

RAIDERS OF THE LOST ARCHIVAL MATERIALS:  
LOSS MANAGEMENT AT A PUBLIC ARCHIVAL COLLECTION

BY  
RYAN POLK

Submitted in partial fulfillment of the requirements for the degree of Master of Arts in  
Museum Studies in the Columbian College of Arts and Sciences of the George  
Washington University, 2004

## **Raiders of the Lost Archival Materials: Loss Management at a Public Archival Collection**

“Documentary heritage reflects the diversity of languages, peoples and cultures. It is the mirror of the world and its memory. But this memory is fragile. Every day, irreplaceable parts of this memory disappear forever.”<sup>1</sup> Whether by natural disaster, war, neglect, or theft, the documents that record our history are always only one unfortunate event away from disappearing into history. Risk of loss through either inherent flaw or theft is a constant issue when managing a public collection of rare books and manuscripts. Often under-mentioned in respect to fine art, documentary loss is a major concern of institutions with archival collections. Using the Maryland State Archives as a model example, this essay examines the authority of a state institution to collect records, state primacy over private claims to resources of the public record, and recommends methods that combat both losses by theft and inherent degradation.

The history of the Maryland State Archives is probably similar to that of other state archives. After many years of accumulation, public records kept by the government and the various state agencies were becoming too numerous and difficult for each location to efficiently manage. Recognizing a centralized records management system is much more efficient than a Byzantine array of agencies controlling their records independently, in 1931 the Maryland Assembly established the Hall of Records and four years later created the Hall of Records Commission, which oversees the direction of the Hall of Records much like a board of trustees.<sup>2</sup> In 1984, the Maryland Commission on

---

<sup>1</sup> UNESCO, “Memory of the World Programme” November 18, 2003.  
[http://portal.unesco.org/ci/ev.php?URL\\_ID=1538&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201&reload=1069188966](http://portal.unesco.org/ci/ev.php?URL_ID=1538&URL_DO=DO_TOPIC&URL_SECTION=201&reload=1069188966).

<sup>2</sup> Chapter 487, Laws of Maryland 1931; Chapter 18, Laws of Maryland 1935.

Artistic Property joined with the Hall of Records to form the Maryland State Archives (MDSA).<sup>3</sup>

MDSA is the lawful repository for all official state records, as well as home to a significant collection of personal papers, art and decorative arts, including the Annapolis Collection and the George Peabody Collection. With the exception of special collections restricted due to conservation concerns, the collection is part of the public record available to every state citizen.<sup>4</sup> Private owners cannot possess documents belonging to the public record. Private ownership of public records unfairly prejudices all citizens who are entitled to access. While public access is the primary goal, it is also the most dangerous risk factor. By virtue of its very nature, having a public collection makes it vulnerable to thefts that in a vast collection of books and manuscripts may go unnoticed for years. Unfortunately, this is an attractive scenario for would-be thieves.

Since its inception, MDSA has operated as an independent agency, which affords it impartiality in executing its legislative mandate to “collect public and private records and other information that relate to the history of the province and State of Maryland from the earliest times, including church records and newspapers.” The broad collecting plan includes any records and materials that relate to the history of Maryland determined inessential for the operation of a unit (governmental agency or department).<sup>5</sup> Maryland’s model is similar to that set forth in 44 U.S.C. Chapter 31, which organizes the United States National Archives and Record Administration (NARA). Like NARA, MDSA’s collection is held in public trust for educational purposes and benefit of the public good.

---

<sup>3</sup> Chapter 286, Laws of Maryland 1984.

<sup>4</sup> Restricted collections are available by appointment, or when possible are available in an alternate format, e.g. microfilm, digital image, reproductions, etc.

<sup>5</sup> MD. Code Ann., § 9-1010(1), § 9-1010(1)(b), (2001).

Despite longstanding legal precedent, Maryland's authority to collect records deemed a matter of the public record was challenged, but successfully upheld in *Magruder v. Hall of Records Commission*, 221 Md. 1, 155 A.2d 899 (1959). Magruder, a genealogist, sought to halt transfer of land records from the county court to the Hall of Records. The Court of Appeals affirmed the decision of the trial court, removing any question of Maryland's authority to collect documents to hold in public trust.

Though the State's records technically begin in 1788, when Maryland ratified the United States Constitution, the State's claim to public records includes records created during colonial period. Through right of conquest, the state is the legal successor to the English provincial governments. The Supreme Court of North Carolina in *State v. West*, 235 S.E.2d 150 (N.C. 1977), reviewed a case involving two bills of indictment from the colonial era that were in the possession of a private owner. The court found that the indictments were public records owned by the Crown, that the Crown showed no intention to dispose of these documents, and ruled that clear title to the indictments passed to the State of North Carolina because the State was the legal successor to the Crown. The private owner paid a considerable fee to a rare manuscript dealer for the contraband documents, which the court recognized, but noted only the legislature could compensate him with a "finder's fee."

In a 1979 opinion, Maryland's Attorney General agreed with the ruling in *State v. West* regarding finders fees, stating if a citizen acts in good faith in the acquisition of a public record and can establish how it was acquired, a finder's fee is appropriate.<sup>6</sup> Furthermore, the Attorney General conceded that by offering a finder's fee, the State would "avoid costly litigation, as well as the possibility that private trading in older, more

---

<sup>6</sup> 64 Op. Att'y Gen. Md. 273, 1979.

valuable public records will go underground,” and perhaps, a finder’s fee would encourage involvement in the return of missing records. However, in an almost contradictory statement, the Attorney General confirmed the authority of the Hall of Records Commission to purchase records for preservation, but added that authority does not include authority to purchase property already owned by the State. By definition, all papers considered “public records” are the property of the State. This raises the question of whether it is appropriate for the State to pay for items for which it already has legal title. At least one other state, North Carolina, has found it appropriate to award finder’s fees; but in contrast, on the national level, the federal government does not allow finders’ fees in such cases. In Maryland, the General Assembly can authorize awarding finders’ fees under the petition or advisement of the State Archivist. Though rarely awarded, the finders' fee is restricted to people who salvage records in good faith (that is to say either without prior knowledge of a theft, or with the intention to return it to the rightful owner) and were not directly involved in their initial disappearance.

In a recent Maryland example, a seller listed missing Washington County judicial records on Ebay. These records probably found their way into private hands long before local courts transferred their records to MDSA, but since they are produced by the Maryland judicial system as a matter of the public record, they are property of the State of Maryland and should be archived at MDSA. The court has upheld the principle “once a public record, always a public record.”<sup>7</sup> The State Archivist had legal standing to pursue an action of replevin, but the Ebay bid price was significantly lower than the probable cost of litigation. In this particular case, a MDSA employee surreptitiously found the auction lot, notified the State Archivist, and then placed the winning bid with

---

<sup>7</sup> Ibid; *Magruder v. Hall of Records Commission*, 221 Md. 1, 155 A.2d 899 (1959).

the good faith intention to return the records to MDSA. The State reimbursed him for his costs incurred. The State could have pursued the seller, but opted against it due to costs involved and the possibility of the storm of bad publicity it could generate. In the end, the records, which were previously unknown and never formally appraised, were accessioned. Ultimately, strategic decisions of this nature fall to the State Archivist and the Assistant States Attorney, the counsel for MDSA. Regular surveys of online and traditional auctions are essential to ensure that lost items or items that should be in the collection do not go unnoticed.

There is no way of knowing how many more records will find their way to sale in a similar lot. In the not too distant past, storage areas for many of these records were hardly secure, often the closets and basements of county courthouses served as makeshift repositories. For decades, many state institutions kept records under minimal security. When public records do surface, MDSA can pursue an action of replevin to re-acquire lost documents regardless of the location of the records. Private owners cannot lawfully own stolen records regardless of how they enter the public domain. Furthermore, purchase of stolen goods even in good faith, that is to say without knowledge of a theft, cannot convey good title.<sup>8</sup>

With the help of modern methods of collections management, aided by thorough tracking software, instances of missing records due to institutional oversight or “lost in the collection” may decrease. In recent years new technology has also made it easier to traffic cultural materials. The ascendance of the digital marketplace facilitated an already lucrative black market for rare books and manuscripts. Archives, libraries and museums

---

<sup>8</sup> MD. Code Ann. art. 27, § 342(c) (1986 Cum. Supp.); MD. Code Ann. art. 27, § 342(c) (1986 Cum. Supp.).

are particularly susceptible to thefts because they provide access to these public materials.

Online auction houses such as Ebay (though Ebay denounces titles stemming from the word “auction”) do not convey guarantees, and more importantly they facilitate transactions without warranty as to quality of title. Ebay in particular classifies itself as a third party disinterested venue, rather than a traditional “auctioneer.” Yet much like a traditional auctioneer, Ebay posts legal disclaimers limiting liability, further stating they do not self-police their site. Ebay even encourages users to police the content of their massive site. Despite this disclaimer, a prospective buyer should be aware that the anonymity provided by website auctions makes for an attractive environment for trafficking in stolen goods. Transporting and purchasing stolen goods across state line invokes federal law. Buyers should research the provenance of any suspicious document, particularly if it bears the inventory mark of an institution that maintains a collection for the benefit of the public good lest they become involved in a federal lawsuit.

According to the Society for American Archivists (SAA), crime against cultural institutions is the third most lucrative international criminal activity after the drug trade and arms smuggling.<sup>9</sup> Archival collections are particularly vulnerable to the type of theft detailed in Miles Harvey’s book *The Island of Lost Maps*. Harvey recounts the exploits of the now infamous book breaker, Gilbert Bland, who was caught stealing rare maps from another Maryland institution: the Johns Hopkins Peabody Library. Over a span of several years, Bland traveled across the US and Canada carefully targeting and stealing over 250 rare maps from in archives, libraries, and museums. “Bookbreakers” like Bland

---

<sup>9</sup> SSA publishes Gregor Trinkaus-Randall's *Protecting Your Collections: A Manual of Archival Security*, (Chicago: SSA) 1995, as well as general guidelines for Museum Archives available at [http://www.archivists.org/governance/guidelines/museum\\_guidelines.asp](http://www.archivists.org/governance/guidelines/museum_guidelines.asp).

can reap higher profits by extracting and selling individual prints than by the keeping a book or collection intact; and it is much easier to smuggle sheets of paper or parchment than entire books. Traditional security measures did not deter Bland. Armed with only a well-concealed razor blade, a notebook, and a coat, he appeared inconspicuous. Rare manuscripts are often kept in rooms with regulated access that require at the very least name registration for admittance. Bland would register under an assumed name using fake identification cards, ask for the books he needed, and then nonchalantly and efficiently slice out the pages he sought. When he had what he needed, Bland would simply fold the pages in with his belongings using his notebook and loose papers to conceal the stolen pages, coolly walk out as if nothing happened, leaving behind no trace of “Gilbert Bland.” Not only was he able to repeatedly disappear, his exploits were not quickly discovered, in fact it is likely some of his crimes may still be undetected. In large collections, a missing record might not be discovered until a patron requests access and the archivist cannot locate it, or in the case of books, until a page is reported missing. It is entirely conceivable this lapse in time could be years for an especially obscure record. Likewise, single missing pages from rare books could go years before discovery.

It is unrealistic to perform a background check, not to mention illegal, on every patron who seeks access to public records. Even with cameras and posted security guards, thefts occur, and can go unnoticed until the next time a patron makes a request and the record is found missing. In Bland’s case, the Johns Hopkins University’s Peabody Library was lucky enough to have an observant librarian from another institution doing research the day Bland visited. She reported Bland’s suspicious behavior and security officers apprehended Bland, but the university did not pursue legal

action, perhaps to avoid bad publicity and costly litigation. Fortunately, after learning of Bland's apprehension, other institutions did prosecute Bland, and ultimately, he served a brief jail sentence as part of a plea bargain to cooperate with the FBI to return his stash of valuable maps to the rightful owners. Nevertheless, several maps remain unclaimed, and who knows if Bland was able to "recall" all of his exploits.

For institutions, nothing is as feared as a theft of irreplaceable cultural materials, but thefts do occur and the preparedness of the staff to deal with the unfortunate event can facilitate the return of the stolen items. The Art Theft division of the FBI prescribes guidelines to follow once a theft is discovered. First, protect the scene of the crime and do not let staff or visitors into the area to disturb evidence, and then notify your local police department immediately. Determine the last time the objects were seen and what happened in the area, or to the objects, since that time. Gather documents, descriptions and images of the missing objects and provide to the police. Someone on the staff should know these procedures and be able to communicate them clearly to support staff. A staff member should also be designated the contact person for law enforcement officers. Be prepared to follow-up on police actions and investigations to ensure that everything possible is being done.<sup>10</sup> However, institutions may wish to avoid the public exposure the FBI would generate, especially if institutional negligence of any kind enabled or contributed to the ease of the theft. Institutions should avoid the temptation to be shy about reporting a theft. Despite the risk of public scrutiny and embarrassment, institutions should seek public remedy by making a fast, persistent, and unwavering claim to their stolen goods as is possible. Lessons learned from the *Guggenheim v. Lubel* case

---

<sup>10</sup> <http://www.fbi.gov/hq/cid/arttheft/legislation.htm>, November 14, 2003.

illustrate the folly of waiting to make a claim.<sup>11</sup> In mid 1960's, staff at the Guggenheim noticed they could not locate a Marc Chagall watercolor, but did not officially record it as missing until 1970. The museum later deaccessioned the piece in 1974, and at no time made any effort to locate it, perhaps out of fear of embarrassment. The Chagall publicly resurfaced in a 1981 exhibition, and later when the owners listed it for auction in 1985, an employee of the auction house recognized a slide of the piece and reported it to the Guggenheim. The Guggenheim demanded its return, but the owners, the Lubells, refused stating that they purchased the watercolor from a reputable dealer in 1967, and asserted the Guggenheim waited too long to make their demand, thus greatly prejudicing them. The Lubells did not know they purchased a stolen Chagall; furthermore, they never made any effort to conceal their ownership of it, in fact in past years they even loaned it for exhibit in museums. The Guggenheim waited too long to bring their case and in the meantime did not exert any effort to locate their missing watercolor. The court found for Lubell, but on appeal, the court remanded the case for retrial using on the laches test, based on the merits of the case. The laches test weighs the reasonableness of the actions of both parties against each other. The parties reached settlement before the case went to the re-trial. Having nearly lost all chance of recovery, the Guggenheim's actions in the case display the importance of maintaining persistent interest in locating a lost object.

It is in an institution's best interest to involve as many legal remedies as possible in order to avoid competing claims of ownership. Under US Code Title 18 sec. 668 (Theft of Major Artwork) items from Museums and Libraries are afforded more protection than private owners because their collections are held in public trust, for the

---

<sup>11</sup> *Soloman R. Guggenheim Foundation v. Lubell*, 77 N.Y. 2d 311, 567 N.Y.S.2d 623, 569 N.E.2d 426 (N.Y. Ct. App 1991).

education and benefit of the public good, though the statute also applies to private collectors. Registering lost items on the FBI stolen art indexes can prove instrumental to their recovery. The FBI's Stolen Art Program covers all objects of cultural heritage, not just fine art. Objects of cultural heritage are defined as over 100 years old and worth in excess of \$5,000, or worth at least \$100,000. The monetary standards apply more toward losses by private collectors as a means to ensure against frivolous applications of the major artwork statute; otherwise, federal rules for thefts across state lines apply. The FBI maintains the National Stolen Art File (NSAF), an extensive database covering all missing cultural artifacts as reported to them by local law enforcement authorities. At victims' request, they post images and details about missing objects on the [Art Theft Program](#) website under the "Spotlight." The FBI has also cooperated with the Antiquarian Booksellers' Association of America (ABAA) who also maintains a database of stolen books.<sup>12</sup>

Along with the FBI Stolen Art Program, other resources allow museums, collectors, and dealers to track missing art and artifacts. Online resources exist, but many indexes maintained by professional organizations are "members only" forums such as the Society of American Archivists (SAASECURITYRT-L@CORNELL.EDU) and ExLibris Electronic Discussion List (EXLIBRIS@LIBRARY.BERKELEY.EDU). Closed listings provide confidentiality and limit the level of public exposure, but also limit the exposure of the posting, and thus the chances of quick recovery. The successful return of the Cyprus Mosaics owes a great debt of gratitude to the international and very public

---

<sup>12</sup> FBI – the Art Theft Program – Spotlight, <http://www.fbi.gov/hq/cid/arttheft/arttheft.htm>, April 18, 2004; The ABAA Stolen and Missing Books Database, <http://www.abaa.org/pages/php/mydbedit/mydbedit.php?tablename=stolenbooks>

NSAF.<sup>13</sup> On the international level, INTERPOL keeps a list with similar regulations. The United Nations Educational Scientific and Cultural Organization (UNESCO) also maintains an extensive international list of resource links for archives in their Archive Portal.<sup>14</sup>

Initiated by the J. Paul Getty Trust in 1993, Object ID attempts to set an international standard for describing art, antiques and antiquities.<sup>15</sup> The more information provided about an object, the better the chance is for recovery. According to Object ID, police officers can rarely recover and return objects that have not been photographed and adequately described. Furthermore, police forces have custody of large numbers of objects that have been recovered but which cannot be returned to their rightful owners because there is no documentation that makes it possible to identify the victims. Identifying particular stolen books and manuscripts is especially difficult without meticulous documentation because books and manuscripts are seldom unique. They are usually one of set or multi-copy edition. Documentation to differentiate them from copies or others in the same edition is essential to recovery.

To cite an old cliché, the best offense is a good defense. It is easier to provide security for the collection than to pursue lost items. Archives keep the most valuable and rare records in rooms with restricted access, but even special collection rooms are not invulnerable to exploitation. Since researchers operate quite privately, the archivists who work with them may be the only defense. Vigilant employees who maintain appropriate

---

<sup>13</sup> The Cyprus mosaic case relied on the persistent and public efforts of the Cypriote government, *Autocephalous Greek-Orthodox Church of Cyprus and the Republic of Cyprus v. Goldberg and Feldman Fine Arts, Inc., and Peg Goldberg*, 717 F. Supp. 1374 (S.D.Ind. 1989).

<sup>14</sup> INTERPOL Stolen Works of Art [portal] <http://www.interpol.int/Public/WorkOfArt/Default.asp>, UNESCO Archives Portal: UNESCO CI (3.01b) [http://portal.unesco.org/ci/ev.php?URL\\_ID=5761&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201&reload=1082311415](http://portal.unesco.org/ci/ev.php?URL_ID=5761&URL_DO=DO_TOPIC&URL_SECTION=201&reload=1082311415), April 18, 2004.

<sup>15</sup> Object ID: an international standard for describing art, <http://www.object-id.com>, April 18, 2004.

oversight over the collections are the best way to catch someone like Gilbert Bland. Setting the national standard for public collections, NARA published an extensive bibliography dedicated to professional development in security issues.<sup>16</sup> In 1999, The Association of College and Research Libraries' Rare Books and Manuscript Section Security Committee published "Guidelines for the Security of Rare Books, Manuscripts, and Other Special Collections," which outlines methods institutions should take to protect themselves against theft.

Dedicated to giving the opportunity for new security measures through awarding of grants and conducting evaluation studies on the needs of libraries and archives, the Institute of Museum and Library Services (IMLS) encourages digitization as a means towards preservation and also as a method to provide an alternative means of interaction with valuable records. Once digitized, records can be designated for restricted access, available only with permission from a curator or a managing archivist.

In the past, Archives have encased endangered documents in Japanese paper, Mylar, and employed other methods to ensure brittle documents could endure moderate handling. These methods preserve the document, but do not act as a sufficient theft deterrent. Digitization removes the document from any physical contact while simultaneously providing unparalleled access without endangering the collection. Public libraries like the New York Public Library and the Philadelphia Free Library's Rare Book Room exhibit or have exhibited restricted collections via their websites, allowing users to page through books that they would otherwise only see open to one page behind safety glass. MDSA's *Archives of Maryland Online* is one of the largest efforts to digitize

---

<sup>16</sup> NARA | ALIC | Archives and Security Bibliography, [http://www.archives.gov/research\\_room/alic/bibliographies/archives\\_security.html](http://www.archives.gov/research_room/alic/bibliographies/archives_security.html), April 18, 2004.

primary source records. Another digital project is UNESCO's Memory of the World Project, which strives to "guard against collective amnesia calling upon the preservation of the valuable archive holdings and library collections all over the world ensuring their wide dissemination."<sup>17</sup>

Undertaking the enormous task of transferring printed materials to digital media also provides a mechanism of inventorying the collection. For MDSA, the sheer volume of 350+ years of state history makes a page level inventory nearly impossible. Certainly, each volume and book can be accounted for, but checking every page of every tome is an inexhaustible task especially in light of the record production in recent years, which makes the institutional fear of another Gilbert Bland very sobering. In the last 50 years, the rate at which the state produces records has increased drastically. For example, the number of pages of the Proceedings of the Maryland General Assembly since 1950 is approximately equal to the aggregate number from 1634 to 1950. The sheer volume of holdings necessitates reliable tracking and diligence in monitoring the collection for both content and conservation. Through systematic digitization, MDSA hopes to account for all the pages of Maryland's history, project by project.

Book and manuscript collections are invaluable resources that deserve preservation and public access. Not every shred of paper is the Constitution, but for public archival collections, all must be preserved for future generations as if they were. The authority to collect documents of the public record is well established in statutory and case law. State and Federal law provide for the return of stolen items of cultural heritage. MDSA and the many other institutions like it are mandated to identify and

---

<sup>17</sup> UNESCO – WebWorld – Memory of the World,  
[http://www.unesco.org/webworld/mdm/en/index\\_mdm.html](http://www.unesco.org/webworld/mdm/en/index_mdm.html), April 18, 2004.

permanently preserve invaluable records and ensure ongoing public access to virtually everything that has ever been public record. These collections are meticulously maintained so that all may have access to primary source documents important to our regional and cultural heritage. The sheer volume of the collections makes safeguarding against loss difficult, but participation in national and international loss registers provides access to a large community to help with recovery. New technology also provides an innovative remedy to ensure against theft and inherent degradation.

## Short List

Federal Bureau of Investigation: Art Theft Program.

<http://www.fbi.gov/hq/cid/arttheft/legislation.htm>, November 14, 2003.

Harvey, Miles. *The Island of Lost Maps*. New York: Random House, 2000.

Hewett, David. "Further Twists to the Case of the Bill of Rights." *Maine Antiques Digest* November 2003.

Hickman, Holly. "Dealer Agrees to Return N.C. Copy of Bill of Rights," (*Raleigh*) *News Observer*, 12 September 2003.

Malaro, Marie. *A Legal Primer on Managing Museum Collection*. Washington: Smithsonian Institution Press, 1998.

Maryland State Archives Laws, Rules and Regulations.

<http://www.mdarchives.state.md.us/msa/intromsa/html/regs.html>. November 24, 2003.

— Regulatory Review and Evaluation Reports.

<http://www.mdarchives.state.md.us/msa/intromsa/html/mdregnotice.html>.  
November 24, 2003.

National Archives, "Archives and Security Bibliography."

[http://www.archives.gov/research\\_room/alic/bibliographies/archivessecurity.html](http://www.archives.gov/research_room/alic/bibliographies/archivessecurity.html).  
April 18, 2004.

UNESCO, "Memory of the World Programme."

[http://portal.unesco.org/ci/ev.php?URL\\_ID=1538&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201&reload=1069188966](http://portal.unesco.org/ci/ev.php?URL_ID=1538&URL_DO=DO_TOPIC&URL_SECTION=201&reload=1069188966). November 18, 2003.