

Our Nomadic Treasures: What To Do When Your Children Go Astray

Legal Rights and Remedies for the Theft of Maps,
Manuscripts, and Rare Books from Libraries and Archives

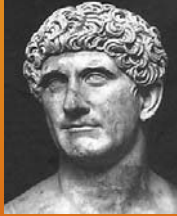
A Presentation to the Fiesole Conference by

William M. Hannay, Esq.

Schiff Hardin LLP

Chicago

Who was the first book thief?



Mark Antony looted the Library of Pergamon (in Anatolia) of some 200,000 of its books, according to Plutarch.



He reputedly gave them as a gift to his beloved, Queen Cleopatra.

1,900 years later, the library building from Pergamon was dismantled by German archeologists and shipped to Berlin.

Rare Book Rogues Gallery



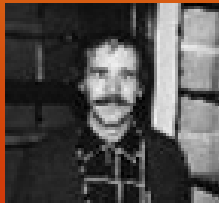
Smiley



Renehan



Spiegelman



Blumberg



Landau



Savedoff

The Charming Thief



- **Edward Forbes Smiley** was a collector of early and rare maps. He was instrumental in building up two major collections that were subsequently donated to the New York and Boston public libraries. His knowledge, urbane charm, and charitable activities gained him the trust of several librarians and, in some cases, unsupervised access to their collections.



- On June 8, 2005, an X-Acto knife on the floor in the reading room of the Beinecke Rare Book Library at Yale University led to **Smiley's** arrest for stealing maps.
- A later review of video surveillance film showed him removing a map valued at \$150,000 from a book.
- At his sentencing a year later, he admitted to having stolen a total of 97 maps from the Boston Public Library, Harvard's Houghton Library, Newberry Library in Chicago, the New York Public Library and the British Library in London as well as Yale University. Smiley said he had been stealing maps for four to seven years.
- Smiley was sentenced to 3 ½ years in prison and ordered to pay \$2.3 Million in restitution.
- Ten of the 97 maps are still missing.

The Folk Singer



- An author of well-received biographies of Jay Gould, Cornelius Vanderbilt, and others, **Ed Renehan** became the director of the Theodore Roosevelt Association in 2005.
- In 2008, Renehan pleaded guilty to stealing letters that were written by Pres. George Washington, Abraham Lincoln and Theodore Roosevelt. Renehan admitted that he stole them from a vault at the home where Roosevelt was born, selling them to a Manhattan gallery for \$86,000.
- Renehan was sentenced to 18 months in prison and ordered to make restitution to the gallery. He claimed that, when the thefts occurred, he was in the manic phase of what was later diagnosed as bipolar disorder.

Renehan admitted that he stole them from a vault at the home where Roosevelt was born, on East 20th Street in Manhattan.

Since his release from prison, Renehan has returned to being a publisher, consultant and writer, and occasional folk singer. Check him out on YouTube.



Here he is (on the left) with Happy & Artie Traum.

The Aerialist

- In Spring 1994, **Daniel Spiegelman** climbed up an abandoned book lift in Columbia University's Butler Library, dismantled a wall, stole books, reassembled the wall, and snuck back down the shaft. Over a three-month period he did this more than a dozen times.
- Spiegelman then fled to Europe with 100s of rare books and manuscripts worth \$1.8M and tried to sell them.
- He was extradited and sentenced to five years in prison in 1998.



seventeen medieval and Renaissance manuscripts dating from 1160 to 1550, including Euclid's *Elementa* (1300), three Books of Hours with illuminations (1425-1490), a late fourteenth century manuscript of *Roman de la Rose* by Guillaume de Lorris and Jean de Meung, and two papal bulls (1160 and 1202);

eight Arabic and Persian manuscripts dating from around 900 to 1887, including several Korans and a volume of secular Persian poetry;

three incunabula: *Compilatio de Astrorum Scientia* by Leopoldus, Dux Austriae (1489), a 1493 edition of *Liber Chronicarum*, also known as the Nuremberg Chronicle, and Seneca's *Proverbia* (1493);

twenty-six medieval, Renaissance, and early modern documents dating from 1122 to 1789, including property deeds, indentures, bills of sale, tax documents, and wills;

284 historical maps dating from 1628 to 1891, including *Danckerts, Novi Belgii no Aequae Angliae . . . Tabula* (1700), and 237 individual maps razored out of Blaeu's *Atlas Major* (circa 1667, German text edition);

twenty-six Presidential letters and documents dating from 1791 to 1918, including six George Washington letters (four to John Jay), eight letters from John Adams to William Tudor, and twelve letters from other presidents including John Quincy Adams, Andrew Jackson, Abraham Lincoln, and Woodrow Wilson; and

133 letters and documents from and relating to Thomas Edison dating from 1860 to 1902, including contracts, patent assignments, and correspondence concerning the

- Some people never seem to learn from their mistakes – or perhaps are unclear on the concept.
- In October 1999 – while he was serving his sentence in a halfway house – Spiegelman escaped, drove to Connecticut, and tried to sell more of the documents he had stolen in 1994 (and had not turned over to the FBI).
- He was arrested and given an additional two year sentence on May 24, 2000, by U.S. District Judge Loretta Preska. He has been out of prison for a decade by now. [What's he doing?]

The Book Bandit

- On March 20, 1990, **Stephen Blumberg** was arrested for stealing more than 23,000 rare and valuable books from 268 or more universities and museums in 45 states and two Canadian provinces. He was eventually sentenced to six years in prison.
- The 19 tons of books and manuscripts that he stole were valued at between 5 and 20 million dollars.
- The 130-pound, 5-foot-9 "Spider-Man" was proficient at scaling rooftops and climbing up dumbwaiters. Blumberg trained himself to pick locks, steal keys, thwart electronic security systems, and blend in with crowds.



The Most Recent Thief



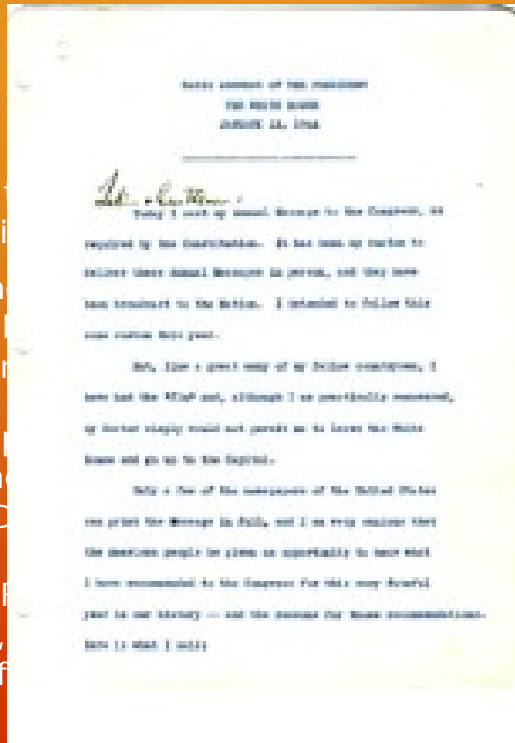
Erstwhile presidential scholar Barry Landau

In July 2011, Landau and an assistant (Jason Savedoff) were arrested for stealing hundreds of documents from Yale University, Cambridge University, the New York Public Library, the Library of Congress, and others archives.



On February 7, 2012, Landau pleaded guilty to theft and conspiracy charges. He faces up to ten years imprisonment at his May 7th sentencing.

- During a search of the New York Public Library's collection on W. 57th Street in 1964, 4,000 of these letters were discovered. Many other copies and variants were recovered over the years. In 2010, a copy was discovered by Landau and his team – ironed and sealed in a manila envelope. For example, a copy of the speech given by Franklin D. Roosevelt at the Madison Square Garden on August 10, 1941, was discovered by a collector from the New York Public Library.



n W. 57th
 ecovered.
 ies and
 S.
 oy Landau
 S, collectors,
 .

**Query: can the FDR
Library sue to recover
the stolen speeches
from the collector?**

Two innocent victims?

- Let us assume that the collector who bought the FDR speeches from Landau was a “bona fide purchaser for value without notice.”
- If the collector is forced to give the documents back to the museum, he has lost his \$35,000. (Unlikely that Landau has the money to return.)
- If the collector is allowed to keep the speeches, the FDR Library (and the general public) has lost four valuable pieces of historical significance.

Two Different Laws

- Some countries favor the innocent purchaser; others the victim of the theft. See Bakalar v. Vavra (CA2 2010)
- In civil law countries like Switzerland, a buyer acting in good faith will acquire valid title to stolen property after a fixed period of time.
- In common law countries like the U.S., a thief can never pass good title. Even a bona fide purchaser cannot acquire rights in the property, generally.
- The FDR Museum would thus not have much of a problem if the collector who bought the FDR speeches lives in New York. (But there could be a different result in Switzerland.)

Potential Defenses

- Even in the United States, the original owner of stolen property may have problems in recovery as time passes.
- The existence of state **Statutes of Limitation** can be a roadblock to recovery for owners from current holders of stolen art or books. (Discovery rule vs demand & refusal rule)
- But the doctrine of **laches** also protects a good faith purchaser of stolen art by requiring that the owner exercise due diligence in pursuing his claim.

Statute of Limitations: Claims for recovery do not accrue until the owner discovers the identity of the possessors. (New York tolls the statute until there is a demand and refusal.)

Failure to search for the stolen property can doom a recovery. See Guggenheim V. Lubell (NYCA 1991) --

In Lubell, the Guggenheim Museum sought to recover a Chagall gouache, allegedly worth about \$200,000, that had been created by Marc Chagall in 1912 as a study for an oil painting. The museum alleged that the work had been stolen in the 1960s by person or persons unknown. The Guggenheim had never reported the theft to the police or to industry organizations; the museum had offered no proof that the work had been stolen; and no insurance claim had been made, because the theft could not be proven. The case was remanded and the trial court instructed to examine whether the actions taken by the original owner [the museum] were reasonable or not, and whether they were in accord with industry practice at the time. At the same time, Lubell would need to show that she was prejudiced by the museum's delay in demanding the return of the work.

Limitations and Laches

- Statutes of limitation (or repose) prohibit a suit to recover lost property if it was brought more than 3 years after discovery of "the facts which form the basis of a cause of action." (But New York employs a different rule: the time to sue does not begin to run until the possessor refuses to return the object upon demand.)
- Laches is an equitable defense arising from unreasonable delay in pursuing a claim that prejudices the opposing party. The theory is invoked if the plaintiff has slept on his rights" in a way that results in changed circumstances such that it is no longer just or fair to grant the plaintiff's original claim. Laches does not apply if the plaintiff exhibited "due diligence."

What's Due Diligence?

- In 1979, several precious 6th Century mosaics were looted from the Kanakaria Church in Cyprus. In 1988, the mosaics re-surfaced in the possession of Peg Goldberg, an Indiana antiques dealer.
- Starting in 1979, the Republic of Cyprus had taken active steps to try to recover them, contacting and seeking assistance from many organizations and individuals, including the UNESCO; the International Council of Museums; the Council of Europe; international auction houses such as Christie's and Sotheby's; Harvard University's Institute for Byzantine Studies; and leading museums, curators and Byzantine scholars throughout the world.
- These steps were held to constitute adequate "due diligence" in Autocephalous Greek-Orthodox Church v. Goldberg (CA-7 1990).

Upon learning of the looting of the Kanakaria Church and the loss of its mosaics, the Republic of Cyprus took immediate steps to recover them. [See 717 F. Supp. at 1380.] These efforts took the form of contacting and seeking assistance from many organizations and individuals, including the United Nations Educational, Scientific and Cultural Organization ("UNESCO"); the International Council of Museums; the International Council of Museums and Sites; Europa Nostra (an organization devoted to the conservation of the architectural heritage of Europe); the Council of Europe; international auction houses such as Christie's and Sotheby's; Harvard University's Dumbarton Oaks Institute for Byzantine Studies; and the foremost museums, curators and Byzantine scholars throughout the world. The Republic's United States Embassy also routinely disseminated information about lost cultural properties to journalists, U.S. officials and scores of scholars, architects and collectors in this country, asking for assistance in recovering the mosaics. The overall strategy behind these efforts was to get word to the experts and scholars who would probably be involved in any ultimate sale of the mosaics.

Where to turn after a theft

- It is notably easier now than it was at the time of theft of the Kanakaria Church mosaics in 1979 for the original owner to try to locate the stolen items (and do due diligence).
- With the Internet revolution, there are a number of websites on which one can list missing items and which dealers and potential purchasers can consult to see if art objects might be stolen.
- A library should regularly search these sites if it was the victim of a theft. Here are some websites:



THE ART LOSS ■ REGISTER™

www.artloss.com

- The ALR was founded in London in 1991 by major businesses in the insurance and art industries. It describes itself as the world's largest private database of lost and stolen art, antiques and collectables to enhance provenance research and the tracing of stolen art.
- The ALR allows the registration of any and all items of valuable possessions on the database (not just stolen ones) and facilitates searches on those lists by art dealers, insurers, museums and collectors. The registry thus acts as a deterrent to art theft because criminals will be aware of the risk which they face in trying to sell stolen pieces of art.



- National Stolen Art File (NSAF) -- The NSAF is a computerized index of stolen art and cultural property as reported to the FBI by law enforcement agencies throughout the United States and the world. The primary goal of the NSAF is to serve as a tool to assist investigators in art and cultural artifact theft cases.
- The public can search an online version of the National Stolen Art File. http://www.fbi.gov/about-us/investigate/vc_majorthefts/arttheft/national-stolen-art-file. (But don't bother searching for "maps"; they are not listed as a category.)

ILAB Stolen Books Database



○ The Int'l League of Antiquarian Booksellers has established a Stolen Books Database for books reported stolen after 15th June 2010. On www.stolen-book.org you can check if a book that you have been offered has been reported as stolen.

○ The database is open to all ILAB booksellers who may enter details of books stolen from themselves or their customers. Librarians may approach their local ILAB bookseller if they wish to enter any details of books stolen or if they wish to check if a book is listed.



MissingMaterials.org



- In 2009, OCLC Research established the website "MissingMaterials.org" to provide a long-desired venue for transparency about theft and loss in libraries and archives.
- MissingMaterials.org experiment will close at the end of 2012 and will be read-only until 31 December 2012.
- According to OCLC, the service never achieved the hoped-for broad usage and adoption: only 10 institutions registered WorldCat Lists and few items were tagged. And although there were 188 posts to the blog, "it is not clear if MissingMaterials.org contributed to recovery of any materials."

Proof of Ownership

- It can be hard to prove which books or maps in a thief's possession were stolen and which legitimately acquired.
- Even after Smiley admitted stealing a map, libraries argued over the ownership, citing tears in the paper, worm holes, etc. Also Smiley had changed the edgings on maps (to draw attention away from edges he had cut), bleached out ownership stamps, or cut them out if they were near an edge. Keeping digital images would help.
- A penciled LOC or accession number is the cheapest and most reliable marking on rare prints and maps. Even if erased, they can still show up under special lighting.

Suing to Recover Stolen Goods ("Replevin")

- Obtaining the return of recently stolen rare books or maps is not particularly hard (once the work has been found – which may not be easy at all).
- Most collectors do not want to keep stolen objects, because the works will eventually have to go back to the rightful owners. But collectors do want to be reimbursed what they paid.
- Dealers who sold the book or map usually feel compelled to reimburse the customer as a matter of good business (and to avoid bad publicity), even if they may not be able to recover any money from the thief.

Theft Insurance

- Nothing can really make up for the loss of a unique and irreplaceable cultural property.
- But a property insurance policy with appropriate policy limits and coverages for special collections can be an affordable way to protect a library or archive from the most serious types of financial loss from theft.
- Inherent in the process of purchasing an insurance policy is the development of a reasonable risk management (loss control) program covering, *e.g.*, security procedures as well as fire prevention and suppression

Policy Limits and Coverage

- The amount of insurance for a library or archive depends in large part on how much insurance the institution can afford. But it need not equal the total market value of the entire collection!
- Rare books and maps are “irreplaceable” but, in the event of a loss, insurance may cover the cost of acquiring a close second or possibly a state-of-the-art security system for next time.
- Insurance premiums are largely market driven, but libraries can reduce their own insurance costs to a significant degree by demonstrating a commitment to effective loss control.

Loss Control Measures

- Install central station monitored alarms for the most vulnerable high valued areas
- Control access to restricted areas and check bags before and after leaving this area
- Install security cameras in reading rooms and restricted areas
- Conduct thorough background checks of all employees access to special collections
- Perform spot checks of special collections
- Establish procedures for reader or researcher requests

Parting Thoughts on Book Theft

- Think about your collection like a thief would:
 - What is worth stealing?
 - How would you steal the books?
 - Where can you sell the books?
- How do you know you have not already been the victim of a thief?

