

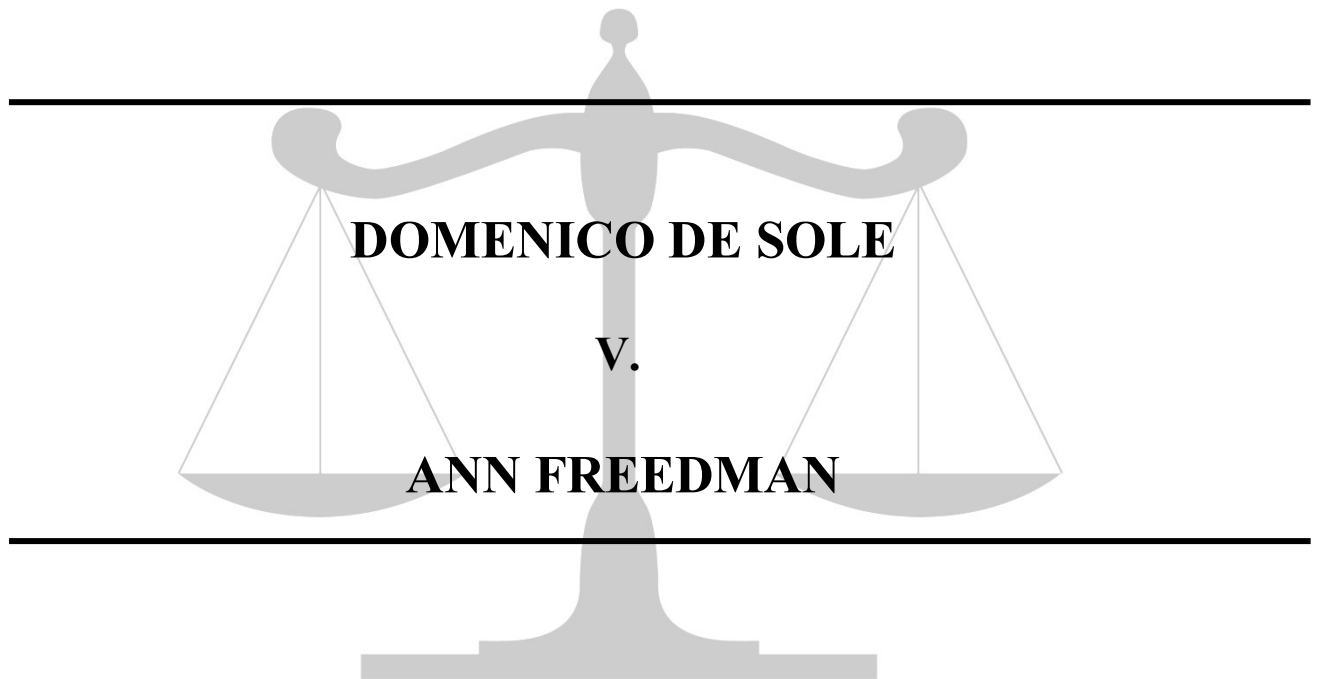


FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

Youth and Government® National Judicial Competition Mock Trial Case 2026



THE CASE OF "IT'S ALL GUICCI"



Case Materials Written By:

Hon. C. Tyler Atkinson, Municipal Court Judge, City of Denton

Adapted from the original trial and the Netflix documentary "Made You Look."

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DOMENICO DE SOLE,

No. 12 Civ. 2313 (PGG)

Plaintiff,

v.

COMPLAINT

ANN FREEDMAN

Defendant.

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, DOMENICO DE SOLE, hereinafter referred to as Plaintiff, for his complaint against defendant Ann Freedman, alleges as follows on knowledge as to himself and his own acts and acts he witnessed and information and belief as to all other matters:

...

VI.

CAUSE OF ACTION

6.01 Mr. Domenico De Sole brings this cause of action under 18 U.S. Code § 1964 (c) authorizing suit as a person injured in his business or property by reason of a violation of section 1962. Defendant violated federal code 18 U.S.C. § 1962(c) by conducting or participating in the conduct of an enterprise's affairs through a pattern of racketeering activity when said enterprise was engaged in interstate commerce.

6.02 Defendant, the Knoedler Gallery, Michael Hammer, 8-31 Holdings, Glafira Rosales, Jose Carlos Bergantinos Dias, and Jamie Andrade were involved in an enterprise whose activities affected interstate commerce as physical artwork, monetary funds, and fraudulent messages were transferred or conveyed from one state to another. The enterprise lasted for over a decade and had an ascertainable structure. Defendant, a Director and the President of Knoedler, was a critical and willing participant in the racketeering scheme at issue. Defendant enabled the enterprise to thrive by lending her name and reputation, as well as Knoedler's, to fraudulent sales of forged artworks.

6.03 Defendant's racketeering activity consisted of violations of 18 United States Code 1341 (mail fraud) in that defendant devised a scheme to defraud or to obtain money by false or fraudulent pretenses, representations, or promises, or to sell, any counterfeit article, for the purpose of executing such scheme or artifice or attempting so to do, and placed in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service.

6.04 In addition, defendant's racketeering activity consisted of violations of 18 United States Code and 1343 (wire fraud), in that defendant devised a scheme to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits and caused to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, a writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice.

...

XII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that on a final trial hereof that they recover judgment against Defendant for actual damages, treble damages, costs of court and such other further relief, whether general or special, at law or in equity, to which the Plaintiff may show himself entitled.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DOMENICO DE SOLE,
Plaintiff,

v.

ANN FREEDMAN
Defendant.

No. 12 Civ. 2313 (PGG)

RESPONSE TO COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, ANN FREEDMAN, hereinafter referred to as Defendant.

Defendant enters a general denial. Defendant in good faith denies all the allegations in the Plaintiff's Complaint.

APPLICABLE FEDERAL STATUTES

Civil Cause of Action:

18 U.S. Code § 1964 (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

Section 1962:

18 U.S. Code § 1962 (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Definitions for 1962 found in 18 U.S. Code § 1961:

(1) "racketeering activity" means ... (B) any act which is indictable under any of the following provisions of title 18, United States Code: ... section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ... if the act indictable under such section of such Act was committed for the purpose of financial gain.

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

Criminal Violations:

18 U.S. Code § 1341 Mail Fraud - Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, any counterfeit article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S. Code § 1343 Wire Fraud- Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

Burden of Proof:

A party who alleges fraud has the burden of proving each of the elements of fraud by clear and convincing evidence. Clear and convincing evidence exists when occurrence of the element is highly and substantially more likely to be true than untrue.

Proof by clear and convincing evidence means that the element must be proved by evidence that carries greater weight and is more convincing than a “preponderance of evidence.” However, it does not mean that the element must be proved by evidence that is convincing “beyond a reasonable doubt.”

A “preponderance of the evidence” means that you must be persuaded, considering all the evidence in the case, that a proposition is more probably true than not true. “Preponderance of the evidence” is defined here solely to aid you in understanding the meaning of “clear and convincing.”

CASE SPECIFIC NOTES AND RULES

- (1) The dates of the original events were intentionally not updated. You will be trying this case in 2016.
- (2) This case was written referencing several sources, including reference material provided by the actual attorneys who tried the case and the parties to the case. However, it is a fictional adaptation of the original trial. Although the author strove to tell the story well, some facts and characters were modified for this competition. As such, outside research may conflict with the facts presented in this case packet. Students may not use information gathered outside of the case packet in their presentations. The facts contained herein are not presented as historical facts. However, participants are encouraged to watch "Made You Look" on Netflix.
- (3) The affidavits have numbered lines for ease of use. For example, on cross-examination, an attorney may reference the page and line number when pointing a witness to a portion of the witness's affidavit.
- (4) The exhibits are pre-numbered. When they are offered into evidence and used as evidence, the exhibits do not have to be associated with one particular litigant. For example, just say "The Plaintiff offers Exhibit 1" instead of "The Plaintiff offers Plaintiff's Exhibit 1."
- (5) The Rules of Procedure are modified for this case to allow Exhibit 2 only to be enlarged as a colored print. Teams are allowed edit the image to remove the white border around the image before printing. All other exhibits may be printed in color in letter size if so desired by the teams.

STIPULATED FACTS

- (1) The Knoedler Gallery is an art gallery and art dealer formerly located at 19 East 70th Street, New York, New York. The Knoedler has been in operation since it was founded in 1846 – before the American Civil War. At the time of the purchase of the painting at the center of this suit, Knoedler was the oldest art gallery in New York City and was highly respected worldwide. The Knoedler Gallery ceased operation in December 2011.
- (2) 8-31 Holdings, Inc. is a holding company for The Knoedler Gallery and a few other art galleries. Michael Hammer is the President and owner of 8-31 Holdings.
- (3) Ann Freedman began working at Knoedler in the 1970s and was the President of Knoedler from 2001 to October 2009. During this period, she was employed and paid by 8-31 Holdings.
- (4) In the mid-1990s, Knoedler employee Jaime Andrade persuaded Long Island art dealer Glafira Rosales to bring a collection of previously unknown “masterworks” to Ann Freedman and Knoedler. Rosales brought two works she claimed were previously undiscovered works by the artist Richard Diebenkorn. Shortly after these works came to Knoedler, Freedman showed them to representatives of Diebenkorn’s family and estate, who immediately expressed reservations about the provenance of these works. Rosales claimed these initial works were held by a collector in Spain.
- (5) Rosales informed Freedman that she had another client wishing to sell a collection of works that the client’s father amassed. The following statements are Rosales’ claims about the client. When she was a child in Mexico, Rosales met the client’s parents who were European Jewish immigrants to Mexico. The husband traveled to the United States extensively between the 1940s and the 1970s, and, on those trips, bought a number of artworks directly from many now world-famous abstract expressionist artists, including Mark Rothko, Jackson Pollock, and Robert Motherwell. The couple died in the early 1990s and these works were bequeathed to their children, who reside in Mexico and Switzerland. Said children are uninterested in art and wished to sell the art while remaining strictly anonymous. They were not in a hurry to sell the artwork and were only willing to release a few pieces at a time.
- (6) Rosales offered no collaboration to her story, claiming that all documents relating to the anonymous collector were disposed of after the parent’s death. Rosales claimed that the son remembers seeing his father with several of the artists in his father’s home in Mexico.
- (7) Around 2000, Rosales claimed that the client told her that the father’s purchases were assisted by Alfonso Ossorio, another abstract expressionist artist, friend and colleague of Pollock and Rothko. Rosales claimed that the client’s parents and Ossorio’s parents were both in the sugar business. Knoedler employees attempted to confirm the details of Rosales’ claims independently but were unable to do so.
- (8) In April 2001, Knoedler purchased an artwork Rosales claimed to be a from the artist Jackson Pollock. In December 2001, Ann Freedman sold this Pollock painting to Jack Levy, a partner at Goldman Sachs

investment firm. The contract of sale to Levy was conditioned on verification of the work by the non-profit company International Foundation for Art Research (IFAR). If IFAR reviewed the work and could not verify its authenticity, the purchase would be rescinded, and Levy would be refunded the purchase price. In October 2003, IFAR completed its review and issued a report which concluded that the organization “cannot currently support the painting’s addition into the artist’s oeuvre.” The report claimed after reviewing the work, some specialists expressed positive comments with reservations and others expressed extremely negative reactions with serious concerns about the authenticity of the signature on the work. The report said even the experts who accepted the painting as authentic expressed doubts about its provenance¹. IFAR rejected the claim that Ossorio had acted as an agent for the purchase of the painting stating that it was inconceivable and difficult to believe based on known activities of Ossorio from the time when the painting was said to be procured. However, the report stated IFAR would “keep an open mind and be very willing to consider additional evidence regarding the provenance of the Levy Pollock.” Freedman sent the IFAR report to Michael Hammer and Glafira Rosales. Levy returned the work to Knoedler and the purchase price was refunded.

- (9) Jaime Andrade was a personal friend and executor of the estate of David Herbert – another deceased art-world figure with strong relationships to the abstract expressionist artist. Andrade told Freedman that Herbert had met with Glafira Rosales and could possibly have ties to the Rosales Works. Freedman asked Rosales to relay the information to her client to see if David Herbert had any ties to the client’s father. Rosales confirmed with her client that David Herbert has assisted the father with obtaining the paintings. David Herbert was a gallery assistant for Ossorio for many years and had acted in his stead. Apparently, this information was not presented earlier because it came with the potential allegation that the father may have had an undisclosed romantic relationship with David Herbert. The family did not want to disclose these facts until after David Herbert passed away in 1995. If he were linked to the story, the client feared that Herbert would be upset and disclose the client’s identity and ruin his father’s reputation. Knoedler employees attempted to confirm the details of Rosales’ claims independently, but were unable to do so.
- (10) In the Fall of 2004, Domenico and Eleanor De Sole contacted Ann Freedman to set up a meeting to discuss the possible purchase of a painting by the artists Sean Scully. The meeting was set for November 2004 and the De Soles arrived intending to spend approximately \$1 million for a Scully work. The Knoedler did not have access to a Scully. At the meeting in Freedman’s office, Eleanor inquired about a painting on a easel that was covered with a white sheet. Freedman uncovered the painting which was purported to be a large painting by the world-famous abstract expressionist painter Mark Rothko from 1956². The De Sole’s, relying

¹ The “provenance” of a work of art is a historical record of its creation, ownership, custody, and location, which ideally will allow a gallery or collector to trace a work – through documents and other resources – from its current location back to the hands of the artist. The presence of a complete provenance back to the creation of a work of art by an artist demonstrates the work is authentic meaning created by the actual artist.

² Exhibit 2.

on the gravitas and goodwill of both the reputation of the Knoedler and Freedman, were instantly drawn to the artwork and expressed a desire to purchase. The De Soles handed over the logistics of the purchase to their consultant Jim Kelly. They intended to bequeath the painting to their daughter Laura De Sole and requested any documents be addressed in her name. In subsequent meetings both in person and over the phone, Freedman represented to the De Soles and Kelly that the anonymous seller of the work was a Knoedler client and that the client's father had obtained the work directly from Rothko with the advice of David Herbert. Also, in these discussions, Freedman informed the De Soles and Kelly that Rothko's son, Christopher Rothko and numerous experts – notably David Anfam who had created Rothko's catalogue raisonné³—had examined the work and attested to its authenticity. Finally, Knoedler and Freedman told the De Soles and Kelly that the work would be included in the forthcoming supplement to the Rothko catalogue raisonne being prepared by Laili Nasr with the National Gallery of Art.

- (11) On or about November 30, 2004, Knoedler sent Kelly an invoice⁴ by USPS mail for the sale of the work, seeking payment in the amount of \$8.3 million. On December 11, 2004, at the request of the De Soles, Freedman faxed Kelly a letter explicitly warranting the authenticity of the work.⁵ On December 17, 2004, Kelly wired Knoedler the purchase price of \$8.3 million on behalf of the De Soles from the First National Bank in New Mexico to the Knoedlers HSBC account in New York.
- (12) The De Soles' received an anticipated loan request from the Foundation Beyeler to have the Rothko shipped to Switzerland to be prominently displayed in the Rothko Rooms at the Foundation. The Foundation published a brief pamphlet on the exhibition⁶.
- (13) Between 2004 and 2008 – in addition to the more than \$7 million in profit made from the sale of the Work to the De Soles – Knoedler made at least six additional major sales of Rosales Collection works, turning a gross profit of more than \$13 million on sales of more than \$20 million.
- (14) Michael Hammer personally received around \$4.7 million in profit sharing from Knoedler – 91% was directly attributable from the Rosales Collection sales. Ann Freedman had a profit-sharing agreement with Knoedler for 30% of each sale.
- (15) From December 2007 to January 2008, Ann Freedman held three meetings with representatives of the Dedalus Foundation whose primary work revolved around the works of Robert Motherwell. Dedalus advised Freedman that it believed seven of the Motherwell works from the Rosales Collection were fakes. Dedalus rejected Freedman's assertions that the works were purchased through David Herbet, directly from

³ A catalogue raisonné is a print book containing a comprehensive, annotated list and images of all of the known, verified works of art from a particular artists. It may be specific to one particular medium that the artist used (only print or only canvas), or all media.

⁴ Exhibit 3.

⁵ Exhibit 4.

⁶ Exhibit 7.

Motherwell. Dedalus board member Jack Flam attended these meetings and sent letters to Knoedler charging that the Motherwell's were likely part of a "false, illegal or dishonest scheme." In response, Freedman and Knoedler drafted a confidentiality agreement promising not to disclose any information about the purported Rosales' client and drafted a letter to the client requesting confirm the details of the provenance in writing. Also, Knoedler hired James Martin of Orion Analytical to conduct scientific testing of two of the Motherwell paintings.

- (16) Martin's analysis agreed with the Dedalus conclusions and asserted that the canvas backs and pigments on the surface post-dated the attributed dates of the works by at least ten years and were inconsistent with the understanding that the paintings were made in the 1950s. Martin noted that the use of acrylic polymer emulsion paint on the works was inconsistent with Mother's use of acrylic paints. The notes that both paintings display patterns of circular abrasions, visible only with magnification, that point to the use of an electric sander to remove an old painting and replace it with a new one. Knoedler provided Dedalus a redacted version of Martin's report.
- (17) Freedman again met with Rosales to ask her to approach the client again to see if there exists any tangible evidence related to these transactions or something which documents the link to David Herbert and the artists in some way.
- (18) In January 2008, Eleanore De Sole requested an updated appraisal of the Rothko for insurance purposes. On January 19, 2008, Knoedler sent the De Soles a written appraisal valuing the work at \$9 million explaining that the appraisal represented its estimate of the probably cost of replacing the work with a similar work. The De Soles then spent \$64,000 to insure the Work.
- (19) In September 2009, a grand jury empaneled to investigate Freedman, Rosales, Knoedler and the Rosales Collection works issued subpoenas to Freedman and Knoedler seeking information. Shortly thereafter, Knoedler placed Freedman on extended leave from work. Hammer had all the remaining Rosales Collection works in Knoedler's inventory marked "not for sale."
- (20) In December 2011, Pierre Lagrange filed a lawsuit seeking damages against Knoedler. The following day, Knoedler announced that it was permanently closing its gallery.
- (21) Attorneys for the De Soles retained James Martin of Orion Analytical to investigate the authenticity of the 1956 Rothko. Martin's report concluded that Rothko did not create the work and that it was a forgery.
- (22) Rosales was indicted on tax charges related to the scheme and plead guilty. Rosales' boyfriend Bergantinos Diaz was indicted and fled to Spain – avoiding extradition. The forger, Pei-Shen Qian was indicted and fled to China – also avoiding extradition. Federal prosecutors have closed their investigation and are not seeking any other criminal indictments.

Affidavits

AFFIDAVIT OF DOMENICO DE SOLE

UNITED STATES DISTRICT COURT §
SOUTHERN DISTRICT OF NEW YORK §

1 My name is Domenico De Sole. I am over the age of 18 years, and I am otherwise fully
2 competent to testify. I can read, write and understand the English language. I am not under the influence
3 of any drug or other substance which would prevent me from fully understanding the nature of this
4 affidavit. All the information in this affidavit is within my personal knowledge and is true and correct.

5 Art is my wife Eleanor's passion. I enjoy art as well and own several artworks from famous
6 painters. However, mostly my wife decides what we buy and I get to enjoy them with her. I am not a
7 sophisticated art expert at all. My expertise is luxury goods. You want to talk about handbags; I am your
8 man.

9 My father was a civil servant in the military in Italy. I grew up in Italy, but we moved around a
10 lot. I went to classic high school. Then went to law school in Italy, in Milan and Rome. We moved to
11 American before I finished my studies, so I transferred to Harvard Law School and obtained my LLM,
12 Master of Law in 1972. I clerked with the law school for a few years. Then I practiced in New York and
13 Washington at the law firm Patton Boggs. I eventually became a partner in the law firm. In 1984, I left
14 law to join one of our business clients – Guicci America – as the President. Guicci America is a wholly-
15 owned subsidiary of the Guicci Group which is the worldwide business. Guicci owns many retail stores
16 throughout the world and is engaged in the wholesale business selling to luxury retailer. It's mainly
17 handbags, accessories, shoes, men's ready-to-wear, women's ready-to-wear, perfume and cosmetics.

18 From 1993 to 2004, I was the COO and then became the CEO of the entire group – running the
19 worldwide operations for Guicci. I had moved back to Italy for that position as the company is based in
20 Florence.

21 In May 2004, I left Guicci to start a new company – a new luxury company with a gentleman

1 that was my creative director at the Guicci Group. His name is Tom Ford. The company was Tom Ford
2 International.

3 A long time ago, Eleanor and I purchased some maritime art in New York. Then later on when
4 we were living in Europe we starting buying contemporary art, which we always liked. And I remember
5 our first painting was a work by Lucio Fontana, an Italian artists, a post-World War II artists. Again, I'm
6 not a expert at all when it comes to paintings. I understand governance – corporate structures and
7 business, and handbags.

8 When we are interested in investing in a work we reach out to our agent Jim Kelly. Jim owns an
9 art gallery in Santa Fe and he guides us through the process to locate a dealer or owner, determine a
10 price and assist with the transaction. Eleanor and I, not being experts, we always historically purchase
11 from very, very famous, well-known and established dealers. We understand there is a markup on the
12 prices. However, that allows you – or was supposed to up until now – some assurances as to the
13 authenticity of the work. You know it is the real deal.

14 In early 2004, we purchased a Rothko on paper for a million four. I always have loved Rothko. I
15 think he was an amazing painter and very important. He had a history of art post-war and I always loved
16 it. We purchased it through Jim Kelly from Anthony Grant Gallery – from Anthony Grant.

17 That summer, we were visiting a friend in Arizona who had a great collection of art. One of his
18 pieces was by the Irish paintiner Sean Scully. It was very attractive, we thought. So we asked the friend
19 where he acquired it and he mentioned he buys all his art through the Knoedler in New York. Now, I
20 already knew about Knoedler – it's very, very famous, the most prominent art gallery in the United
21 States. He went on telling me about Ann Freedman saying she was a close friend at this point.

22 In November 2004, Eleanor and I visited Knoedler and met with Ann Freedman. The Knoedler is
23 a very imposing building, very elegant. We asked for Ann and were taken upstairs to an office. Her
24 office was standard for what you would imagine – oversized sofas, rows of bookshelves, artwork

1 scattered around. There were two easles more prominently displayed – both had white sheets covering
2 them. We sat down – it was just the three of us. Knoedler represented the artists Sean Scully directly. Ms
3 Freedman said she did not have any Scully works presently, but she could reach out to the artist on our
4 behalf. Eleanor inquired about the cloaked paintings. When Ms. Freedman lifted the veil on those
5 paintings, she brought it down over our eyes – metaphorically of course. There was the fake Rothko –
6 Exhibit 2.

7 Ms. Freedman then went on for the next thirty minutes or so about how amazing, magnificent,
8 beautiful and important this painting was. She explained that there was this discovery and paintings
9 owned by a client of hers – a Swiss client. The father had died and left a collection of beautiful paintings
10 – she would not disclose the name of the client. She went on and on about this Swiss client of hers, a
11 client of Knoedler. The history of the artwork matters, but more important to me was the brand. For
12 example, “Guicci” the brand means a great deal. The same was true – at least at the time – for the
13 Knoedler gallery. Ann Freedman conveyed that the Knoedler had done their homework and they were
14 willing to put their 165 year history behind this painting. She claimed it the Swiss client with the
15 assistance of a specialist named David Herbert acquired the work. Then she went on and on about all the
16 people who had authenticated the painting – including the son of the artists, Christopher Rothko.

17 She also had a Jackson Pollock painting and offered to give us a discount if we purchased both.
18 They were both beautiful works. The Rothko – or fake Rothko – she offered at \$8.5 million or around
19 there and the fake Pollock at \$11 million. We had never spent that much on art before – we intended to
20 only spent around \$1 million on a Scully to start. But, the chance to own a Rothko doesn’t come around
21 very often.

22 We called Jim Kelly so he could research the current going rate for a Rothko of this type –
23 whether Freedman’s asking price was exorbitant. Jim flew to New York and met with Ms. Freedman.
24 He worked out a lowered price – and confirmed that the price was reasonable. We didn’t have Jim – and

1 we didn't either – contact the experts spoken of by Ms. Freedman. The world trusted Knoedler – they
2 were the top name in art. It wasn't as if we were getting the art at a below market rate – no red flags for
3 us not to trust the expert here. Jim's role has always been limited to research on the price with all works
4 we purchase. With the Rothko work on paper – same thing. Jim was brought in to help with price.

5 Jim received an invoice from Knoedler – Exhibit 3 – which I have seen. Although I trusted
6 Knoedler, I wanted the story from Freedman to be put in writing as a warranty from Knoedler.
7 Something to attach to the painting to describe that story of where it comes from. I hadn't asked before
8 for such a warranty. It has always been – you know – trust the gallery, get the invoice, Jim pays and the
9 art is delivered – no questions ever beyond that. But this work was a much larger purchase and Ms.
10 Freedman was happy to oblige. The letter came in the mail – Exhibit 4 – and we told Jim to move
11 forward. The warranty letter did reflect the conversation we had with Ms. Freedman in November 2004
12 – her selling the story about the painting. We wired Jim funds from our account and he executed all the
13 details and that was that. There was no reason to make the purchase any more complicated – to explore
14 the warranty or call those experts. I relied on Ms. Freedman and paid her well.

15 Looking back it is important to note here that neither Freedman nor any Knoedler employer told
16 my wife or I that the Swiss client was unknown to Knoedler, that they were really getting these works
17 from someone named Glafira Rosales and her boyfriend Bergantinos Diaz who had been accused of
18 selling forgeries before, that the true seller of the work was Knoedler itself as it had purchased the
19 paintings years before, that Knoedler was relying on Rosales' statements alone to support the
20 provenance of these paintings, that the Pollock she offered had been rejected by IFAR as “difficult to
21 believe,” that the story about the dealer changed from Ossorio to Herbert, that not one work out of the
22 entire collection had any paperwork to back it up, that none of the experts on her warranty list had
23 actually authenticated the painting, and that every letter in support of the collection relied on the
24 truthfulness and reputation of Knoedler instead of hard evidence.

1 The painting came to our home in South Carolina. We displayed it in our home. It only left once
2 – there was a request from the Beyeler Foundation in Switzerland to include the painting in a gallery
3 exhibit. Then we had it in our house – until we discovered it was fake.

4 It was December 2011, Eleanor and I were in Florida for Art Basel – an art event for galleries,
5 artists, collectors, spectators and students. We were staying with some friends. I had just come out of the
6 shower and saw Eleanor shaking – holding a New York Times. She was very, very upset – almost crying
7 – couldn't talk. She pointed to the article. It said that a gentleman – Lagrange – had sued The Knoedler
8 over a fake Pollock painting and that the Knoedler had announced that it was closing its doors. Same
9 story though – Swiss collector, David Herbert, undisclosed client. I called Jim Kelly and then Ann
10 Freedman directly. Again, she went on and on, attempting to assure me that our Rothko was genuine –
11 and the Pollock was as well – but ours was not a fake. She was going to release more history of the
12 painting to put the lawsuit to rest and she would update the provenance of our work as well. She would
13 call me back. I'm still waiting on that phone call – never heard from her again.

14 The painting, being fake, is worthless – zero. I later came to know that there was no Swiss
15 collector client of Knoedlers – they didn't exist. All the experts may have talked with Ms. Freedman –
16 but no one actually authenticated the work as real.

17 I have worked very hard to build what I have for my family. I'd like to first recover what I paid
18 for the painting. And since I really believe there was a conspiracy around the works as a whole – to
19 offload them at significant profit – I think I'm entitled to damages. Actually, there has been a lot of
20 suffering.

21

22

23

24

AFFIDAVIT OF JAMIE MARTIN

UNITED STATES DISTRICT COURT §
SOUTHERN DISTRICT OF NEW YORK §

1 My name is Jamie Martin. I am over the age of 18 years and I am otherwise fully competent to
2 testify. I can read, write and understand the English language. I am not under the influence of any drug
3 or other substance which would prevent me from fully understanding the nature of this affidavit. All of
4 the information in this affidavit is within my personal knowledge and is true and correct.

5 I am the owner and founder of Orion Analytical, LLC. Worldwide, I am one of only a handful
6 of individuals who perform forensic analysis of works of art to arrive at a conclusion of authenticity. My
7 work concerns the examination and analysis of the structure and composition of materials. I also
8 perform some analysis for industrial goods, contaminants on gyroscopes and guided missile defense
9 systems, fabric softener packaging. But, I mostly focus on artworks.

10 The clients that my company does work for in the world of art include the FBI and U.S.
11 Attorney's Office. I do work for Christie's and Sotheby's and other auction houses. Also individual
12 galleries and insurance companies. A lot, most of what I do, though, is doing work for conservators, art
13 conservators and museums. The work I do is in a private facility not in a museum laboratory. The
14 techniques that I use as a conservator are the same as those used in museums though. The principle
15 difference is that my boss, me, allows me to work for people outside the museum.

16 So for example, a museum calls and says they have a painting that varnished and they've tried
17 everything to get the varnish off. They ask me to identify the varnish so it can be removed without
18 hurting the painting. I analyze a small microscopic spec of the varnish and tell that it's a polyurethane.
19 Then they use the correct removal solution for that compound.

20 From 1994 to 2000, among other clients, I helped the FBI with an art forgery investigation of a
21 large number of fake works being sold by a man named Charles Heller. Oh and also the case of the

1 famous forger named Ken Perenyi. I'm also working on this case – the Rosales investigation with the
2 FBI.

3 I view the relationship between materials analysis and authentication of a work of art as a three-
4 legged stool – this concept is not mine, its widely accepted in the field. First, there's the person who
5 authenticates and attributes a work of art – an art historian with some knowledge about the artist's body
6 of work. The second leg would be the provenance or the documentation that physically links the object
7 back to the artist's studio. The third leg deals with the physical substance of the work – what the work is
8 made of and whether that physical substance is consistent with the attribution and the understood age of
9 the work. Are the structure and materials consistent with what the artists was using or what was
10 available to the artist at the time.

11 The techniques I use are largely the same ones I learned in graduate school and have used for the
12 last 30 years now. They consist of technical photography, so taking cameras of the sort that you can buy
13 anywhere and attaching a special lense that lets you photograph and look through the paint or see
14 invisible inscriptions. I use black light to see how the works fluoresce or glow. That can help me identify
15 restoration and identify historically inaccurate materials. Then use what's called a stereo microscope
16 – what a neurosurgeon would use when operating. It lets you look at fine details, at magnifications of
17 maybe a hundred times. I can see the structure of the object, the way the layers are built up. It's
18 condition over time. If the age cracks are real or if they were painted on. If the dirt is natural or if it has
19 been wiped onto the canvas. And I can select samples for analysis.

20 These samples are fed into my best friend – I take him everywhere with me. He is the FTIR
21 machine – Fourier Transform Infrared Microspectroscopy. It's a technique where you combine infrared
22 spectrometer – an instrument that emits infrared light – and heat. It allows you to pass that light
23 through a microscopic sample and detect how much light comes out on the other side. The light coming
24 through has a specific wave length based on the molecular composition of the material being examined.

1 If produces a plot – like a graph with peaks and valleys. You compare that to a database of known wave
2 lengths and you can identify the substance. Right down to the specific type of paint used – for example,
3 Bone White, Egyptian Green, Lapis Lazuli Blue, BV15 Violet, Bile Yellow. There is an encyclopedic
4 document called the Colour Index that tracks down pigments right to the manufacturer and dates of
5 indtroduction of the colorants – going back to at least the 1920s.

6 So I guess I should go over my educational background. After a hiatus to skateboard and date in
7 my teen years, I went to art school in Baltimore. We made our own materials, stretched our own
8 canvases and primed them. We mixed our own paint from pigments and oil. We drew and painted from
9 life. As a part of that we were encouraged also to copy paintings by the masters. So I got very good at
10 copying paintings – making very good facsimiles of real works.

11 I thought I was going to go into medical illustration at Johns Hopkins. One fateful day, I bumped
12 into an art conservator from the Baltimore Art Museum who took me into a lab. I realized immediately
13 what I wanted to do for the rest of my life. My graduate studies were at the University of Delaware – it
14 had the strongest science background. First year involved studying the materials, the chemistry, the
15 physics of materials that are used to make different works from glass and veramics to paintings and
16 furniture textiles. We studied their deterioration and learned how to distinguish real from fake ageing.
17 We learned the techniques required to restore or preserve those works of art. The second years was
18 hands on in a specialty – for me that was paintings. I examined and cleaned and restored paintings –
19 while at the same time studying analytical chemistry, the technique I now use. It was more advanced
20 self-selected studies in my third year – where I focused on microscopy. I then taught art conservation
21 around the world – Cambridge in England and also here in the States.

22 In 1991, I set up an analytical lab at the Clark Art Institute to provide basic services to
23 conservators and museums. By 1997, it was recognized by the Department of Interior as the foremost
24 lab in the country for provision of analytical services for museums and conservators. In 2000, I opened

1 Orion Analytical as a private operation.

2 I'm a fellow in the American Institute for Conservation of Historic and Artistic Objects – the
3 national organization for professional art conservators. I'm a member of the American Academy of
4 Forensic Sciences. I've published 10 to 15 publications related to FTIR analysis and general art
5 conservation. In my professional career I've completed well over 1800 projects some of which involved
6 multiple works of art each. In total, I've probably analyzed eight thousand works of art. I've taught paint
7 analysis at the Smithsonian Center for Research Materials. Also, I've worked with Quantico researchers
8 with the FBI to teach them FTIR analysis. For the last six years, I've been an adjunct professor at New
9 York University.

10 I don't consider myself an art historian expert – even though I studied art history in college.
11 However, as an art conservator I am skilled at researching the history of an artwork and an artist. That
12 piece is vital to understanding what materials and techniques the artists used.

13 In the Spring of 2008, I was hired by the Knoedler gallery in New York to make an objective,
14 independent examination of two works that were attributed to Robert Motherwell, which were signed 53
15 and 55, which I took to mean 1953 and 1955. The initial inquiry came from the conservator Dana
16 Cranmer to whom I sent the forms which were filled out by Mr. Jensen at the Knoedler on behalf of Ann
17 Freedman. My main point of contact was with art historian EA Carmean who I understood was working
18 with the Knoedler on the Rosales collection. The form from Mr. Jensen contained an added note from
19 the Knoedler which stated, "Client certifies that mS. Ann Freedman is the full, absolute, undisputed and
20 rightful owner of Spanish Elegy, 1953, and an anonymous private client, known to client, is the full,
21 absolute, undisputed and rightful owner of Spanish Elegy 1955."

22 The works were delivered to my laboratory from Dana Cranmer's gallery. I performed the
23 standard, extensive analysis on these two works. I did reach a conclusion. It was based on a number of
24 factors. I found the presence of two white grounds – uhm, white base layers and the composition of one

1 of the materials, acrylic polymer emulsion, that those paintings should not have had if they were created
2 in 1953 and 1955 because Motherwell didn't begin using this material until 1963. We have a transcript
3 of an interview Motherwell himself gave which explicitly confirmed this fact. I took samples of the
4 material with the stereomicroscope and then used the FTIR analyzer to identify the substance.

5 I also found colors taken from samples along the edges of the paintings. Those samples contained
6 colors that didn't exist in 1955 according to the Color Index.

7 I guess it was October 2008, I conversed back with Mr. Jensen of the Knoedler by e-mail with a
8 preliminary report. I explained that my study of the work was extraordinarily interesting. That the
9 materials and structure of the painting was inconsistent with the stated history of the artworks. January
10 2009, I received a reply from Knoedler through EA Carmean – it was a request for revisions to my
11 report. Dr. Carmean asked that I remove any statement that the materials found in the works were
12 inconsistent with the artist's known use of materials. He wanted me to add a statement that very little
13 research into Motherwell's materials existed. He also wanted me to remove the information about the
14 time traveling color pigments – he claimed that the pigments might have gotten on the canvases from
15 other works that leaned up against this painting and were added along the edges. I didn't agree with any
16 of his statement – they weren't true.

17 Ultimately, Knoedler wanted me to state that I was not able to come to a conclusion regarding
18 the authenticity of the works. Which again is not true. They were clearly fakes.

19 My next Rosales work I received for examination was actually at the request of Plaintiff's
20 attorneys in this case. The De Soles requested an analysis of their Rothko work. I received the painting
21 in either December 2011 or early 2012. In fact, since then I've conducted analysis on 16 of the Rosales
22 collection works.

23 I examined most of the works in Brooklyn at Christie's Fine Art Storage Services. What first
24 stood out to me about the 1956 Rothko was that it was created over a white ground – the fabric canvas

1 was coated with a white layer and the red paint was applied over that. You can see that reflected in the
2 stereo microscope picture of the white layer under the red paint. In that picture, I actually discovered
3 two white base layers – one of which was tearing. This happens with elastic type paints. When I returned
4 with samples to my lab and the FTIR analyzer, I identified the paint as water-based polyvinyl acetate
5 paint – similar to indoor paint you would get from Home Depot.

6 The art history research is very clear on this. Mark Rothko in the 1950s was not using a white
7 ground for his paintings at all. He was taking animal glue – mostly rabbit skin glue, which is transparant
8 and mixing in colored pigments to create a combination ground. He worked the glue into the canvas
9 fibers and this served as the base for the rest of his work. It was not just a preparation step, but served as
10 the basis for his remarkeable style. Another more simple point, water-based acrylic emulsion paint
11 wasn't commercially popular until the late 1960s. Rothko didn't have access to it in the 1950s.

12 There were other concerns. The crossbar marks on the back of the canvas are not seen in Rothko
13 works. Those were visible to the naked eye. They show up in basic photographs. Crossbar marks occur
14 when the canvas flexes against a crossbar behind the canvas. If the artist uses a brush vigorously, you
15 can actually press the canvas fibers across the back crossbar causing micro cracks in the canvas and a
16 build up of paint along the lines of the crossbar. Rothko took great car to avoid this. He invented a
17 special stretcher technique that resulted in no crossbar marks on any of his paintings.

18 There were similar concerns with the other paintings in the Rosales collection. One of the most
19 striking problems is actually with a Pollock painting that hung in Ann Freedman's house for a number of
20 years. A quick glance at the artists signature on the front, lower, right corner shows his name was
21 misspelled – "Pollock." Jackson Pollock was never consistent in how he applied his signature to a
22 painting. However, I've never seen another Pollock where the artists name is misspelled. Many of the
23 works had suspicion signatures. Some were clearly applied with a stencil.

IDAVIT OF DAVID ANFAM

UNITED STATES DISTRICT COURT §
SOUTHERN DISTRICT OF NEW YORK §

1 My name is David Anfam. I am over the age of 18 years, and I am otherwise fully competent to
2 testify. I can read, write, and understand the English language. I am not under the influence of any drug
3 or other substance which would prevent me from fully understanding the nature of this affidavit. All of
4 the information in this affidavit is within my personal knowledge and is true and correct.

5 I was born and raised in Kensington, London. Due to a childhood case of measles, I've been
6 profoundly deaf since the age of five. Early on, my parent's encouraged my passion for the arts. My
7 father frequently took me to the Brighton Museum and the National Gallery in London. I obtained a
8 Bachelors degree and Docorate of Philosophy in Art History focusing primarily on the abstract
9 expressionists from Courtauld Institute of Art

10 I am an art historian, critic and curator. My work focuses on Mark Rothko and to a lesser extent
11 on Clyfford Still, Jackson Pollock and William de Kooning. I published the catalogue raisonne of Mark
12 Rothko's works on canvas in 1998. I've probably seen over 800 Rothko works on canvas and hundreds
13 of works on paper. I have written over 14 books on various artists and served as co-author on another 30
14 books. I currently lecture globally and act as an external Ph.D. examiner for the University of Essex, the
15 New York University of Fine Arts and the University of Texas at Austin. I am widely considered the
16 foremost expert on the abstract expressionists artists.

17 In early 1998, I was contacted by the Knoedler Gallery to see what they said were works by
18 Franz Kline and Mark Rothko. I went to the gallery itself on East 70th Street. It was a while ago, but I
19 did see a Rothko work on paper that day. It had an orange base with a floating red cloud on top of a
20 floating black cloud. I don't recall who, but someone asked me to analyze the work and provide an
21 opinion to accompany the sell of the work. In March 1998, I sent a fax to Knoedler as a follow-up. I was

1 simply asking if they needed my assistance further on the project and if so, I asked for further
2 provenance data associated with the work. I never heard back from Knoedler on the matter. I sent
3 another fax in late 1998 informing Knoedler that I was already doing some research for another gallery
4 instead.

5 I found out later that when the work sold to a Mr. and Mrs. Gersh, Knoedler informed the buyer
6 in writing that I indicated the work was to be included in a catalogue raisonne for Mark Rothko's works
7 on paper to be published by me, David Anfam. False. First, I wasn't ever going to be the publisher of the
8 works on paper. Second, I never told anyone at Knoedler that I had authenticated the work.

9 In 2002, I attended the Park Avenue Armory Art Fair – an annual art fair held at 68th Street. I
10 visited the Knoedler Booth and saw a Rothko work on canvas. Mrs. Freedman was there along with
11 another staff member. I told them both that the painting was extremely interesting, that I was astonished
12 at its beauty. It had a redish orange base with black cloud over a red cloud and a bright yellow strip
13 between them. I believe it was later sold to the Hilti Family Trust.

14 It was sometime in 2004, I had another conversation with Knoedler through Mrs. Ann Freedman.
15 She began to tell me about this mysterious collector. Based in Switzerland who was Jewish and had
16 considerable links to Mexico.

17 In 2005, I received some mail from the Knoedler. The package included an eight-by-ten color
18 copy of the 1956 Rothko and then a printout of what appeared to be the work hung in the Rothko Rooms
19 at the Beyeler Foundation in Switzerland. Ms. Freedman included a small notecard dated July 25th. I
20 never spoke to anyone at the Knoedler about the mailing.

21 I was invited back to the Knoedler to view five works – not all Rothkos. The meeting invite
22 came through Ms. Edye Weissler who was a librarian at the Knoedler tasked with conducting research
23 on the works. She asked me to come see the a few works that were “from a trove of undocumented
24 works.” I replied to her e-mail asking to see more than just the five if the collection included more. She

1 replied back jokingly, “Just give me a chance, I can only paint so many of those at a time.”

2 I made it to the Knoedler in February of 2006 – Mrs. Freedman was present at the meeting. In
3 my quick view of the works, I let her know that I was intrigued. I thought the works were fascinating,
4 beautiful, elegant. Which they were, even though we now know they were all forgeries. At that time,
5 again, I wasn’t employed by Knoedler to form an opinion as to the work’s authenticity. Ms. Freedman
6 did discuss her idea of bringing all of the Rosales works back together for a grand exhibition. I
7 expressed interest in assisting with that effort. I knew that my sentiment, obviously, mean that I would
8 conduct indepth research before pulling such and exhibition together. All along in my interactions with
9 these works, I never was asked and never did perform any independent research or form any
10 professional conslusions.

11 Sometime in 2007, I was pulling together a gallery exhibtion for a small museum in Brazil on
12 the abstract expressionists. Ms. Freedman and I had a brief discussion about the possibility of including
13 what we believed to be a small Jackson Pollock in the exhibition. Mrs. Freedman asked me to send her a
14 letter requesting the loan of the painting and specifically identifying the painting. I sent the letter.
15 However, the exhibition fell through and was never put together.

16 In June 2008, I received another e-mail from Knoedler librarian Ms. Edye Weissler. It read, “I’m
17 a little worried about the Newmans, I don’t want you to get into hot water, and we haven’t enough to go
18 on with D. Herbert. I have found an appointment in Rothko’s calendar where he met with Herbert once,
19 but that is it.”

20 In September of 2008, I opened a gallery exhibition in New York as curator. I did include the
21 Blue Newman that was purchased by the Knoedler in May of 2005 in the exhibition. I didn’t intend its
22 inclusion to be a statement as to the authenticity of the work. The work was photographed and appeared
23 in the exhibition catalog.

24 In late 2008, Ms. Freedman asked me to write a letter to Jack Flam at the Dedalus Foundation.

1 Apparantly, he had begun to dismiss the Rosales works. Ms. Freedman claimed that Mr. Flam had a
2 closed mind as to the scholarship regarding the works. She just asked me to write a letter asking him to
3 have an open mind on the works. I felt very uncomfortable. As if she was trying to use me as a
4 mouthpiece for her gallery. I sent a carefully worded letter to Jack Flam which merely explained that
5 there are a lot of missing pieces in the provenance of the works and that it was worth exploring more
6 with an open mind. I in no way conveyed that I had even closely examined these works, let alone had
7 authenticated them myself.

8 The final conversation I had with Ms. Freedman was Thanksgiving of 2011. She requested that I
9 send a letter to the Clyfford Still Museum in Denver. She claimed to have a fragment of a burnt painting
10 by Clifford Still that should be included in the Museum's exhibit. The fragment came from this
11 mysterious client. I am actually the curator of the collection for the Museum so my letter would have
12 ensured its inclusion. At this point, I already knew about the forensic testing being done by James
13 Martin – and the glowing doubts in regard to all of these paintings. I thought it rather rich that she
14 attempt to pull me into her coverup at this point. I told Ms. Freedman that I wasn't comfortable writing
15 such a letter.

16 I was never hired by Knoedler to conduct independent analysis of any work in the collection. I
17 never conducted my own research into the false provenance claims presented by the Knoedler. I was
18 never engaged in a profit sharing venture with Knoedler in regards to the sell of any of the works. I
19 never gave Mrs. Freedman or anyone at Knoedler to use my name to sell any of the works. I'm appalled
20 that she would take such liberty and attempt to bring me into her scheme.

21 If I knew what she knew all along, of course I would have spotted the red flags and thrown all of
22 the paintings into a burn pile quickly. She hid the full story from us as she attempted to create truth
23 where that wasn't any.

24

AFFIDAVIT OF ANN FREEDMAN

UNITED STATES DISTRICT COURT §
SOUTHERN DISTRICT OF NEW YORK §

1 My name is Ann Freedman. I am over the age of 18 years and I am otherwise fully competent to
2 testify. I can read, write and understand the English language. I am not under the influence of any drug
3 or other substance which would prevent me from fully understanding the nature of this affidavit. All of
4 the information in this affidavit is within my personal knowledge and is true and correct.

5 No one wants to be fooled. People are fooled by art much more than we know. The director of
6 the Met was once asked, “How many fakes do you think could possibly be on the walls?” To which he
7 responded, “I have no idea.” It’s embarrassing. Worse than that I think is that they – the whole art world
8 – don’t want to own up to admitting that they were fooled. It’s very easy to see how I was so caught up
9 in the excitement over the art.

10 I grew up about an hour north of New York City. My father worked in real estate and my mom
11 was a stay at home mother. They both worked very hard to provide for our family. I played basketball in
12 high school and received a scholarship to Washington University. I’ve always loved art. After college, I
13 worked as a receptionist at another art gallery in the city. When I was 29 I received an offer from the
14 Knoedler. It was my dream job to work for Knoedler. I worked for Knoedler for 32 years in total. I’ve
15 dedicated my whole life to art.

16 So I guess we should start from the beginning of it all.

17 It was my recollection, that around 1995 Jaime Andrade, a Knoedler employee – Jack-of-all-
18 trades type – he came to me in my office. He told me he had a very close friend who wanted to show me
19 a Rothko. I said – you know – of course. One day, he brought Glafira Rosales into the Knoedler gallery.
20 I don’t think I had ever heard her name before, but it didn’t matter. She was polite, well dressed, very
21 soft spoken. She had the Rothko work-on-paper wrapped between some cardboards. Jaime unwrapped it.

1 I though it was absolutely beautiful. If one could fall in love with something material, I would fall in
2 love with art. I got genuinely excited. Signature on the back, dated – it looked very real.

3 It would be normal for me to ask some questions. Can you tell me anything about where it comes
4 from, the owner? She made it very clear that she had confidentiality, the owner's name was not to be
5 revealed – which is common.

6 She explained that a very well to do family, they came over from Europe, went to Mexico – not
7 unusual after war time. He and his wife came to New York and bought paintings through Alfonso
8 Ossorio, he connected the collector directly with the artist. She said she acquired a number of works, not
9 just this one, there are others. He takes the paintings back to Mexico and stores them carefully. The
10 collector passed and left the collection to his son. The son didn't share his dad's interest in art and
11 wishes to sell them – not all at once. I let her know I was interested, but wanted to show the works to
12 experts to get their opinion. Now, they came step-by-step, the information we have today about the con
13 artists and her confession, I didn't have then. I worked one painting at a time, one expert at a time to
14 bring – what I thought at the time – to bring this masterpiece, part of our history – collection and present
15 it to the world. This is the art world equivalent to finding dinosaur bones. What an honor – I thought.

16 In 1994, the first work sold was from the artists Richard Diebenkorn. I showed the work to the
17 artist's daughter, Gretchen Diebenkorn. She was concerned because the work didn't appear in her
18 records regarding her father's work. She was hesitant and said it didn't look all the way right.
19 However, I brought in the artist's personal art dealer – Larry Rubin – to directly sell that work. It looked
20 real and Rubin agreed. Funnily enough, my commission on that first work was only \$42. Looking back I
21 would quickly trade that \$42 to someone else if they would have taken Glafira away from me. In fact, I
22 was the first to lose money to Glafira. The first Rothko she brought in, I acquired myself for my home. I
23 traded another painting in my personal collection to Knoedler for the painting – then hung it in my own
24 home.

1 But, I'm getting ahead of myself. It's important to provide some background here.

2 I am an art dealer – a salesperson – a facilitator. An art dealer is not an expert. I have no Ph.D. –
3 no Master's degree in art. Art dealers hire experts to give them an opinion, to evaluate a painting. I rely
4 on the experts because they are experts. Paintings don't come with VIN numbers, like cars or serial
5 numbers, like watches.

6 We have three types of experts. A conservator looks at the physical aspects of a painting. They
7 look at the front and the back. They evaluate the base layer. They use a magnifying glass and infrared
8 lights. They look at the main structure of the painting and form an opinion about whether this painting is
9 consistent with the artist's other works.

10 Another type, a connoisseur is someone who has seen hundreds or thousands of works by this
11 artists. They have a memory bank, a mental database of what they have seen and they compare this work
12 to their database. Are the colors consistent? Is the style consistent? Is the design similar to the period of
13 time that this painting was dated?

14 The third type is an art historian. They research the history or provenance of the painting – trying
15 to determine if the story of the painting is plausible. And, if they can, they try to trace it back directly to
16 the artist. These artists aren't alive anymore so we can't ask them directly.

17 Now, back then, we didn't have an expert in forensic analysis for paintings. It was something
18 just being developed. No one – no art dealer – routinely sent paintings out for this type of testing.

19 So, the art dealer takes all of this information, looks at it in total assesses whether the consensus
20 about the work is positive. Some experts will put their opinions in writing, but other's won't. Some
21 experts worry that if they express an opinion in writing – they could end up in a lawsuit later on. These
22 paintings are worth millions and an expert doesn't want to face liability. So when you get something in
23 writing from an expert, you can put faith in that as an art dealer. They often will only speak informally
24 with you and share their opinion.

1 So I gathered a team around this project. We had internal Knoedler employees performing
2 research. It was like discovering raw land. I hired Stephen Polcari to review the works. I reached out to
3 the experts outside of Knoedler. The go-to experts for each individual artists and the living members of
4 the artist's family. The provenance of the works – coming from Rosales – had no documents. The client
5 said that any documentation related to the works were lost in transit and that he didn't believe many
6 receipts or documents really every existed because of how the works were acquired by his father.

7 I knew from the story that the paintings were purchased late 50s early 60s directly from the
8 artists. It's vital to understand the lives of these artists. They were messy and unpredictable. Keeping
9 records of their works, careful records, is the farthest thing from their minds. Jackson Pollock was an
10 alcoholic. He died drunk behind the wheel of a car crash in 1956. Mark Rothko was also a heavy drinker
11 and smoker – highly depressed. He committed suicide in 1970. Franz Kline couldn't pay his rent during
12 the late 40s and early 50s. He was hanging out of a bar in New York City. He was getting drunk with de
13 Kooning and Pollock. Pollock got angry for some reason, went into the bathroom, ripped the bathroom
14 door off the hinges and threw it at Kline – getting them both kicked out of the bar. This is a highly
15 disfunctional world.

16 The artists were starving. It is common knowledge that Pollock would exchange his paintings to
17 the liquor store and the grocery store. Imagine a work worth millions of dollars today, being traded for
18 groceries. At this time, the paintings were not expensive at all. One can acquire a large collection if you
19 know the right people. You had great collectors like Walter Chrystler, they all did it, they went into the
20 artists studios and paid in cash – bought everything that was ready – cheaper by the dozen. There was
21 some mystery but it was credible to me I believed what I was told. I hoped to solve the mystery as time
22 went on.

23 So, it was known that Ossorio or someone in his circle – later believed to be Herbert – were
24 connected to most of the abstract expressionist artists. Glafira said the sister of the collector might have

1 some of the paperwork confirming the link, she would ask. Provenance is almost never complete never
2 perfect. That was one issue we ran into with the Levy Pollock – the green Pollock.

3 In 2001, Knoedler sold a Pollock from the Rosales collection to Jack Levy – an investment
4 banker. The sale to Levy was different – it was wholly conditioned on whether an outside group called
5 IFAR could come to a definitive agreement that the work was authentic. The IFAR report came back
6 inconclusive – there were some vague and outlandish statements in it. But, in the end, the agreement was
7 that Knoedler would refund the purchase price – so we did. Mr. Levy wanted a absolute certainty and
8 IFAR fell slightly short of that. During the time, Pollock works were increasing in value, so I was more
9 than fine with refunding his money on the work.

10 I was open with the report and brought it to Michael Hammer and also went back to Glafira to
11 see if she could ask the client for more information around who the dealer was who assisted. Glafira
12 came back with more information. It was not inconsistent or unbelievable information.

13 I think was in late 2002, Glafira said her client had released the '95 Rothko later purchased by
14 the De Soles. It happened that the expert on Rothko was in town from London – David Anfam. He had
15 an expert eye for Rothko – he was noted worldwide as the scholar. He had an immediate take – that it
16 was beautiful. He had been hired by the Rothko family and the National Gallery to create the Bible on
17 Rothko – the catalogue raisonne. In a letter he told me that he wanted to write an essay about the work.
18 Later he sent a request for a loan of one of the Barnett Newman works to display in Anfam's own
19 gallery in New York. It meant a great deal – it meant it was right.

20 Dana Cranmer, the conservator from the Mark Rothko foundation, took the Rothko into her
21 studio – examined it front and back under a microscope. She wrote a letter confirming – this is a classic
22 Rothko.

23 The National Gallery of Art was conducting studies culminating in a catalogue raisonne of Mark
24 Rothko's works on paper and an update to the works on canvas. After reviewing two of the Rothkos,

1 Laili Nasr, on behalf of the National Gallery, wrote back with the explicit statement that these newly
2 discovered works would be included in the catalogue. What more could you ask for for confirmation?
3 But, there was more. Rothko's son – Christopher Rothko – viewed the work as well – again no red flags.

4 Also, every single work Rosales brought into the gallery was displayed out in the open for the
5 world to see. The Knoedler hosted a booth at the Armory – the Park Avenue Armory – annual show
6 hosted in New York by the Art Dealers Association of America, which nearly all top dealers attend.
7 Hour after hour a venerable who's who of the art world would stop to examining these shining stars. Had
8 anyone found anything wrong, believe me, I would have been told. Quite the opposite, the art world
9 responded favorably and with excitement as – well, as we believed we were uncovering a missing piece
10 of history of the abstract expressionists. I counted myself blessed to be a shepard of this fabulous
11 collection to the world. I wanted them to be right and relied on the best to assist me with that effort.

12 In the fall of 2004, I met with the De Soles at the gallery. I didn't have a Scully at that point in
13 time, But I wanted to meet them. Knoedler represented Scully – so we could reach out to the artists if
14 needed. We sat down and they said what's that over there with the white cover on it. I said it was a
15 Rothko and next to it was a Pollock. I uncovered them for them. And they seemed as blown away with
16 the paintings as I had been. It was beautiful and you just don't see them everyday. No one gets a chance
17 to have a Rothko or Pollock in their living rooms. I explained the provenance as I knew it, as the whole
18 art world knew it up to that point. They brought their own expert in and he also said it was good. They
19 didn't seem to have many questions. They did ask for a write up about the known provenance and also
20 the individuals who had viewed the work.

21 I also explained over the phone that Ernest Beyeler from the Beyeler Museum in Switzerland had
22 submitted a request for a loan of the Rothko. Beyeler was bringing a collection of 19 Rothkos into what
23 he called the Rothko Rooms. The De Sole's purchased the work. Ultimately, after it was transferred to
24 Switzerland from the De Soles, the painting had its own wall. You walked into this room and were

1 immediately hit by this painting. Beyeler was so appreciative of the De Sole's willingness to loan the
2 art.

3 I wasn't alone in believing in these works of art. It wasn't Ann Freedman against the world.
4 Everyone was willing – the art world was willing. They weren't hidden. They were widely exposed –
5 shipped around the world.

6 And it was not just Rothko experts who were convinced. In 2007, the leading expert in
7 Motherwell, Jack Flam, reviewed one of the Motherwells brought to us by Rosales that was then owned
8 by Julian Weisman a collector who had gallery. Flam ran the Dedalus Foundation which was originally
9 founded by Robert Motherwell to preserve and research his own works. Flam was a good friend of
10 Motherwell. He wrote in a letter, which I was given a copy of, stated "It is the opinion of the
11 Foundation that the Work is the work of Robert Motherwell." Again, for a Motherwell, what more
12 could you ask for? Well, Motherwell's wife of 13 years also looked at another Motherwell and she
13 looked at the elegy and said "yep, that's Bob."

14 Of course now that the full story has come out Flam has recanted and said he made a mistake in
15 writing that letter. I just think he is attempting to save his own reputation. Well, too late for all of us on
16 that front. Jack Flam asked that we send the work to Jamie Martin at Orion analytics. There were some
17 inconsistencies in the report. But, instead of coming to me to talk about the issue, he went straight to the
18 FBI. I thought we were closer than that. This was an attack – attempting to cover his initial opinion. Of
19 course, they did get to the correct answer. But how they did it – attempting to put it all on me and
20 destroy my reputation – that is another matter.

21 While everything began to fall apart, I went right back to Glafira to have her press the client for
22 conclusive information. We needed the name of the client to be revealed quickly.

23 In October 2009, I was asked to leave. I didn't want to leave. Even if they took away my title and
24 my salary. I was called up to a meeting and told I was being given a leave of absence. Because things

1 were difficult. Michael Hammer said maybe you'll come back or maybe you won't. He wanted me to
2 blame my leave on a reoccurrence of lung cancer. I was walked down the stairs, given an umbrella – they
3 said it might rain. I said goodbye to my staff. I didn't know what was happening that made him go
4 against me, but it was clear that was happening. An attempt to have me take the fall. It didn't rain by the
5 way.

6 Pierre Lagrange was the first lawsuit over a silver Pollock. He was in a divorce and they wanted
7 the painting liquidated. Pierre had submitted his painting to Orion Analytics and it came back similar to
8 the Motherwell. December 2011, with that lawsuit, Michael Hammer closed the gallery for good.

9 I still was attempting to be open and as honest as I could. I obviously didn't know what was
10 coming yet. But, I fielded calls and had meetings. I wanted them to know that I refuted the allegations
11 that I intentionally misled anyone. I firmly believed in the authenticity of the works. There was a part of
12 me, right up until Glafira's confession, that still believed that they were authentic. That this was just bad
13 press – a nightmare that we would wake up from. I wanted to do everything I could – no stone unturned.
14 I told my lawyers to assist me toward that goal.

15 I got a phone call it was lunch time that said Glafira had just confessed that the paintings are all
16 fake. I had invested 20 years of my career to this collection. Aweful. All those years of build up. Brick
17 by brick. Shattered. But, I caught my breath and began considering how to make this right.

18 You know. Glafira came to public galleries. She bought art from Knoedler and from others. She
19 wasn't hiding – like an criminal lurking the shadows. She purchased exclusive auction tickets from
20 Christie's auction house. She worked hard to establish her own credibility. She fooled us all. I never met
21 Bergantinos, Glafira's boyfriend. He just was not in the picture.

22 I absolutely did not knowingly sell fakes. I was convinced that they were right, and real and
23 believeable. I was convinced. I have read and agree to the accuracy of the "Stipulation of Facts" in this
24 case.

AFFIDAVIT OF DR. STEPHEN POLCARI

UNITED STATES DISTRICT COURT §
SOUTHERN DISTRICT OF NEW YORK §

1 My name is Dr. Stephen Polcari. I am over the age of 18 years and I am otherwise fully
2 competent to testify. I can read, write and understand the English language. I am not under the influence
3 of any drug or other substance which would prevent me from fully understanding the nature of this
4 affidavit. All of the information in this affidavit is within my personal knowledge and is true and correct.

5 I am an art historian. I have Bachelors Degree in political science and a Masters Degree in Art
6 History both from Columbia University. My Ph.D. in Art History is from the University of California. In
7 the late 80's, I received three competitive fellowships designed around the research for my first book.
8 They were with the National Endowment for the Humanities, The Institute for Advanced Study in
9 Princeton, and the National Gallery in Washington, D.C. My book entitled *Abstract Expressionism and*
10 *the Modern Experience* was published by Cambridge University Press in 1991. The work focused on the
11 meaning behind the abstract expressionist paintings which in large part were spontaneous outpourings
12 related to the period in which they were created – around World War II. It quickly became the
13 fundamental book on these artists – Clyfford Still, Branett Newman, Pollock, Motherwell, De Kooning,
14 Rothko – all of them. I have just finished an individual book on Pollock entitled *Jackson Pollock, Mass,*
15 *Man, Agoniste* about the meaning behind Pollock's work.

16 In my studies, I have been very lucky. I lived in New York and have been able to see every show
17 of an abstract expresionists artists since the '60s. For Pollock, it's a rare thing indeed, for me not to have
18 seen one of his works – and there are hundreds of them worldwide. In preparation for my first book,
19 there was I time I lived in Germany near the Guggenheim Museam, just to be near a Rothko exhibit.
20 There were tons of them – I went 25 or 30 times for hours – documenting and closely studying the
21 works. For Newman, he didn't create many works – but I have probably seen them all in person.

1 Clyfford Still's works were less exhibited than others. There are several public collections in Buffalo
2 and San Francisco – I've studied those.

3 Also, during my career, I have been employed as a professor of art history at the University of
4 Illinois. I taught modern art which includes the abstract expressionists. After that, I taught at SUNY at
5 Stonybrook and then held a non-teaching position at the Smithsonian. I ran a research bureau. My job
6 was to gather the records and archives of artists, critics, dealers, so that scholars would have documents
7 to research, to write about, and to curate exhibitions. After that I joined Chapman University in
8 California as the chair of the art department.

9 Throughout the years, I have also written numerous essays on – two larger articles on Mark
10 Rothko and a seminal article on Pollock and his teacher Thomas Hart Benton. With all of my research, I
11 considered myself to be an expert in the works of the abstract expressionists. I devoted my life, my
12 studies, my teaching to their works – what motivated them, who they were associated with.

13 Somewhere in the late 90s, I was approached by the Knoedler Gallery through Ann Freedman
14 to take a look at some artwork that had come through their door. There was actually much excitement
15 around these works. I was honored to be the one to get to review them. There are specialists on
16 individual artists, but since the collection involved several abstract expressionist, I was called in as an
17 expert to study, opine and write essays on the works. In total, I probably reviewed a dozen or so of the
18 total collection. I believe one of my later essays is included as Exhibit 6. I wrote earlier essays on
19 Rothko works in 1999. Ann Freedman told me that they were all acquired by a private collector who
20 lived in Europe and Mexico, that she didn't know the name of the owner and that Knoedler had not
21 found any provenance documents directly connecting the works to the artists. The owner was remaining
22 anonymous through their own dealer – a longtime friend of the family – Glafira Rosales. Part of my
23 task was to evaluate all these factors and the works themselves – all compared to my lifelong studies of
24 these artists.

1 The International Foundation for Art Research – also known as IFAR – has consulted with me
2 several times on newly discovered paintings attributed to an abstract expressionist artist. Before I
3 reviewed a the Pollocks held by the Knoedler, IFAR brought be on as an expert to authenticate two
4 Pollocks that they were working on. IFAR relied on my expertise – you know, my actual words – in
5 their final report on those Pollocks.

6 Ann Freedman had me review a Pollock – I think it is referred to as the green Pollock – that had
7 been sent by Knoedler client Jack Levy to IFAR for review and authentication. IFAR had declined to
8 authenticate the painting – not saying it was fake at the time, just a refusal. I reviewed the painting again
9 and the IFAR report and penned a letter to Mr. Levy on behalf of the Knoedler. That letter was sent
10 November 2003. I explained that I had reviewed Pollocks before for IFAR and they had relied on my
11 breadth of research before. I said I disagreed with their decline – that the work was in line with the
12 movements – was consistent with other Pollocks from this time. I told him the report seemed to be
13 argumentative for the sake of being argumentative. To me the report from IFAR was very amateurish
14 and irrelevant to the work. We now know they were right – but they were right for the wrong reasons. At
15 the time, with what knowledge we had there was no reason to take the stance they did. The stance IFAR
16 took revolved around the reliance on the information regarding Ossorio – we found out that it was David
17 Herbert who was the true dealer. It was known that Herbert worked for Ossorio – so it was absolutely
18 plausible connection. I had extensive experience exploring the lives of the dealers connected with the
19 abstract expressionist artists. As an art historian I came to the conclusion based on their lives to either
20 Alfonso Ossorio or David Herbert could have been involved in acquiring these works. David Herbert
21 directly represented or had a direct connection with many abstract expressionist. He often acted as a
22 point of direct contact if a collector was avoiding a gallery purchase. All of the works in these
23 collections were of the size and nature that we would typically see in works sold directly from an artists
24 studio without much paperwork involved.

1 I sent that Levy letter also to Ann Freedman. I attempted to calm her fears – explaining that the
2 author of the IFAR report on the green Pollock – Sharon Flescher – was not a Jackson Pollock expert.
3 There were Pollock experts contained in the report – Pollock’s nephew named Jason McCoy and the
4 conservator of the largest collection of Pollocks current named James Coddington. Neither of whom
5 expressed concerns as to the authenticity of the painting.

6 Ultimately, the green Pollock was purchased back from Levy by the Knoedler.

7 We had planned to host an exhibition at the Knoedler of all of these works from the collector. I
8 pitched the idea and Ann Freedman agreed that it would be a nice exhibition. In fact, one goal I had was
9 to base a third book off of this collection. All along, the Knoedler and Ann were very open about the
10 artwork. They were displayed in the open at open galleries in New York. They were borrowed and
11 placed on display at the top art museums in the world. In late 2008, I curated an exhibit in Paris and
12 borrowed the green Pollock. There was a press released on the exhibit which included images of the
13 artwork – including the green Pollock. Dealers and collectors from around the world visited the exhibit.
14 No one raising an eyebrow or hint of concern over the work.

15 I was not employed by Knoedler. I worked freelance and was in total only paid \$3000. I never
16 received a commission off of a sale. However, Ann Freedman is paying for my legal counsel through
17 these court proceedings – just so I have an attorney to consult.

18 Just quickly before I end. This artist from Queens They all were right, the artistic skill to create
19 these works is unparalleled. The artist or forger from Queens – Pei-Shen Qian – is a master at his craft.
20 He is a once in a million year talent that he could create or replicate the styles of 10 different artists at a
21 level that would be approved of by experts worldwide. We’ve seen one-off where someone attempts one
22 artists, but never has the art world seen this. Hindsight is 20/20, but in the moment, it was considered
23 impossible that such a large collection could be the work of a forger.

24

AFFIDAVIT OF LAILI NASR

UNITED STATES DISTRICT COURT §
SOUTHERN DISTRICT OF NEW YORK §

1 My name is Laili Nasr. I am over the age of 18 years and I am otherwise fully competent to
2 testify. I can read, write and understand the English language. I am not under the influence of any drug
3 or other substance which would prevent me from fully understanding the nature of this affidavit. All of
4 the information in this affidavit is within my personal knowledge and is true and correct.

5 I currently work for the National Gallery of Art in Washington D.C as the project manager for
6 the Mark Rothko Catalogue Raisonné of works on paper. I started with the National Gallery in 1995
7 assigned to the later part of David Anfam's works on canvas project. Then in 1998, we started the works
8 on paper catalogue. So in all I have been there for somewhere between 15 to 17 years.

9 So, for a catalogue raissonne, it is a lengthy process. My team, we start by trying to identify and
10 locate any work that we think may be attributed to the artist. We look at various published sources or
11 exhibition documents or lifetime source – you know, just a variety of different sources. We move
12 through the various stages of research on all the works until the time of publication with all the
13 information that we have labored to gather. Then that is the time we would – you know, draw some
14 conclusions or make different groupings or date works. So finalize the research.

15 The National Gallery has a basic record system where we can make rudimentary notes regarding
16 each of the paintings – who we spoke with and what they told us – for future reference. The works on
17 paper project contained over 2700 works, so there are a lot of keep track of and we are not able to
18 obviously work on every work every day. At the start, nothing is donw in a hard-and-fast systematic
19 way. Every work would have its own research requirements.

20 After that, we would want to physically see and examine the work. We take measurements –
21 look at the back and the front. The structure of the painting. And take some reference pictures of it.

1 Basic boilerplate information. Then we process through each work – its sources or provenance. We
2 don't do any forensic testing of the works or ask for the dealer or collectors to do so. Our strategy is to
3 gather all the information we can and at the end when we look at the entire oeuvre to include in the
4 catalogue, that's I think the point of publication is when the final determination will be made. We aren't
5 going to print a work in the catalogue that we know or have reason to believe is not authentic.
6 Ultimately, the catalogue raisonne is the subjective opinion of the project manager at the time the book
7 is printed.

8 So, we were early in this process when Ann Freedman at the Knoedler reached out to me. She
9 asked that I stop by the gallery when I'm in town to view some newly discovered Rothko works that
10 Knoedler acquired. It would have been around March 2002 when I first saw the painting – the Untitled
11 1956 Oil on Canvas. I obviously knew of Knoedler and Freedman. I worked with most of the top
12 galleries worldwide while gathering information. Knoedler, if not the best, was one of the most
13 prominent art galleries in New York. Freedman was known to be one of the most famous and successful
14 art dealers. I never met her before in person though.

15 The work was in the possession of Dana Cranmer at her studio. Freedman met me to see the
16 work. In our first meeting, Freedman described this new collection of paintings – that the client wanted
17 to remain anonymous. That the collection was acquired through Alfonso Ossorio directly from the
18 artists' studios. That the collection was held by a private collector in Switzerland who had ties to
19 Mexico. The work was beautiful and I did not have any reason to doubt the provenance at the time. I
20 politely thanked her for taking the time to show me the work.

21 I actually saw the work a second time. In August of 2002, I visited New York again for the
22 ADAA (Art Dealers Association of America) art fair. I visited the Knoedler booth and Ann Freedman. I
23 don't remember our specific conversation. At the art fairs people are busy. There are people walking by; so
24 I don't remember having an extensive conversation. What I do remember from my visit to that fair is

1 walking away with a list that had the name of people that was in a pile on the side of the table near the
2 1956 Rothko. I remember thinking it was such an odd handout because usually, you know, galleries just
3 have a fact sheet on the work. Nobody ever has a list of people who have looked at the work. That is
4 why it left an impression on me. My name was on that list. I never gave permission for my name to be
5 used. I never brought that up to Ann or anyone at Knoedler though. It was just odd to me. That was the
6 last contact I had with Ms. Freedman or anyone at Knoedler.

7 Going back a bit, Ann Freedman did convey that she herself didn't have all of the pieces on the
8 provenance herself – that it was a puzzle that was actively being put together. She made it clear that she
9 would update the National Gallery team when more information was pulled together on these works.

10 I did write a "Thank You" letter to Ms. Freedman. It is standard to send such a letter after a
11 gallery, dealer or collector has taken the time to allow me or my staff to view a work. It's only polite.
12 Some of the words in the letter – especially the statement about including the work in an update to
13 David Anforth's works on canvas catalogue – just don't really sound like my words. I wrote the letter and
14 sent it, though. It just isn't like my normal, standard Thank You note. I think that some of that language
15 was requested to be in the letter by Ann Freedman directly. She did call me a few times after I saw the
16 works to ask about my opinion. She was slightly persistent that I write the letter. Because I need to
17 maintain a good relationship with all of the dealers we work with, I thought it was important to oblige
18 her request. I didn't want to alienate the Knoedler. However, I never intended the letter to Knoedler to
19 be used to sell the painting. I just considered it a "Thank You" letter.

20 The letter references the Seagram Murals. These were a collection of murals by Rothko that were
21 originally meant to be displayed and exhibited at the Seagram Building on Park Avenue in New York –
22 a gathering place for the who's who of New York's upper society. After creating the works, Rothko
23 decided not to transfer them to the Seagram and instead they are on display at the Tate Modern gallery
24 in London.

1 During that time and since, neither myself nor my staff have every conducted independent
2 research on those. Nor did we update anyone at Knoedler that our opinions of the works changed. At the
3 time I wrote my letter I had no knowledge of Glafira Rosales or the IFAR report concernin the
4 authenticity of the Levy green Pollock. I wouldn't have written the letter if I knew the Rothko was
5 fraudulent.

6 The works on paper catalogue hasn't progressed yet to publication. The plans for the update to
7 the works on canvas have been dropped – the National Gallery does not intend to update that
8 publication.

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Evidence

Exhibit 1: Summary of Artwork sold by Glafira Rosales (1994-2008).

Exhibit 2: The Painting sold to Domenico DeSole (titled *Untitled*, dated 1956)

Exhibit 3: Invoice from Knoedler to James Kelly, agent for Domenico DeSole.

Exhibit 4: Fax, Warranty of Authenticity and Attachments.

Exhibit 5: Orion Analytical Report of *Untitled* 1956.

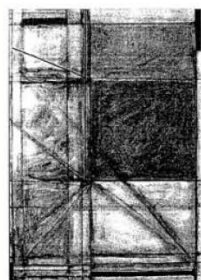
Exhibit 6: Essay by Dr. Stephen Polcari

Exhibit 7: Letter from Laili Nasr

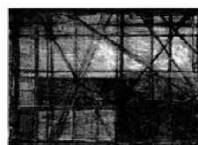
Exhibit 8: Indictment Glafira Rosales

Rosales Works (1994-2008)

PLAINTIFFS'
EXHIBIT
1



To KNOEDLER: Jan. 18, 1994
ARTIST: "Diebenkorn"
SOLD: Feb. 1, 1994
PURCHASER: Bernard Kruger
KNOEDLER PAYS: \$50,000
SALE PRICE: \$95,000
GROSS PROFIT: **\$45,000 (90%)**



To KNOEDLER BY: Nov. 9, 1994
ARTIST: "Diebenkorn"
SOLD: Nov. 9, 1994
PURCHASER: Larry Evans
KNOEDLER PAYS: \$47,500
SALE PRICE: \$82,500
GROSS PROFIT: **\$35,000 (73%)**



To KNOEDLER: Dec. 1996
ARTIST: "Rothko"
SOLD: Apr. 4, 1997
PURCHASER: Mr. & Ms. Robert Freedman (by trade)
KNOEDLER PAYS: \$160,000
SALE PRICE: \$225,000 (value of trade)
GROSS PROFIT: **\$65,000 (40%)**



To KNOEDLER: May 13, 1997
ARTIST: "Kline"
SOLD: Jun. 2, 1997
PURCHASER: Hughes and Sheila Potiker
KNOEDLER PAYS: \$300,000
SALE PRICE: \$535,000
GROSS PROFIT: **\$235,000 (78%)**



To KNOEDLER: Jun. 10, 1997
ARTIST: "Diebenkorn"
SOLD: Jul. 3, 1997
PURCHASER: Kemper Museum of Contemporary Art & Design
KNOEDLER PAYS: \$31,000
SALE PRICE: \$110,000
GROSS PROFIT: **\$79,000 (254%)**



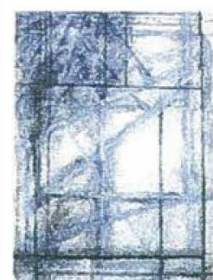
To KNOEDLER BY: Oct. 1997
ARTIST: "Rothko"
SOLD: Jan. 31, 1998
PURCHASER: Mr. & Mrs. Phillip Gersh
KNOEDLER PAYS: \$150,000
SALE PRICE: \$360,000
GROSS PROFIT: **\$210,000 (140%)**



To KNOEDLER: Oct. 30, 1997
ARTIST: "Still"
SOLD: Mar. 13, 1998
PURCHASER: Jack & Fran Levy
KNOEDLER PAYS: \$250,000
SALE PRICE: \$600,000
GROSS PROFIT: **\$350,000 (140%)**



To KNOEDLER: Nov. 26, 1997
ARTIST: "Diebenkorn"
SOLD: Dec. 6, 1997
PURCHASER: Murray Bring
KNOEDLER PAYS: \$54,000
SALE PRICE: \$94,000
GROSS PROFIT: **\$40,000 (74%)**

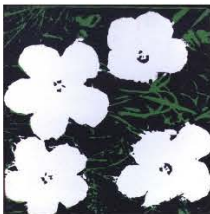


To KNOEDLER: Feb. 10, 1998
ARTIST: "Diebenkorn"
SOLD: Feb. 18, 1998
PURCHASER: Robert Gilson Fine Art
KNOEDLER PAYS: \$54,000
SALE PRICE: \$148,500
GROSS PROFIT: **\$94,500 (175%)**



To KNOEDLER BY: Feb. 10, 1998
ARTIST: "Kline"
SOLD: Aug. 24, 1999
PURCHASER: Kemper Museum of Contemporary Art & Design
KNOEDLER PAYS: \$250,000
SALE PRICE: \$475,000
GROSS PROFIT: **\$225,000 (90%)**

Rosales Works (1994-2008)

	To KNOEDLER By: May 11, 1998 ARTIST: "Rothko" SOLD: Jul. 1, 1998 PURCHASER: Michelle Rosenfeld Gallery KNOEDLER PAYS: \$155,000 SALE PRICE: \$325,000 GROSS PROFIT: \$170,000 (109%)		To KNOEDLER: May, 15, 1998 ARTIST: "Rothko" SOLD: Jun 23, 1998 PURCHASER: Solomon & Co. Fine Art KNOEDLER PAYS: \$155,000 SALE PRICE: \$320,000 GROSS PROFIT: \$165,000 (106%)
	To KNOEDLER: May 15, 1998 ARTIST: "Kline" SOLD: Jan. 18, 1999 PURCHASER: Jack Levy KNOEDLER PAYS: \$315,000 SALE PRICE: \$560,000 GROSS PROFIT: \$245,000 (77%)		To KNOEDLER: Sep. 24, 1998 ARTIST: "Francis" SOLD: Jan. 23, 2004 PURCHASER: Elizabeth Schwartz KNOEDLER PAYS: \$84,700 SALE PRICE: \$148,500 GROSS PROFIT: \$63,800 (75%)
	To KNOEDLER: Oct. 10, 1998 ARTIST: "Still" SOLD: Jun. 20, 2000 PURCHASER: Manny Silverman Gallery KNOEDLER PAYS: \$375,000 SALE PRICE: \$850,000 GROSS PROFIT: \$475,000 (126%)		To KNOEDLER: Nov. 24, 1998 ARTIST: "Warhol" SOLD: Feb. 24, 1999 PURCHASER: Donna Schwartz KNOEDLER PAYS: \$18,000 SALE PRICE: \$27,000 GROSS PROFIT: \$9,000 (50%)
	To KNOEDLER: Jan. 30, 1999 ARTIST: "Francis" SOLD: Aug. 11, 1999 PURCHASER: Wright Gallery KNOEDLER PAYS: \$150,000 SALE PRICE: \$150,000 GROSS PROFIT: \$0 (0%)		To KNOEDLER: May 21, 1999 ARTIST: "Rothko" SOLD: Oct. 19, 1999 PURCHASER: Jack & Fran Levy KNOEDLER PAYS: \$155,000 SALE PRICE: \$615,000 GROSS PROFIT: \$460,000 (296%)
	To KNOEDLER: Jun. 1, 1999 ARTIST: "Francis" SOLD: Aug. 30, 1999 PURCHASER: Michel Cohen KNOEDLER PAYS: \$5,000 SALE PRICE: \$35,000 GROSS PROFIT: \$30,000 (600%)		To KNOEDLER: Sep. 29, 1999 ARTIST: "Motherwell" SOLD: Mar. 18, 2000 PURCHASER: David Howe KNOEDLER PAYS: \$90,000 SALE PRICE: \$350,000 GROSS PROFIT: \$260,000 (288%)

Rosales Works (1994-2008)

	To KNOEDLER: Sep. 29, 1999 ARTIST: "Pollock" SOLD: Apr. 8, 2000 PURCHASER: Harvey White KNOEDLER PAYS: \$670,000 SALE PRICE: \$3,100,000 GROSS PROFIT: \$2,430,000 (362%)		To KNOEDLER: Feb. 1, 2000 ARTIST: "Kline" SOLD: Mar. 3, 2000 PURCHASER: Mr. & Mrs. John Sandelman KNOEDLER PAYS: \$475,000 SALE PRICE: \$900,000 GROSS PROFIT: \$425,000 (89%)
	To KNOEDLER: Apr. 25, 2000 ARTIST: "Pollock" SOLD: Dec. 21, 2001 PURCHASER: Jack Levy KNOEDLER PAYS: \$750,000 SALE PRICE: \$2,000,000 (returned) GROSS PROFIT: \$500,000 (66%)* *Reflects later investment by David Mirvish and Ann Freedman		To KNOEDLER: Jul. 2000 ARTIST: "Still" SOLD: Dec. 19, 2000 PURCHASER: Jack & Fran Levy KNOEDLER PAYS: \$300,000 SALE PRICE: \$750,000 GROSS PROFIT: \$450,000 (150%)
	To KNOEDLER: N/A ARTIST: "Motherwell" SOLD: Aug. 1, 2000 PURCHASER: Ann & Robert Freedman SALE PRICE: \$15,000		To KNOEDLER: N/A ARTIST: "Pollock" SOLD: Sep. 1, 2000 PURCHASER: Ann & Robert Freedman
	To KNOEDLER: May 26, 2001 ARTIST: "Pollock" SOLD: Nov. 29, 2007 PURCHASER: Pierre Lagrange KNOEDLER PAYS: \$950,000 SALE PRICE: \$15,300,000 GROSS PROFIT: \$14,350,000 (1510%)* *Split with David Mirvish		To KNOEDLER: May 26, 2001 ARTIST: "Rothko" SOLD: Nov. 6, 2002 PURCHASER: Martin Hilti Family Trust KNOEDLER PAYS: \$750,000 SALE PRICE: \$5,500,000 GROSS PROFIT: \$4,750,000 (633%)
	To KNOEDLER: Dec. 19, 2002 ARTIST: "Rothko" SOLD: Dec. 17, 2004 PURCHASER: Domenico & Eleanore De Sole KNOEDLER PAYS: \$950,000 SALE PRICE: \$8,300,000 GROSS PROFIT: \$7,350,000 (773%)		To KNOEDLER: Oct. 15, 2004 ARTIST: "Still" SOLD: Nov. 7, 2005 PURCHASER: Nicholas & Jenny Taubman KNOEDLER PAYS: \$600,000 SALE PRICE: \$4,300,000 GROSS PROFIT: \$3,700,000 (616%)

Rosales Works (1994-2008)

	To KNOEDLER: May 4, 2005 ARTIST: "De Kooning" KNOEDLER PAYS: \$390,000 UNSOLD		To KNOEDLER: May 4, 2005 ARTIST: "Newman" KNOEDLER PAYS: \$1,000,000 UNSOLD
	To KNOEDLER: Dec. 12, 2005 ARTIST: "Motherwell" SOLD: Mar. 11, 2006 PURCHASER: Jay H. Shidler, II KNOEDLER PAYS: \$475,000 SALE PRICE: \$2,200,000 GROSS PROFIT: \$1,725,000 (363%)		To KNOEDLER: Dec. 12, 2005 ARTIST: "Newman" KNOEDLER PAYS: \$800,000 UNSOLD
	To KNOEDLER: Nov. 19, 2006 ARTIST: "De Kooning" SOLD: Jun. 13, 2007 PURCHASER: John Howard KNOEDLER PAYS: \$750,000 SALE PRICE: \$3,500,000 GROSS PROFIT: \$2,750,000 (366%)		To KNOEDLER: Nov. 19, 2006 ARTIST: "Pollock" KNOEDLER PAYS: \$2,250,000 MIRVISH INVESTMENT: \$2,000,000 UNSOLD
	To KNOEDLER: Jan. 22, 2007 ARTIST: "Krasner" SOLD: Feb. 27, 2007 PURCHASER: Jay H. Shidler, II KNOEDLER PAYS: \$80,000 SALE PRICE: \$1,000,000 GROSS PROFIT: \$920,000 (1150%)		To KNOEDLER: Nov. 11, 2007; Jun. 26, 2008 ARTIST: "Motherwell" KNOEDLER PAYS: \$850,000 UNSOLD
	To KNOEDLER: Mar. 1, 2008 ARTIST: "Rothko" SOLD: Apr. 30, 2008 PURCHASER: Urs Kraft (as agent for Masterson Gurr Johns, Inc.) KNOEDLER PAYS: \$4,850,000 SALE PRICE: \$7,200,000 GROSS PROFIT: \$2,350,000 (48%)		To KNOEDLER: Jul. 1, 2008 ARTIST: "Kline" SOLD: Jul. 10, 2008 PURCHASER: Jaime Frankfurt (as agent for client) KNOEDLER PAYS: \$1,250,000 SALE PRICE: \$3,375,000 GROSS PROFIT: \$2,125,000 (170%)



KNOEDLER & COMPANY
— ESTABLISHED 1846 —
19 EAST 70 STREET NEW YORK NEW YORK 10021

November 30, 2004

James Kelly
James Kelly Contemporary
1601 Paseo de Peralta
Santa Fe, NM 87501

Invoice

Mark Rothko (1903-1970)

Untitled

1956

Oil on canvas

50 1/8 x 40 1/4 inches

Signed and dated on verso

A 12322

Provenance

The Artist

Private Collection Switzerland

By descent to the present owner

Literature

To be included in the forthcoming supplement to the 1998
Rothko catalogue raisonné under preparation by the National
Gallery of Art, Washington, D.C.

Special Courtesy Price: \$8,300,000.00

Subtotal: \$8,300,000.00

Sales Tax: Resale

TOTAL PAYABLE \$8,300,000.00

TEL 212 794-0550 FAX 212 772-6932
WWW.KNOEDLERGALLERY.COM

EXHIBIT

3

Knoedler & Company

- ESTABLISHED 1846 -

19 East 70 Street, New York 10021 Telephone (212) 794-0550 Fax (212) 772-6932

FAX TRANSMISSION

TO: James Kelly / James Kelly Contemporary
505/989 4005

FROM: Ann Freeman, President

DATE: December 11, 2004

RE: Letter to Laura De Sole

Pages: 3

This message is intended for the use of the addressee only and may contain information that is privileged and confidential. If you are not the intended recipient, you are notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error please notify us immediately at the above telephone or fax.



KNOEDLER & COMPANY

— ESTABLISHED 1848 —

19 EAST 70 STREET NEW YORK NEW YORK 10021

December 10, 2001

Dear Laura De Sole

As requested, I am writing to you concerning the background of the following painting by

Mark Rothko (1903 - 1970):

Untitled

1956

Oil on canvas

50 1/8 x 40 1/4 inches

Signed and dated on verso

This classic Rothko painting was acquired directly from the artist through the advice and counsel of David Herbert (1920 - 1995). I have attached a profile and *curriculum vitae* of Mr. Herbert, which will give you the context within which his presence in the art world was so critical to many of the seminal artists and collectors of the 1950s.

The original owners of the Rothko, a couple whose residences included Switzerland, are now deceased and *Untitled*, 1956 was inherited by their son.

The painting has been viewed by a number of eminent scholars on Rothko as well as specialists on the Abstract Expressionist movement. I have included a selected list of those individuals, which include Christopher Rothko, son of the artist. Importantly, Laili Nasr, manager of the Rothko *catalogue raisonné* project for the National Gallery of Art in Washington, D.C., has written to us about her intention to include the Rothko in the forthcoming *catalogue raisonné* supplement.

TEL 212 794-0550 FAX 212 772-6932

WWW.KNOEDLERGALLERY.COM

We are anticipating a loan request from Oliver Wick of the Fondation Beyeler who was curator of the Foundation's 1991 groundbreaking exhibition, *Mark Rothko: A consummated experience between picture and onlooker*. The Foundation in Basel is the greatest European repository of the work of Mark Rothko, with a gallery of rotating exhibitions devoted exclusively to Rothko's painting. Several of the Rothkos are on loan directly from the family, as well as from major museums and prominent private collections. Mr. Wick considers the Rothko painting, *Untitled, 1956* to be of superior museum quality and he hopes that it may be possible in the future to include the work in this rotating loan exhibition.

In summery, Knoedler warrants the authenticity and good title of the painting, *Untitled, 1956*, and confirms its "remarkably good condition", quoted and verified by Dana Cranmer, the former conservator for the Rothko Foundation.

Sincerely yours,

Ann Freedman

President

Mark Rothko

Untitled, 1956

Oil on canvas

50 1/8 X 40 1/4 inches

Signed and dated on verso

The Painting Has Been Viewed by the Following Individuals with Special Expertise on the Work of Mark Rothko:

THE ROTHKO FAMILY:

Christopher Rothko, son of the artist

SCHOLARS:

David Anfam, author of *Mark Rothko: The Works on Canvas, Catalogue Raisonné*; Yale University Press

E.A. Carmean, Jr., consulting art historian and author, former curator and head of the department of 20th Century Art at the National Gallery of Art (during his tenure oversaw the Rothko Foundation's gift of 198 canvases and 765 works on paper to the National Gallery); curator of 20th century art, Museum of Fine Arts, Houston (repository of the extra Rothko Chapel paintings); Director of the Modern Art Museum of Fort Worth. Curator and author of *Subjects of the Artist*.

Jack Flam, art historian and author, Professor Graduate School and University Center, City University of New York. Trustee of the Dedalus Foundation (Robert Motherwell). A specialist on Robert Motherwell and Henri Matisse.

Laili Nasr, Mark Rothko catalogue raisonné project, National Gallery of Art, Washington, D.C.; viewed the painting for inclusion in the supplement to the catalogue raisonné of the paintings, which will be published to coincide with the publication of the catalogue raisonné of Rothko's works on paper (March 8, 2002).

Stephen Polcari, art historian and author; author of *Abstract Expressionism and the Modern Experience*; noted authority on the New York School; currently writing a monograph on Jackson Pollock.

Irving Sandler, art historian and author; formerly on the Board of The Rothko Foundation (as such, he would have been familiar with all of the more than one thousand works in the Foundation); author of *The Triumph of American Painting* and *The New York School: Painters and Sculptors of the Fifties*; considered one of the foremost authorities on Abstract Expressionism.

THE MUSEUM WORLD:

Bonnie Clearwater, former curator of The Mark Rothko Foundation. Curator of *Mark Rothko Works on Paper*, circulated by The American Federation of Arts, 1984-1986; currently director of the Museum of Contemporary Art, Miami.

Earl A. Powell II, Director of the National Gallery of Art. Seat of the Mark Rothko catalogue raisonné project; the National Gallery is also recipient of the largest single bequest of works by Rothko from the Mark Rothko Foundation. Formerly curator of the Michener Collection of Twentieth Century Art.

Oliver Wick, Fondation Beyeler, curator of *Mark Rothko: A consummated experience between picture and onlooker*, 1991.

CONSERVATOR:

Dana Cranmer, Now the head of Cranmer Art Conservation, as conservator for the Rothko Foundation, she was familiar with most of the works on canvas and paper which she examined at the Foundation prior to the dispersal of the collection in 1986. She has also written on Rothko's use of materials.

David Herbert Profile

Gallery owner and art dealer, David Herbert (1920-1995) first worked for the Betty Parsons Gallery from 1951-1953, in close relationship with the then emerging abstract expressionist painters, including Pollock, Still, Newman and Rothko. Interestingly, when the New York School artists moved from Parsons to the Sidney Janis Gallery in 1953, Herbert also made the same transition and remained there until 1959. At Janis, he continued these relationships, actively selling the works of Pollock, Rothko, Motherwell, de Kooning and Gorky; while Sidney Janis directed the gallery's other focus on French modernist paintings and sculpture.

During the time of his gallery employment, David Herbert also organized private exhibitions in his apartment from which he sold smaller to medium scale works. In 1959 he opened the David Herbert Gallery with an inaugural show of numerous abstract expressionist works he had previously sold, however the gallery's focus would be on newly discovered artists. After the gallery closed in 1962, he continued privately dealing for the remainder of his career. He also formed a brief partnership with Richard Feigen from 1962 to 1964, and was employed at the Graham Gallery from 1969 to 1975.

Herbert was indirectly responsible in forging the careers of important mid-century artists and, most especially, in finding them financial support through additional sales at a time when the artists' sales income was limited (Rothko, for example, had to continue teaching until 1957 in order to provide a sufficient income). In other examples of support, Herbert introduced Ellsworth Kelly to Betty Parsons in 1955, triggering Kelly's New York career,¹ and he also introduced Andy Warhol to Irving Blum and Walter Hopps, founders of the influential Ferus Gallery in Los Angeles.²

Over the many years in the art world, and due to his extensive travel, Herbert developed a broad client base in the United States, Latin America and Europe. He had significant relationships with the most influential dealers, including Ernst Beyeler, as early as 1959.³ Herbert was also a trusted advisor and friend to major American collectors and patrons on both coasts, namely – Gifford Phillips, the nephew of Duncan Phillips, founder of The Phillips Collection; Richard Brown Baker, whose collection was bequeathed to Yale University; and Lois Orswell, whose

collection, gifted to the Fogg, was exhibited for the first time in 2002-2003 in Cambridge and, in a smaller selected exhibition, at Knoedler in New York. As a collector, Orswell was not well known or a part of the New York art scene. Through her close relationship with David Herbert she made numerous acquisitions from him, including works by de Kooning, Gorky, Guston and Kline.

Knoedler & Company is currently in the process of an in-depth exploration and study of the heretofore unknown career of David Herbert. This research project will include not only documentary information, but interviews conducted with Herbert's clients, colleagues and friends.

¹ New York, The Museum of Modern Art, *Ellsworth Kelly*, 1973. p. 61. David Herbert also asked that Barnett Newman join them for this introduction.

² Sotheby's Contemporary Art, May 12, 2004. See entry for lot 9. (Information obtained from the Warhol archives.)

³ Archives of American Art, Smithsonian Institution, Washington, D.C. Letter from Ernst Beyeler to David Herbert dated November 20, 1959.

February 6, 2012

Mr. Gregory Clarick
Clarick Gueron Reisbaum LLP
40 West 25th Street
New York, NY 10010

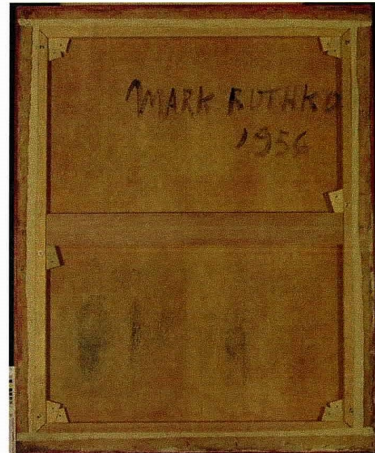
Re: Orion Project No. 1745

Dear Mr. Clarick,

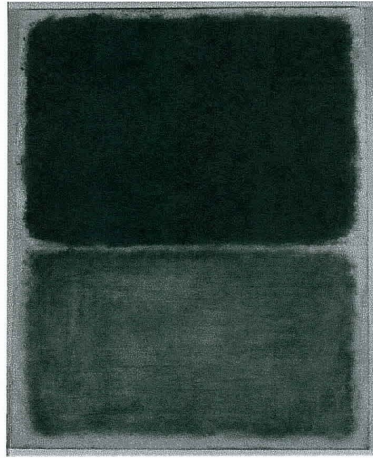
This report describes examination and analysis of *Untitled*, a work of art described as an oil painting on canvas, signed and dated, "MARK ROTHKO 1956" (hereinafter, the "Painting"). Knoedler & Company described the Painting in 2004 as a work by Mark Rothko, painted in 1956, and acquired directly from Rothko through the advice and counsel of David Herbert.



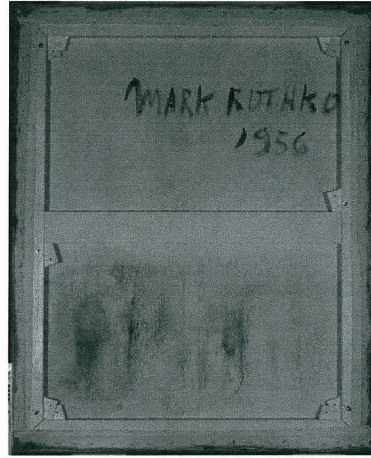
Front, normal light



Back, normal light



Front, infrared



Back, infrared

Visual observations

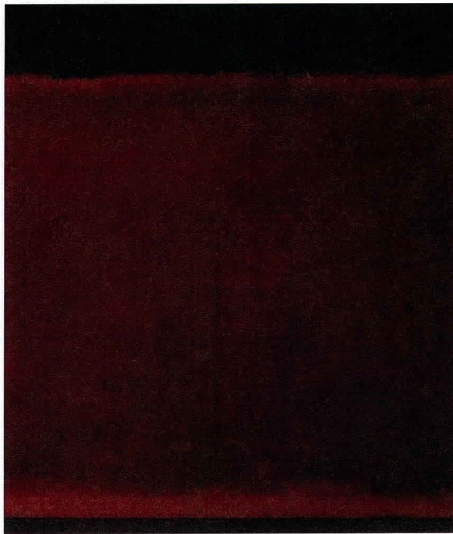
Orion examined and sampled the Painting at Christie's Fine Art Storage Services in Brooklyn, NY on December 21, 2011.

The Painting measures approximately 49 3/4 inches along its proper right edge and 40 1/8 inches along its bottom edge, and consists of paint applied to primed canvas, which is mounted with metal staples to a wooden stretcher.

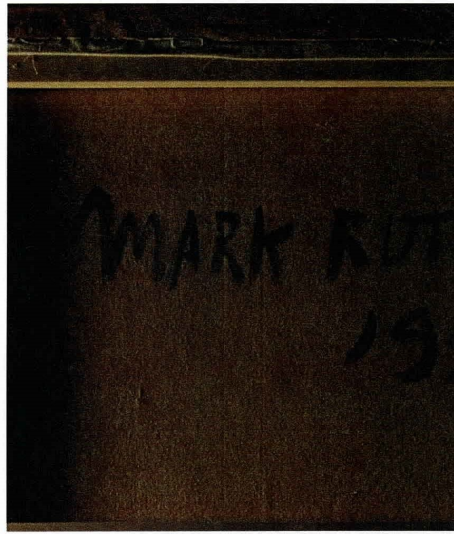
Stretcher

The wooden stretcher includes a single horizontal wooden crossbar. Crossbars add stability to large stretchers, but also can give rise to problems, such as crossbar marks, which occur when canvas presses against the edge of a crossbar. This pressure can cause primer and paint to crack, primer and paint to build up along the edge, or both.

Significantly, vertical crossbar marks appear on the front and back of the Painting.



Front, detail in raking light
(note vertical parallel crossbar marks in shadow)



Back, raking light
(note vertical parallel crossbar marks through R and K of MARK)

Please recall that the current stretcher contains a horizontal crossbar, but no vertical crossbar; therefore, the canvas was mounted to another stretcher when the crossbar marks formed.¹

Further, crossbar marks on the back of the canvas appear faint red, where dilute red paint penetrated corresponding cracks in underlying layers; thus, *Untitled* was painted after the crossbar marks formed.

¹ Moving painted canvas from one stretcher to another usually leaves a set of unoccupied tack or staple holes in the canvas; however, no set of unoccupied tack or staple holes is visible.



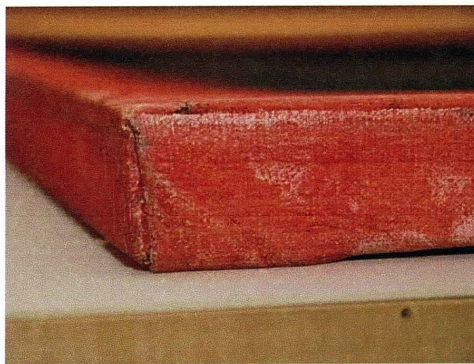
Back of canvas, detail

(Note vertical parallel crossbar marks and faint red line where paint penetrated a crack in the primers)

Primed canvas

Significantly, the canvas is coated with two white opaque primers.

The white primers extend over the edges of the Painting and onto the back, but do not extend to the cut edges of the canvas. Interestingly, the second white primer is flexible and has torn apart, rather than cracked.



Tacking edge

(Note white primer covers tacking edge)



Front edge, detail

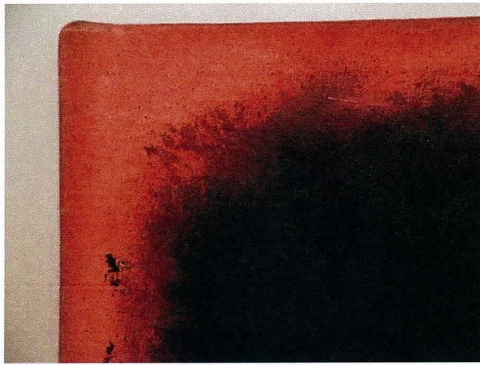
(Note white primer under thin red paint. The top primer layer has torn apart.)

Paints

Black and red paints, and mixtures of these colors, were applied by brush to the white primed canvas. Some paint also was deposited on the Painting as small spots, probably as paint spatter.

The red paints vary in consistency from dilute washes of color that stain the white primers (and apparently penetrate cracks and stain the canvas), to opaque applications of discernible thickness. The dilute washes of red paint extend over the primed edges of the Painting, but do not extend to the cut edges of the canvas.

The black paint and mixtures of black and red paint appear thicker and more opaque than the dilute red paint; the black paint displays impasto.



Top proper right corner, detail

(Note thin red wash, opaque black, and opaque mixtures of reds and black)



Front edge, detail

(Note opaque black paint over red wash)

Signature and date

The Painting is signed on the back of the canvas in opaque black paint that displays brush marks and some impasto: "MARK ROTHKO / 1956".



Alterations

The canvas is strip-lined; however, the reason for the strip lining – generally a tear or

The painting displays scattered retouching, mostly along the edges of the painting.

Samples

Orion selected and collected samples while viewing the Painting under magnification using the stereomicroscope. Care was taken to select and collect samples from paints that were clearly and unambiguously integral to preparation of the canvas and the original creation of the Painting – not later addition or restoration.

Laboratory analyses

No single laboratory method can detect and identify all components in a sample of paint or other painting material. Orion used two analytical methods commonly used in museum, forensic, and industrial laboratories for paint analysis: Fourier transform infrared microspectroscopy (FTIR) and *dispersive confocal Raman microspectroscopy (Raman)*.²

Primers

The two white primers are composed of different kinds of binders and pigments. Binders are film-forming polymers that "bind" pigment together to make primers and paints. The binders and pigments detected in samples include:

<u>Primer layer</u>	<u>Binder detected</u>	<u>Pigments detected</u>
First (bottom)	Polyvinyl acetate	Calcite and titanium dioxide
Second (top)	Acrylic polymer emulsion	Aragonite and titanium dioxide

Paints

The black, red, and red brown paints contain oil binder. Pigments detected among the paints include bone black, barium sulfate, dolomite, and Pigment Yellow 1.

² FTIR analyses were made in transmission at 4 cm⁻¹ resolution using a Thermo Electron Continuum infrared microscope coupled to an Avatar 360 FTIR spectrometer. Raman analyses were made using a

Discussion

Please recall that the Painting is signed "MARK ROTHKO 1956". Please also recall that the Painting displays crossbar marks and two white primer layers composed of polyvinyl acetate and acrylic polymer emulsion.

Orion examined published literature pertaining to Mark Rothko's materials and techniques.³

Cross bar marks

Please recall that the Painting displays crossbar marks, and that the crossbar marks formed before the Painting was created.

According to Carol Mancusi-Ungaro, Rothko temporarily fastened crossbars to the back of stretchers – creating a wide separation between the crossbar and canvas – to avoid formation of crossbar marks:

"It is not surprising that an artist with Rothko's critical eye would develop such a technique of stretching canvas. The practical benefit was that this system helped retard the development of stretcher-bar marks that so often mar the surfaces of oversized canvases by eliminating the impact of the loaded brush against crossbars."

"In his typically deliberate manner, Rothko carefully considered every variable that would affect what was seen. Rather than accept standard equipment and methods, he devised this innovative way of stretching fabric in deference to his keen regard for surface."

Crossbar marks on the Painting are inconsistent with Rothko's technique.⁴

³ Carol Mancusi-Ungaro, "Material and immaterial surface: the paintings of Rothko," in *Mark Rothko*. Washington: National Gallery of Art (1998): 283-300. Lesley Carlyle, Jap Boon, Mary Bustin, Patricia Smithen. "The substance of things" in *Rothko*. London: Tate Publishing (2008): 73-87.

⁴ Further, according to Mancusi-Ungaro, Rothko's temporary fastening of crossbars to the back of stretchers caused distortions in excess canvas pulled over the ends of crossbars; however, the Painting shows no such distortions. The presence of crossbar marks, crossbar marks that formed before the Painting was created, and the lack of the aforementioned distortions suggest that *Untitled* was painted on a canvas that Mark Rothko did not prepare.

White primers

Please recall that the Painting displays two white opaque primers.

According to Mancusi-Ungaro, from the late 1940s onward, Rothko used a mixture of animal glue and pigments to size and prime his canvases, prior to painting. A size usually is a clear or transparent material used to reduce the absorbance of liquids by canvas. A primer usually is a pigmented coating, often applied after a size, to modify the texture and color of canvas, prior to painting.

"Accordingly, it was Rothko's custom to brush an aqueous solution of warm rabbit-skin glue onto a stretched canvas, allow it to penetrate the fibers and dry, then repeat the process as necessary."

"In addition to the obvious benefit to the preservation of these works, Rothko's attention to the ground layer helped ensure the absence of planar distortions that otherwise would have diminished the integrity of the picture plane."

Further, according to Mancusi-Ungaro, Rothko exploited the visual potential of a transparent colored ground when painting his works:

"Rothko, among other modern painters, took this practice [exploiting the visual potential of a ground] a step further not only by coloring the ground with the addition of dry pigments to the mixture but also by allowing the exposed ground to participate fully as a design element. Thus the colored ground serves to unify the surface by visually holding the painting together. This technique was perfected by Rothko and became a hallmark of his style."

"As such, the medium [water-based medium with the addition of dry pigments] that served Rothko from the late 1940s onward, as both a sealant and a paint, was not unlike watercolor or gouache."

Carlyle et al. observed:

"Rothko created an intimate relationship between his paint and canvas by avoiding a traditional ground, and by using a priming method that he had developed in previous works. For the Tate murals [1958-59], he stained his

canvases with transparent reddish-blue coloured-glue layers."

"The pigmented size acted as a sealing layer, keeping the canvas from absorbing further paint. Highly diluted, it coated the fibers but did not disguise or flatten their textural effect. This tinted base formed the beginning of Rothko's subsequent layers of subtle colour and gloss variations."

The presence of white opaque primers on the Painting (and no evidence of transparent pigmented size) is inconsistent with Rothko's technique. Further inconsistencies include the presence of a polyvinyl acetate based ground, which is not a material associated with documented works by Rothko, and acrylic polymer emulsion, which did not appear in Rothko's paintings until the mid 1960s, nearly a decade after the date on the back of *Untitled*, 1956.

Conclusions

In spite of the signature, "MARK ROTHKO", and date, "1956", materials and techniques used to create the Painting are inconsistent and irreconcilable with the claim that *Untitled* was painted by Mark Rothko (Russian-American painter, 1903-1970) in 1956 or any other date.

Please do not hesitate to contact me if you have questions about the examination and analyses to date.

Very truly yours,

A handwritten signature in black ink that reads "James Martin". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

Orion Analytical, LLC
By James Martin

ANOTHER MEMBER OF THE FAMILY

A new example by Robert Motherwell joins his Elegy series and other abstract expressionists works acquired at Knoedler Gallery in recent years. I have been able to examine virtually all of them. Most of the paintings, including those by Pollock, Still, Rothko, Kline and others, are of medium scale and are fine examples of their mature art.

This newest Motherwell, as with the previous examples, is entitled 'Spanish Elegy indicating his continued experiments with that image and format in the 1950s. A conservator has not seen the work, as far as I know, but I do not think one is necessary. I know several independent scholars have seen the paintings and all have been impressed. I have no reservations as to its stylistic resemblance to Motherwell's oeuvre.

The provenance, though not traditional, is convincing as well. They have obviously been chosen by a sharp eye and because all are from the late 1940s and 1950s could have been purchased from the artists themselves since the artist's gallery representation in the 1950s was fitful. It is known that the artists, including Motherwell, could not afford to hold back paintings, and given their financial need, were eager to sell privately as well as through galleries. These abstract expressionist paintings are from a collection that seems to have been assembled quietly with the aid of well-connected friends and dealer, in this case, David Herbert and Alfonso Ossorio. The work has had one owner and not traveled.

After personally viewing the work, I believe in my professional opinion, to be a Robert Motherwell.

Sincerely Yours,

Stephen Polcari

On Motherwell delivered to Knoedler November 11th, 2007

From: Laili Nasr

To: Ann Freedman, Knoedler Gallery

Re: Untitled (1956), Mark Rothko, Oil on Canvas

Date: October 29, 2002

Ms. Freedman,



I am writing to you at the suggestion of Dana Cranmer on behalf of the Mark Rothko Catalogue Raisonné of works on paper regarding the 1956 work by Mark Rothko. The work was apparently acquired directly from Rothko (through David Herbert) by a private collector in Switzerland. Reviewing the work at Dana's studio in New York, I would like to ask if you can provide us with any information previous ownership of this work as well as any exhibition and publication histories you may be aware of.

About Untitled (1956), the new painting, it is so grand without being large. I think the maroon square on the lower half of the painting relates it closely to several of the Seagram mural paintings; for example, Catalogue Raisonné No. 651. Compared the right-hand side square with the tilted arm in CR 651 to the lower square in Untitled (1956). Also, the interplay of maroon and electric orange/red invigorating the 1956 work is also an important aspect of the Seagram paintings.

Dana Cranmer was equally impressed and left me the following note regarding the painting: "From this cumulative experience with Mark Rothko's works, I can say that this classic work from 1956 is wholly characteristic of other works from the period I have inspected and treated. This is a prime example of the artist's classic style which he created, implementing the full regalia of his technical innovations."

The National Gallery of Art with the full support of Rothko heirs is preparing the second volume of the Mark Rothko catalogue raisonné, intended to document the works on paper. As you may know, Mark Rothko The Works on Canvas the first volume of the catalogue raisonné, was published to great acclaim in 1998 by Yale University Press in association with the National Gallery of Art. Please note the enclosed press release and web address for further information about the project.

At this stage in the works on paper catalogue raisonné project, we intend to include a supplementary section to introduce new works on canvas that were discovered since the 1998 publication of the first volume of the California catalog devoted to the artist's paintings on canvas. If we do indeed publish the supplement listing the newly discovered canvases, we intend to include Untitled (1956) among the works featured, reproducing the painting along with a comprehensive catalog entry.

Sincerely,

Laili Nasr
National Gallery of Art
Washington, D.C.

EXHIBIT

7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

GLAFIRA ROSALES,
a/k/a "Glaflra Gonzalez,"
a/k/a "Glaflra Rosales Rojas,"

Defendant.

INDICTMENT

S1 13 Cr. 518 (KPF)

(Title 18, United States Code,
Sections 1343, 1349, 1956(a) (2) (B) (i)
and (h), and 2; Title 26, United States
Code, Section 7206(1); Title 31, United
States Code, Sections 5314 and 5322(a);
Title 31, Code of Federal Regulations,
Sections 1010.350, 1010.306(c, d), and
1010.840(b).)

PREET BHARARA

United States Attorney.

A TRUE BILL

Kathleen Sweet

Foreperson.

8/14/13
MB

S1 Filed indictment... Ellis, VSK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

GLAFIRA ROSALES,
a/k/a "Glaflira Gonzalez,"
a/k/a "Glaflira Rosales Rojas,"

Defendant.

INDICTMENT

S1 13 Cr. 518 (KPF)

(Title 18, United States Code,
Sections 1343, 1349, 1956(a)(2)(B)(i)
and (h), and 2; Title 26, United States
Code, Section 7206(1); Title 31, United
States Code, Sections 5314 and 5322(a);
Title 31, Code of Federal Regulations,
Sections 1010.350, 1010.306(c, d), and
1010.840(b).)

PREET BHARARA

United States Attorney.

A TRUE BILL

Kathleen Sweet

Foreperson.

8/14/13
mg

S1 Filed indictment... Ellis, VSK