

Art in American, May, 1981

## The Pasadena Case

Litigation concerning the deaccessioning of works from the former Pasadena Museum of Modern Art, now the Norton Simon Museum, raises some sensitive questions about a museum's financial and ethical responsibilities.

BY HUNTER DROHOJOWSKA

A little more than a week before the auction last May 16th (1980) at Christie's in New York, Los Angeles collector Robert Rowan opened the catalogue and much to his surprise saw two familiar paintings listed for sale: a Richard Diebenkorn 1953 oil, *Urbana I*, and a Franz Kline gouache, *Composition 1948*. Both had belonged to him until he and his former wife had given them to the institution then named the Pasadena Museum of Modern Art, now the Norton Simon Museum of Art.

By their own estimate, the Rowans contributed a total of over \$400,000 worth of art and money to the museum.<sup>1</sup> Rowan had served from 1964 to 1974 on the museum's board of directors. But nobody had advised him that his gifts were to be deaccessioned. As Rowan investigated further, he found that the May 16th auction included other paintings he knew well—ones by Sam Francis, Willem de Kooning and Wayne Thiebaud. And a second Christie's auction, scheduled for June 10th, included works by Paul Jenkins, Ed Moses, James Rosenquist, William Copley, Antonio Tápies, Tom Weselmann, Ed Kienholz, Jean-Paul Riopelle, John McLaughlin, Philippe Hosiasson, Joe Goode, John Ferren, Agnes Martin and Ed Ruscha. All had been part of the PMOMA collection when Rowan had been on the museum's board of trustees.

Dismayed, Rowan contacted two other former trustees, Los Angeles collectors Alfred Esberg and Gifford Phillips, to discuss the situation. The idea of putting the paintings up for auction incensed all three men, so they joined forces and sued in a California court to stop the sale. The suit was hardly a modest undertaking; within the first two months (as of July 1980) their lawyers' bill was \$7,500.<sup>2</sup>

The Norton Simon Museum, during the same period, spent \$64,000 in attorney fees to prepare its defense.<sup>3</sup> Simon told me: "There's a campaign to try and get us. But no one is going to take a vexatious lawsuit and use it as a tool to help their own concept of what should be done with the art."<sup>4</sup> The case represents a contest of wills, and for

both parties the issues are complicated and painful. One of the most important of them is how a museum ought to be run.

To say that the Simon Museum in Pasadena has had a long, confused history is to indulge in understatement. It has changed its name four times, each time for a good reason. The institution opened in 1924 as the Pasadena Art Institute in a Victorian house in Carmelita Park (razed in 1967 to make room for the new Pasadena Museum of Modern Art), and in 1942 moved to Grace Nicholson's Chinese House and Emporium. The Institute was devoted mainly to the acquisition and display of 19th-century American and European art, although it also put on annual shows of local art and the art of other cultures.<sup>5</sup>

In 1951, child psychologist Galka E. Scheyer deeded some 600 German Expressionist works including major pieces by the Blue Four—Feininger, Jawlensky, Kandinsky, Klee—to the Pasadena Art Institute on the conditions that a catalogue be published and none of the work ever be sold. The collection was installed in the Chinese House, and in 1954 the Institute changed its name to the Pasadena Art Museum.

The trustees considered Scheyer's Blue Four works a solid base from which to build a modern collection, especially of post-1945 art. Throughout the '50s and '60s, the museum acquired works by emerging contemporary artists on both coasts, some by direct purchase, but an even greater portion by donations from artists and collectors alike. The collection came to include pieces by Ellsworth Kelly, Helen Frankenthaler, Roy Lichtenstein, Claes Oldenburg, Frank Stella and Andy Warhol. In addition, the museum pulled together the first cohesive public representation of Southern California artists, among them, Larry Bell, Richard Diebenkorn, Robert Irwin, Ed Kienholz, Ken Price, Ed Ruscha and DeWain Valentine. In April 1973 the museum changed its name again—now to the Pasadena Museum of Modern Art—and generally was considered to have the best contemporary collection west of Chicago.

As the collection grew, so did the ambitions of the museum's trustees.<sup>6</sup> In 1964, they hired architects Thornton Ladd and John Kelsey to design an expansive building that cost close to \$4.5 million when it finally opened in 1969.<sup>7</sup> The new museum's operating expenses far exceeded those in the Chinese House. Pledged donations did not come through and the city of Pasadena contributed only \$25,000 annually. Financial peril loomed.<sup>8</sup>

According to Martha Padve, trustee of the Pasadena Art Museum from 1965 to 1974 and co-chairperson of the museum's fundraising and development committee during the late '60s, "There was a split between the board members for contemporary art and the more traditional trustees who had contributed as much if not more than the others. Many of these people gave money in expectation of an oriental gallery and a curator of oriental art, and when that never happened they were disappointed. When some of your strongest fundraisers aren't behind the ongoing acquisitions and exhibitions and their expectations are not met they have a right to be unhappy. It made fundraising difficult."<sup>9</sup>

The museum went through four directors and numerous other staff changes between 1964 and 1971. Robert Rowan held the job of president of the board of trustees during those years but could not stem the flood of red ink, nor could his successors, Alfred Esberg in 1971 and Gifford Phillips in 1972. Although Esberg and Phillips cut almost all expenses and estimate their own contributions to have been over \$100,000 in art and money,<sup>10</sup> their efforts came too late. By 1973, the museum reported an operating deficit of \$844,789.<sup>11</sup> By June 30, 1974, the deficit had increased to \$1,004,522, and the museum was unable to pay its debts as they came due.<sup>12</sup>

The trustees sought help from many sources. They discussed merging as a western branch of the Museum of Modern Art in New York, only to learn MOMA was plagued by its own financial difficulties.<sup>13</sup> Then there was the possibility of acting as the contemporary gallery of the new and financially sound Los Angeles County Museum of Art, but that plan was killed for complicated legal reasons. Finally, four of Pasadena's trustees, Esberg, Phillips, Rowan and Coleman Morton, went to wealthy California art patron and industrialist, Norton Simon.

Simon is a self-made millionaire. He parlayed a \$7,000 investment in a bankrupt orange juice company in 1929 into a conglomerate that at one time owned everything from Hunt's catsup to *McCall's* magazine.<sup>14</sup> In 1954, encouraged by his former wife Lucille, Simon bought his first three paintings, a Gauguin, a Bonnard and a

...ow he owns an important collec-  
...predominantly pre-20th-century art  
...includes old masters, Impressionists  
...and Oriental art. Last spring, through the  
Norton Simon Foundation he paid \$3.7 mil-  
lion for the *Resurrection of Christ* by  
Renaissance artist Dierick Bouts.

Most of Simon's art works are the prop-  
erty of either of two foundations: the Norton  
Simon Foundation (incorporated in 1952  
and having assets of \$65 million in 1972) or  
a foundation called the Norton Simon, Inc.,  
Museum of Art (incorporated in 1954, long  
before any involvement with the Pasadena  
Museum had taken place, and having assets  
of \$32 million in 1972).<sup>15</sup> As Karl Meyer  
wrote in *The Art Museum: Power, Money  
and Ethics*: "Works of art given to the  
Simon foundations qualify as charitable ded-  
uctions. In papers filed with the IRS, as  
required by federal law, the Norton Simon  
Foundation listed the total value of art pur-  
chases through December 31, 1973, as  
\$44,787,344. During 1973 he purchased  
seventy-five works and gave them to the  
foundations. He was thus able to deduct up  
to half the works' total purchase price from  
his 1973 taxes and at the same time  
[through his control of the foundation]  
retain control of the art."<sup>16</sup>

The only thing that Simon lacked in 1974  
was a place of his own to show his art—  
various portions of his expanding collection  
were on loan to museums and universities—  
which was why he became interested in the  
fate of the financially troubled Pasadena  
Museum of Modern Art.

By 1974 the banks were threatening to  
foreclose on the museum's mortgage, which  
meant that, with the exception of the Blue  
Four works, the museum's collection, in-  
cluding the contemporary work, could have  
ended up being sold.<sup>17</sup> Trustees Esberg,  
Phillips, Rowan and Morton had been nego-  
tiating with Simon's representatives, nota-  
bly Robert MacFarlane, for several months  
when, on April 22, 1974, Simon sent the  
Pasadena Museum of Modern Art a letter  
setting out their various discussions and a  
proposal for joining the various collections.  
In it, he suggested that the 35-member  
PMOMA board of trustees vote itself out of  
office and vote in a new group.<sup>18</sup> The new  
board would consist of four members nomi-  
nated by the Simon group, three members  
from the public at large to be nominated by  
the Simon group, and three to be nominated  
by the Pasadena group.<sup>19</sup>

Simon wrote, "I earnestly believe that  
each collection will be enhanced by the oth-  
er by presenting an historical sweep of the  
evolution of art. We would plan that items  
from our two collections would be shown on  
a long-term basis at the Pasadena Museum.  
We would expect to utilize 75% of the exhi-  
bition space and we would expect the Board  
to commit to an average use of 25% of the  
exhibition space for five years for exhibiting  
modern and contemporary art from the per-  
manent Pasadena Modern collection, the  
Galka Scheyer collection, and other modern  
and contemporary art loaned to the museum

for exhibition."<sup>20</sup>

The PMOMA trustees were aware of an  
absence of concrete terms in the agreement,  
and they regretfully noted the secondary  
importance allotted by Simon to Pasadena's  
own collection from the start.<sup>21</sup> But they had  
scant bargaining power and, according to  
Gifford Phillips, the only term they were  
able to insist that Simon put in writing was  
the "25 percent" clause.<sup>22</sup> Beyond that,  
Simon would agree only verbally to main-  
tain a generous loan policy regarding the  
Pasadena works,<sup>23</sup> and not to sell any of the  
permanent collection for at least five  
years.<sup>24</sup>

Since Simon was saving PMOMA from  
its creditors, however, the board of trustees  
voted to accept Simon's proposal. At the  
April 26, 1974 meeting of the board of trust-  
ees, the museum's articles of incorporation  
were amended to reduce the board from 35  
to 10 and to change the name from the Pas-  
adena Museum of Modern Art back to the  
Pasadena Art Museum.<sup>25</sup> In May 1974, the  
museum closed for renovation.

---

***No one can dispute the fact  
that Norton Simon has saved  
the Pasadena Museum. Yet a  
number of former trustees  
resent what they perceive  
as a collection held hostage.***

---

After a \$1-million refurbishing, the  
building reopened in 1975 with 72  
percent of its gallery space devoted  
to modern art<sup>26</sup> (art critic Peter Plagens  
praised the new installation in *Artforum*).<sup>27</sup>  
And for the next two years, the museum  
continued to show more than 25 percent  
20th-century art.<sup>28</sup> As time passed, howev-  
er, less and less contemporary work was dis-  
played and more and more pre-1945 work.  
By 1977, with the exception of a very few  
pieces—for instance, sculpture by Isamu  
Noguchi and David Smith—the bulk of the  
PMOMA contemporary collection was in  
storage. By then, other changes were worry-  
ing Esberg, Phillips and Rowan—the rep-  
resentatives of the Pasadena group—now sit-  
ting on the new board.

In October 1975, the three holdover trust-  
ees were outvoted seven to three, and the  
institution's name became the Norton Si-  
mon Museum of Art. The vote served to  
define the waning power of the PMOMA  
trio: they could challenge—but not really  
affect—policies and decisions.

By this time, Simon was starting to adopt  
a loan policy that appeared to many to be  
less generous than he had promised; he  
refused, for instance, to lend an Ed Ruscha  
painting, *Annie Poured from Maple Syrup*,  
to the artist even for a few minutes so that it  
could be photographed for documentation—

much less lend it as part of "The Last Time  
I Saw Ferus" exhibition at the Newport  
Harbor Art Museum in 1976.<sup>29</sup> Then, in  
October 1978, the Simon Museum refused  
to let Richard Diebenkorn borrow a paint-  
ing that he himself had given PMOMA, and  
which he now wished to have included in his  
retrospective at the Albright-Knox Mu-  
seum.<sup>30</sup> In protest, Esberg, Phillips and  
Rowan resigned from the board.

Obviously, the artists of Los Angeles were  
less than happy to see contemporary works  
that had been donated or even purchased by  
PMOMA stored away and unavailable for  
loan. For many artists, the final blow came  
when they learned of Simon's intentions to  
sell their art works at auction last summer.  
Richard Diebenkorn, Sam Francis, Robert  
Irwin, DeWain Valentine and others don-  
ated time and money to support the legal  
battle, initiated by the former PMOMA  
trustees, to enjoin the sale. Irwin spoke for  
most when he told me, "I gave that painting  
to a known entity, a museum of modern art.  
And that has changed. It is as if the Modern  
had become the Frick. If Simon doesn't  
want the material, why doesn't he give it  
back to me?"<sup>31</sup>

As the legal battle continued, both sides  
won important early victories. The ex-  
trustees were pleased when the Su-  
perior Court of California issued a "Tempo-  
rary Restraining Order," stopping the sale  
of PMOMA's contemporary paintings at  
the two Christie's auctions. But the Simon  
group was equally pleased that the court  
ordered the former trustees to post first a  
\$100,000 bond and then, after Preliminary  
Injunction hearings in June, an additional  
\$25,000 bond. The bonds are meant to offset  
possible damages to the Simon Museum in  
terms of lost sales, plus to pay for Simon's  
attorney fees—should the case be decided in  
Simon's favor.

The Preliminary Injunction hearings also  
brought another defeat for the former trust-  
ees. Superior Court Judge Thomas Johnson  
ruled that three additional auctions<sup>32</sup> sched-  
uled at Sotheby Parke Bernet to which the  
Simon Museum had consigned items would  
be exempt from the restraining order. The  
judge reasoned that the PMOMA group  
had not offered any *specific* objections over  
the sales of any *specific* works, but rather  
had asked for a blanket injunction, as if all  
the works were of equal importance.

Judge Johnson went on to note that two of  
the three Sotheby auctions were of prints,  
and that prints, unlike the original works of  
art at Christie's, are "fungible." In other  
words, since more than one copy of each  
print exists, the works are therefore replace-  
able. Thus, in the eyes of this court, prints  
are like potatoes, soybeans, copper or any  
other traded commodity. (The museum,  
however, did not own duplicate examples of  
the works sold.)

The Simon Museum went ahead and  
deaccessioned scores of prints and offered  
them for sale at Sotheby's. Among the 19th-  
and 20th-century American and European

...s from the PMOMA collection sold at the Sotheby's, Los Angeles, June 16-18 sales were a portfolio of lithographs by Laszlo Moholy-Nagy (\$26,000); Jasper Johns's lithograph of ale cans (\$18,000); Odilon Redon's *The Reader* (\$11,500); Edward Hopper's *Evening Winds* (\$8,500).<sup>33</sup> At Sotheby's, New York, on June 15-16, a number of old-master prints, including some Rembrandt etchings, were sold. And at the June 23-24 sales at Sotheby's, Los Angeles, a number of 20th-century American and European paintings were also sold. Among them: a 1959 Karel Appel (\$14,000); Adolf Gottlieb's *Symbols* (\$7,000); two Morris Graves canvases (\$3,000 each); a 1963 Helen Lundberg (\$3,100); a 1947 Peter Krasnow (\$2,700); and a Mark Tobey (\$1,500).<sup>34</sup>

Still, the only really major contemporary work that had been sold was a large protractor painting by Frank Stella, his 1967 *Tahkt I Sulayman I*, that Robert Rowan had given to PMOMA in 1971. Prior to the Christie's furor, the Simon Museum had quietly sold the Stella to two dealers, James Corcoran in Los Angeles and Leo Castelli in New York, for \$70,000. Rowan was quoted in *Fortune* magazine as saying that the fair market value of the painting is more like \$175,000.

No other deaccessions have been proposed by the Simon Museum since last summer. At the final hearing held at the end of June '80, after all of the auctions, Judge Johnson ruled that if the Simon Museum should want to deaccession any work in the future, it would be required to give the former trustees a 45-day written notice along with a description of the work, its exhibition record, the date, time and place of the sale and the estimated range of the proceeds. Any objections by the former trustees to any proposed sales by the Simon Museum would be heard by the judge on an individual basis. In the event that a sale should be enjoined, the court could demand that the former trustees put up additional bond money.

In a conversation last summer, Simon told me he thought Judge Johnson's decision was quite fair and noted that it put the former trustees on the defensive. One of Simon's attorneys put it more precisely: "The Order does not prohibit the Museum from selling any works of art; rather, the Museum is only required to give notice prior to selling any works. In our opinion, the Order reflects the court's recognition of the critical weakness of the plaintiffs' claims and the importance of avoiding excessive interference with the Museum's operations until those claims [the former trustees'] are ultimately decided."<sup>35</sup>

Ultimately, the issues will be decided when the case comes to trial, but the main arguments are already clear. Simon, his curators and his attorneys maintain that the museum is only deaccessioning work that is either "inferior" or "inappropriate" to the altered direction of the institution. Simon explained it to me this way: "We have limits

to our operating expenses and we're not going to keep inferior contemporary art. There is a residual importance to the PMOMA name because of their exhibition record, not the collection. No one talks about the junk they have down there."<sup>36</sup>

"Junk" is in the eye of the beholder, and Selma Holo, at that time curator of the Simon Museum, filed affidavits last June commenting on the paintings proposed for sale at Christie's. She wrote, for example, that Diebenkorn's oil, *Urbana I*, had a problem of "flaking paint" and "would need to be watched from time to time." Of Joe Goode's 1962 oil, *One for Monk*, a panel of monochrome color with an attached milk bottle, Holo remarked, "Not, in my opinion, of sufficient interest to merit its further exhibition in the museum; and while it was displayed under the current administration

---

***The case represents a contest of wills, and for both sides the issues are complicated and painful. Among the most important is the question of how a museum ought to be run.***

---

in 1975, it was not at all well-received by the museum-going public."<sup>37</sup>

She also dismissed Agnes Martin's *Leaf in the Wind*, a 1963 acrylic and pencil on canvas: "This painting, with its severely reductive repetition of lines on a bland surface, inspired no interest in the museum-going public. In my opinion, the museum could purchase more interesting works of art from the proceeds of the sale."<sup>38</sup> The Holo critique of John McLaughlin's 1963 oil, *No. 6*, said: "The museum has two better works by the artist. We feel that ultimately we need to keep only the single best work."<sup>39</sup>

William Agee, the last director before the Simon takeover (he is now director of the Houston Museum of Fine Arts), remembers the collection as being "not fully encyclopedic or deep" but as having "some very good things." (There is no catalogue documenting the whole permanent collection of the Pasadena Museum of Modern Art.) Still, "It was a cohesive and representative collection—particularly representative of work from Southern California."<sup>40</sup> Asked about the pieces proposed for sale at Christie's last summer, he said certain of them wouldn't have been wrong to sell. He picked out Wayne Thiebaud's 1962 oil, *Refrigerator Pies*, saying it was "small . . . not bad to deaccession." In addition, Agee lumped together Paul Jenkins's 1960 *Phenomena Before Quick-Silver*, William Copley's 1963 *I Remember Cuba*, Antonio Tápies's 1960 *Points Between Parenthesis*, and Jean-Paul Riopelle's 1960 *La Rade*, judging them "not very great."

Agee felt strongly when I spoke to him last summer that other paintings should not have been put up for auction. In particular, he termed the following "great losses": Richard Diebenkorn's 1953 *Urbana I*; Sam Francis's 1958 *Study for White Line*; Ed Moses's 1959 *Donna Lee*; James Rosenquist's 1964 *Win a New House this Christmas (Contest)*; Tom Wesselmann's 1962 *Great American Still Life No. 2*; Ed Kienholz's 1958 *They Tar And Feather the Angel of Peace* and the same artist's untitled 1957 oil and wood assemblage; Joe Goode's 1962 *One for Monk*; and Ed Ruscha's 1966 *Annie Poured from Maple Syrup*. Agee went on to say that John McLaughlin's 1963 *No. 6* is a "great picture," and the Agnes Martin 1963 *Leaf in the Wind* is "top-notch." In other words, "some very good paintings may end up being sold"—if, that is, the former trustees lose their legal battle.

Whatever one might think of the Simon Museum's deaccessioning policy, it is the most explicitly stated one the museum has had. The former trustees did not formulate a specific policy on the subject, although they did themselves deaccession some art works. Between 1969 and 1974, museum records indicate, the former trustees sold works by Rembrandt, Degas, Rodin, Miró, Grandma Moses and others for a total of \$443,950.<sup>41</sup> Most of the money was reinvested not in art but in survival; it went to keep the museum doors open.

Today, the Simon Museum's deaccessioning policy dictates that any money gained from the sale of 20th-century work must be reinvested in 20th-century work. That is a broad definition, of course: one could say it simply gives the museum license to sell Stella and buy Brancusi.

It is inevitably controversial when a museum deaccessions donated art works over the protest of the living artist or donor. Many museums, including New York's Museum of Modern Art, have a policy of never deaccessioning gifts without the expressed consent of the donor or the donor's heirs.

That brings up a salient point. Simon has given relatively few works to the museum outright.<sup>42</sup> Most of the pictures and sculptures from the Simon collection do not actually belong to the museum; rather, they are on loan from the two Simon foundations. In fact, the Simon Museum's current board of trustees<sup>43</sup> would seem to have a primary responsibility to the PMOMA collection, not to the works on loan from the Simon foundations.

Esberg, Phillips and Rowan find it hard to buy Simon's and Holo's argument that they are pruning and upgrading the collection through deaccessioning. In an article in the *New York Times* of May 9, 1980, Grace Glueck quotes Rowan as saying: "If Norton had given, say, \$10 million or \$100 million worth of objects to the museum, he'd certainly have the right to upgrade or improve those objects. But he hasn't given anything

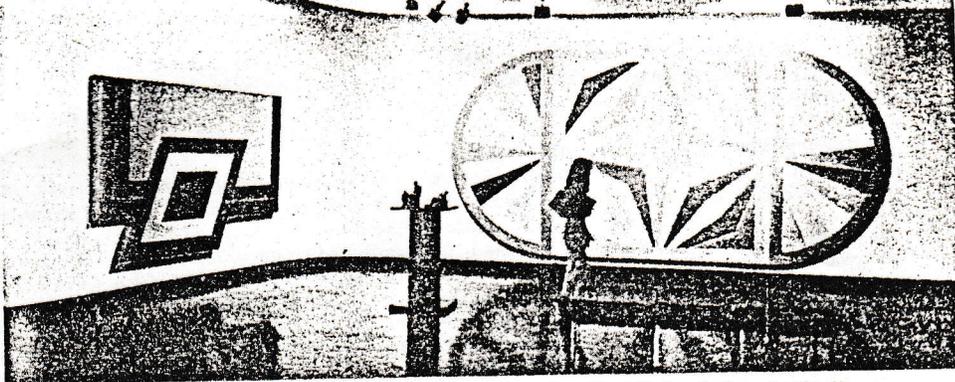
of, and when he starts selling the permanent collection at the museum, isn't he wasting its assets? That's one of the things we intend to look into legally."

It seems hard to dispute that Norton Simon has saved the Pasadena Museum. He has put more than \$3.5 million into what was a foundering institution; the museum's current cash assets (as of the last quarter of 1980) are a healthy \$2.5 million.<sup>44</sup> Nonetheless, the former trustees resent what they perceive as a collection held hostage.

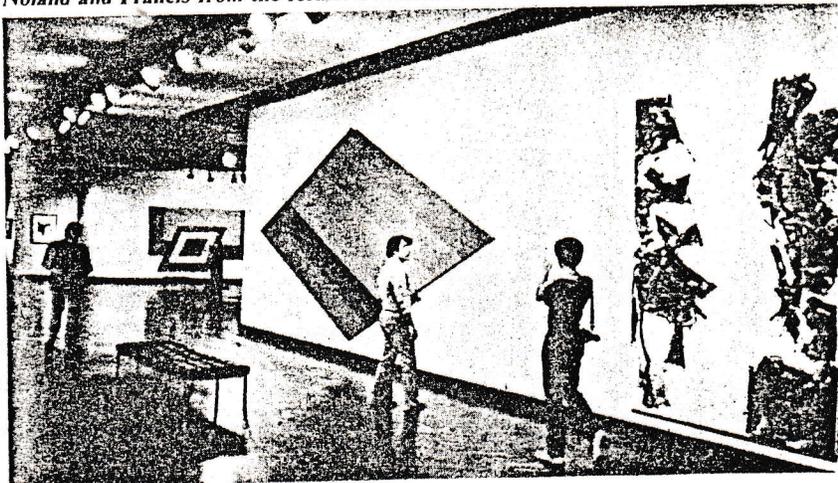
Ideally they'd like Simon to lend the entire collection to the fledgling Museum of Contemporary Art (MOCA) that is now planned as part of Los Angeles's Bunker Hill redevelopment plan [see p. 50] and which numbers among its trustees none other than Robert Rowan, as well as Norton Simon's sister, Marcia Weisman. Weisman, a powerful collector of contemporary art in her own right, was so influential in the earliest stages of MOCA's genesis that the local L.A. community referred to it, at times, as the "Marcia Weisman Museum." She denies rumors, however, that sibling rivalry has played any part in Norton Simon's lack of enthusiasm for the MOCA project. And Simon told me that his own museum could do a better job for the Los Angeles public than MOCA—even in the purchase and presentation of contemporary art.<sup>45</sup>

"We are seriously thinking about taking our kind of leadership and putting it in the contemporary art field. It's possibly the thing we'll have to do,"<sup>46</sup> Simon said. He argued that the people at the Simon Museum who were sensitive enough to choose a quality Dierick Bouts would also be able to apply the same discernment to contemporary work. "I've bought contemporary art and I have a feeling for it," he added. "I had to make a choice about which to collect, but I've never let go of the other. I purchased Gorky, Pollock, David Smith. I've owned far better de Koonings [than the one up for auction at Christie's]."<sup>47</sup> Simon also commented that "there are a few exceptionally good artists in California." When I asked him to specify, he demurred: "I'm not about to propagandize, but it will be demonstrated when the time comes."<sup>48</sup>

These comments were made in June 1980. Now, Simon seems to have put some of his ideas into effect. Starting last September, several pieces from the PMOMA collection—most notably Sam Francis's *Basel Mural* and Frank Stella's protractor painting, *Damascus Gate I*—were retrieved from storage and put on display in the museum's auditorium. Then, last December, one wing of the museum was stripped of its Renoirs and its Venetian and Barbizon school paintings and rehung with over 20 PMOMA works: the big Stella was brought in from the auditorium and was hung with Roy Lichtenstein's *Big Modern Painting-Expo '67*, a pair of Josef Albers's



Two views of the Norton Simon Museum showing recently reinstalled paintings by Stella, Noland and Francis from the former PMOMA collection. Photos ©Robert Landau 1980.



1968 *Homage to the Square/Red Series*, Richard Diebenkorn's 1960 *Bottles*, Hassel Smith's 1950 *Tip Toe Down to Art*, Helen Frankenthaler's 1968 *Adriatic*, Kenneth Noland's 1964 *Color Temperature*, John Altoon's 1962 *Ocean Park Series #8*, and others of equal caliber. The quality of the work and the installation is quite good and admirably complemented by a few Blue Four pieces and Simon's own Picassos. Ironically, the whole wing looks like what the former trustees had in mind when they merged with Simon back in 1975.

The question, of course, is why? Simon may actually be interested in showing contemporary art at the Simon Museum. Then again, he recently sent 50 of his old masters East on long-term loan, so perhaps he is simply filling up wall space. On the other hand, it is possible that the action is in response to the lawsuit.

Questioned as to why Simon would want to show contemporary work, David Bull, director of the Norton Simon Museum until his resignation in March '81, said, "Obviously, the lawsuit is causing him trouble. But who knows why he might be doing this? He's just that sort of man, a man who is like the wind, constantly changing."<sup>49</sup> Curator Selma Holo, who also resigned in March, said, "I think that he's upset and trying to manage the situation in his own way, one that is creative and fluid. He's an extraordinary man but he works in ways that are hard for most people to understand."<sup>50</sup>

At the time of the resignations, Simon said he had no plans to fill their positions,

but would work with consultants. Since then Tréssa Helfet, the former head of prints at Sotheby Parke Bernet in Los Angeles, has been hired in a curatorial capacity.

The reinstatement of contemporary art at the Simon Museum has not affected the lawsuit. The case was on the court's agenda for early summer, but has now been postponed. One must marvel at the ironies involved. Here are three of the Pasadena Museum's former trustees—men who asked Norton Simon to help bring the museum out of its bankruptcy—now trying to prevent the Simon Museum's trustees from dismantling the former PMOMA collection in any way. And here is Norton Simon—who may not have given a lot of art works to the museum but who has put in over \$3.5 million—battling for the right to run the institution as he sees fit. There are some interesting legal and ethical points to examine: points about the fiduciary responsibilities of museum trustees and, indeed, about the basic definition of a public museum as the steward of the art it holds. The courts may not be able to treat such issues directly, but they cannot ignore them entirely. For that reason, any decision on the Norton Simon Museum's deaccession attempt is sure to be carefully noted by museum trustees, curators and donors—and not only in Pasadena. □

1. Jerry Belcher, "Judge Blocks Norton Simon Auction," *Los Angeles Times*, May 18, 1980.  
2. Hillel Chodos—attorney representing Robert

Esberg and Gifford Phillips—in  
with the author, July 1, 1980.  
Simon, in an interview with the  
June 26, 1980.

Ibid.

Martha Padve, trustee of the Pasadena Art Museum from 1965 to 1974, co-chairperson of the museum's fundraising and development committee during the late '60s, and currently assistant director of development at Art Center College of Design, Pasadena, Calif., in an interview with the author, March 20, 1981. Also from Padve's draft for the museum's unpublished 50th-anniversary booklet, in which she covered the history of the museum's buildings and collections as well as the history of its earliest financial problems and some innovative solutions. As she

1922 a group of Pasadenans, a third of whom divided their time between their homes in the midwest and their Pasadena residences, banded together to purchase land for a museum. They bought the Reed house [a 22-room, 1,000-square-foot residence, built in 1892 in Carmelita Park by Simon and Amanda Reed, founders of Reed College] and nine-and-a-half acres of the surrounding property. Its western boundary bordered on famous Orange Grove Boulevard. Articles of incorporation were signed on August 14, 1924. It was the progenitor of the present museum.

The fledgling Art Institute barely had time to develop before the depression of 1929 interrupted its operation. To save the property from foreclosure, the Carmelita Grandstand Association was formed and seats for the Tournament of Roses Parade were sold each year. Huge grandstands were erected along the southern boundaries of Carmelita on Colorado Boulevard. They accommodated more than 4,000 persons. Thus began the innovative methods of raising funds for the largely privately supported museum.

In the early '40s, the city of Pasadena acquired title to the Carmelita property for its own use for a period of 20 years. At the end of that time, the property would revert to the museum if the trustees could produce sufficient funds to erect a new building.

6. According to Maryanne Rex, vice president and assistant secretary of the Norton Simon Museum (in an interview with the author, March 24, 1981), the board of trustees of the Pasadena Art Museum in 1964 included: Walter Askin, Mrs. Edward C. Crossett, Mrs. Francis Frost, Jr., Stanley Hahn, Arthur Hanisch, Mrs. Leslie Hoffman, William Jans, Mrs. Lawrence Jeffries, Harold Jurgensen, Mrs. Francis McAlister, Mrs. Anson Moore, Coleman Morton, Gifford Phillips, Mrs. Houston Rehrig, Mrs. B.J. Redder, Emrys Ross, Robert Rowan, Frederick Runyon, Alexander Saunderson, Joel Sheldon, Mrs. Larry Slattery, Dana C. Smith, Mrs. Gordon Smith, Jack Smock, Willis Stork, Robert Strub, Harold Ullman, Emerson Woeffler, Dudley Wright, Donald Young, Mrs. Joseph Jones, Mrs. Nathan Phelps, Mrs. Clark Hunter, Donald Factor.

7. Maryanne Rex in an interview with the author, March 25, 1981, correcting the often published \$8.5-million figure.

8. According to Martha Padve (in an interview with the author, March 23, 1981), the budget for the fiscal year 1965-66 was \$168,000; for 1966-67 it was \$196,000. Deficits ranged anywhere from \$20,000 to \$50,000, but "they were manageable. The budget for 1973-74 was \$665,000, and inordinately expensive to run that museum, but there was no way for us to pick up the deficit, which was \$800,000." According to Maryanne Rex (in an interview with the author, March 25, 1981), in the same fiscal year ['73-'74] an additional \$135,000 deficit was piled atop the already accumulated deficit of \$844,789, pushing it close to \$1 million.

9. Martha Padve in an interview with the author, March 20, 1981.

10. Jerry Belcher, op. cit.
11. Court Declarations of Maryanne Rex, as filed in records of the Court of the State of California for the County of Los Angeles, June 6, 1980.
12. Ibid. Maryanne Rex also summarized the 1974 museum finances (in an interview with the author, March 25, 1981): \$200,000 in cash, securities (book value \$280,000) which had diminished to a value of \$220,000, and a \$4.5-million building. PMOMA owed \$850,000 to the banks, and had \$30,000 in expenses and liabilities. As she put it, "They were sinking further into the hole every year."
13. Karl Meyer, *The Art Museum: Power, Money and Ethics*, New York, William Morrow, 1979, pp. 152, 153.

***The court ruled that prints, unlike original art works are "fungible." Thus, in the eyes of the law, multiples are like potatoes, soybeans, or any other commodity.***

14. Steven V. Roberts, "Why a 63-Year-Old Tycoon Worth \$100 million Wants to Run For the U.S. Senate," *New York Times Sunday Magazine*, May 31, 1970, p. 10.
15. Karl Meyer, op. cit., p. 155.
16. Ibid.
17. Gifford Phillips, in an interview with the author, Sept. 3, 1980.
18. Letter from Norton Simon to the Pasadena Museum of Modern Art, April 22, 1974. Included in Court Declarations as filed in records of the Superior Court of the State of California for the County of Los Angeles, June 6, 1980.
19. Ibid.
20. Ibid.
21. Gifford Phillips, in an interview with the author, Sept. 3, 1980.
22. Ibid.
23. Ibid.
24. Minutes of the Board of Trustees Meeting April 26, 1974, included in Court Declarations as filed in records of the Superior Court of the State of California for the County of Los Angeles, June 6, 1980.
25. Ibid. Darryl Isly, Julia R. Mayer, Alvin Toffel and Robert S. MacFarlane, Jr., were those Simon immediately chose to sit on the board. The Pasadena group selected Robert Rowan, Gifford Phillips and Alfred Esberg. By December 1974, as reported in "Rebirth," (*Artnews*, Dec. '74, pp. 66-67), the projected structure of the board had changed somewhat. There were to be four rather than three public trustees: Tom Brokaw, Frank McCarthy, Dorothy McGuire Swope, and Mrs. Nick B. Williams (the former Barbara Steele). The Simon group would be reduced to three trustees; by this time Simon himself was one of them. And three trustees from the Pasadena group remained from the original board—Rowan, Phillips and Esberg.
26. Maryanne Rex, court declarations, op. cit.
27. Peter Plagens, "Pasadena, Like a Real

- Museum," *Artforum*, May 1975, p. 67.
28. Maryanne Rex, court declarations, op. cit.
29. Ed Ruscha, in an interview with the author, Dec. 18, 1980.
30. Richard Diebenkorn, in an interview with the author, May 8, 1980.
31. Robert Irwin, in conversations with the author, May and June 1980.
32. Last March 17 ['80], a number of 19th-century California paintings from the Josephine P. Everett Bequest to the Pasadena Art Institute went on the block at Sotheby Parke Bernet in Los Angeles. There was no reaction to this sale. It signified the end of the five-year "gentlemen's agreement" with Simon not to sell from the PMOMA permanent collection, and set a precedent for the May 16 Christie's sale.
33. William Wilson, "A Controversial Simon Auction," *Los Angeles Times*, June 25, 1980, p. 6.
34. According to Joan Hartley (in an interview with the author, March 25, 1981), vice president of Sotheby's, Los Angeles, 55 pieces from the PMOMA collection were sold for a total of \$62,375.
35. Letter to the author from Thomas Pfister of Latham and Watkins, the law firm representing Simon, describing the June 25, 1980 Preliminary Injunction Order issued by the court. Sent to the author August 1980 (letter undated).
36. Norton Simon in an interview with the author, June 26, 1980.
37. Court Declarations of Selma Holo as filed in records of the Superior Court of the State of California for the County of Los Angeles, June 6, 1980.
38. Ibid.
39. Ibid.
40. All quotes by William Agee are from an interview with the author, August 19, 1980.
41. Court Declarations of Maryanne Rex, op. cit.
42. According to Maryanne Rex (in an interview with the author, March 25, 1981) the Simon foundations and Mr. and Mrs. Simon between 1974 and 1979 gave \$95,000 in art works to the museum, \$17,000 of which was in 20th-century work. Other sources during the same period gave the museum \$1,195,000-worth of art works, \$973,000 of which is in 20th-century work, including pieces by Oskar Schlemmer, Picasso, Miró, Georges Rouault and George Grosz.
43. As of March 1981, members of the board of trustees of the Norton Simon Museum are: Olive Behrendt, Candice Bergen, Tom Brokaw, Judge Matthew Byrne, John Calley, Henry Fonda, Katherine B. Gates, Cary Grant, David J. Mahoney, Frank McCarthy, Norton Simon, Jennifer Jones Simon, Douglas Simon, Mrs. Dennis Stanfill, Dorothy McGuire Swope, Harold M. Williams. (Maryanne Rex, in an interview with the author, March 25, 1981).
44. Court Declarations of Maryanne Rex, op. cit.
45. Norton Simon, in an interview with the author, June 26, 1980.
46. Ibid.
47. Ibid.
48. Ibid.
49. David Bull, in an interview with the author, March 18, 1981.
50. Selma Holo, in an interview with the author, March 18, 1981.

**Author: Los Angeles freelance writer Hunter Drohojowska contributes to a number of publications including New West, Artweek and LAICA Journal.**