become available. It is essential for the art appraiser to recognize when and how to work with the correct experts, and to understand emerging standards, methods and professional expectations.