

ON THE IMPORTANCE OF RECORDS

My Daddy once told me that any dumb cat can learn not to sit on a hot stove by sitting on a hot stove; a smart cat, however, can learn not to sit on a hot stove by watching what happens to other cats that sit on a hot stove. So here for your edification is a true story about incomplete records.

A museum, which we shall call "Museum X", in the 1950s acquired an extensive collection of Native American artifacts. The collection was put together over many years by an avid collector, whom we shall call "A". The exact date that the collection was acquired from A is not known, and whether it was a gift or a loan is not clear. In 1999, the collection was believed to have substantial value, and descendants of A have come forward to claim ownership of the collection. At the time Museum X took possession of the collection (probably in 1959) no inventory of the collection was made. In addition to claiming ownership, these descendants claim that part of the original collection is missing, and that either Museum X is concealing some of the artifacts or that they have been lost through neglect. This claim is based on a book of photographs of A's collection made by a friend sometime in the late 1930's. The descendants have even gone so far as to suggest a criminal investigation would be appropriate. There is no evidence, however, that all the items that were photographed were actually given or loaned to the Museum as A's descendants now claim. On the other hand, there is no evidence to the contrary. In addition, the records (files) which have so far been found are not in agreement as to whether the Museum acquired the collection by gift or by loan. It further appears that certain decisions concerning the collection were made on either poor professional advice or no advice at all.

Sometime around 1948, A went to live in a retirement home. About that same time, he asked a friend, who had participated with him in digging for artifacts near his home, to take possession of the collection and to sell it to a museum. Letters have been found that indicate that no museum was willing to purchase the collection. The reasons given were lack of funds and the fact that the collection was not well documented and, therefore, of little scientific value (a common failing of untrained collectors).

According to letters, the friend tried for a year or so to sell the collection without success. In 1950, the friend reported back to A that he could not find a museum buyer for the collection. A told his friend that if he should die before a buyer could be found or before he gave any other instructions, the friend should offer the collection, as a gift, to a particular museum (Museum "Y") which was associated with a certain college. Contemporary letters indicate that the donor did not want the collection broken up even if it could not be sold intact. Museum Y later decided that it did not have the resources to absorb the collection and, accordingly, declined the gift.

A died in September 1951, probably before the museum declined the gift. It is apparent that A believed he had made final disposition of the collection because it is not mentioned in his will which was executed by him in October of 1950.

Most of these dates are approximate since the information comes from letters that refer to events with phrases such as, "on my visit I visited A and he told me that" and, "the following summer". What chronology we have been able to establish is based on taking fixed dates, like a date of someone's death and calculating other dates from the confirmed date.

There is a reference to a discussion that if Museum Y did not want the collection, it should be given to a museum near where A had lived and had done some of his collecting. However, there is no record as to whether or not this matter was ever actually discussed with A before he died. There are records, however, that indicate that Museum X had to have a secure place for the collection in order to receive it. We have learned from the minutes of the board of trustees of Museum X that such a secure facility was built in 1959. This indicates that

there must have been some understanding that the Museum X was to get the collection if it complied with the condition that they provide secure storage. It has been learned that Museum X took physical possession of the collection in 1959, after the secure facility was completed. This strongly suggests the existence of a contract, i.e., that Museum X would get the collection in consideration for its building a secure facility.

One critical question, the answer to which I am not sure, is: *Was the friend to whom A had entrusted his collection acting as A's agent or was the collection given to him as a trustee empowered to make final disposition of the collection?* If he was an agent, the agency terminated at A's death and the property became part of A's estate. If, on the other hand, he was a trustee, the trust continued and the trustee could make final disposition of the collection. The letters that have been found to date indicate that this friend did not regard himself as a trustee. However, the circumstances seem to indicate that he, in fact, acted as trustee for A.

If this is not complicated enough, there is in the file a loan agreement dated in 1965, six years after Museum X received the collection. The loan agreement is signed by Museum X's president and the trustee for A's descendants. (Note this is not the same trustee referred to above). The validity of this loan agreement depends on whether or not the collection become part of A's estate upon his death (i.e., the friend was an agent not a trustee) or the collection was not part of A's estate (i.e. the friend was a trustee).

Before a decision may be made on the final disposition of the collection more research into the records is necessary. If Museum X owns the collection, the Board of Trustees of Museum X holds the collection in trust for the people of the State of Washington and must not dispose of the collection except as such disposition benefits the museum. On the other hand, if the collection was on loan, the descendants of A can properly claim it.

Even though the outcome of this story has not yet been determined, the moral of the story is clear.¹ A museum must keep and maintain good records of all property, whether in the collection or not, in its possession!

From a curatorial point of view, good records are essential to establish the provenance of an item. Museums are custodians of our past, be they history museums or art museums, and if the provenance is lost much of the value of the item has been lost.

From an administrative and legal point of view, good records are essential to establishing the museum's right to possession of the property.

Every piece of property that comes through the door must be documented! If something is purchased, there should be a sales slip or bill of sale. If something is donated, there should be a deed of gift.² If something is loaned, there should be a loan agreement. If something is found on the doorstep, someone, such as the curator or the director, should prepare and execute an affidavit stating the circumstances about how the property was found, the date it was found, and that the circumstances were such that it is presumed the property was intended as a gift to the museum. If the property is a collection of items, related or not, the bill of sale, deed of gift, loan agreement, or affidavit should list each and every item.

If your museum has (Horrors!) undocumented property, start now to inventory such property and to reconstruct, as well as can be done, the circumstances of how the property came into the museum's possession.³ If the date the museum acquired the property can be determined, this can be very valuable. If that cannot be determined, you can at least make a record of the current date, i.e., the date the record is made. This date is critical in establishing the museum's title to the property. R.C.W. Chapter 63.26⁴ contains a mechanism for

¹ Since this Law Note was written the matter has been settled. The Museum was able to purchase the items in the collection that it really wanted for \$6000., with rest going to the heirs. I have heard that some of these items are now for sale on e-bay.

² Be sure a deed of gift is signed by the donor and the donors spouse; this a community property state.

³ If your museum does really not have any undocumented property, please drop me a note, since in over 12 years with WMA I have never heard of such thing.

⁴ This legislation was prepared and sponsored by WMA in 1988. It passed both houses without a dissenting vote

museums to acquire title to undocumented property. A critical element is that it must be shown that the property in question has been in the museum's possession for not less than five years and that no adverse claim to the property has been made during that period. The important point here is to establish a date that will start the clock running. The mechanics of establishing marketable title to undocumented property must await another Law Note.

LEGAL NOTICE

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