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## The underside of the iceberg: major thefts from a small repository

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### Abstract:

*In 2006 the firm of Zubal Books discovered that materials consigned to them were likely the property of the Catholic University of America Libraries. This alarming event provided an opportunity for the book firm and the rare books curator to work together for the repatriation of the stolen books. It also made the institution more aware of the problem of missing materials which had left the library by various means over many decades and found their way to other collections across the globe.*

*The authors, who collaborated on this case, reflect on the professional bonds formed by the events of 2006 and the benefits of cooperation between booksellers and librarians in combatting theft from libraries. At the same time the authors urge more consideration of the obstacles to such successful collaboration and posit some suggestions for discouraging theft and resolving matters of contested ownership. Crucial in this effort is the library world's responsibility to combat the plague of theft, a commercial problem which threatens the existence of the book trade and an ethical question which undermines the credibility of librarians as guardians of cultural property.*

### Keywords:

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In September of 2006 the rare books curator at the Catholic University of America (CUA) in Washington, D.C. received an unsettling phone call from a Washington-based attorney representing a bookseller who believed that he was in possession of several rare volumes belonging to the CUA Libraries. Although these books bore no signs of having been de-accessioned, the oval CUA hand stamps and most accession numbers had been crudely

bleached from title pages, a condition generally felt to signify an intent to defraud. Upon investigation, the curator, Lenore Rouse, found that at least one of these books was linked to a former CUA employee, known from a handwritten note in her department's shelf list, to have had custody of the volume in 1965, after which the book had vanished. Soon after taking the post of curator in 2005, Rouse had learned that much material from CUA had been lost from her collection, or had disappeared before the establishment of the Rare Books department as a separate and theoretically more secure environment; external rumors, scathing faculty comments, and the occasional shelf-list notation provided most of the evidence that all was not well within the 70,000 volume collection which covered all subjects and included printed and manuscript works spanning a millennium.

Rouse wondered for several days about the identity of the dealer, until the attorney's client, Michael Zubal, phoned the curator and revealed that the books were on consignment at the Cleveland firm of Zubal Books. Founded in 1961, this large family-owned company specializes in scholarly books, and though not a member of ABAA, it has an ancillary stock of antiquarian and rare books. The first contact between Michael Zubal, a manager of the firm, and Rouse, owed everything to the Zubals' honesty, an established business relationship, and some incredibly good luck. By a confluence of events, the consignor of the books had chosen Zubal, not knowing that the Cleveland company had long done business with the Catholic University of America. That association and the excellent working relationship between the bookseller and Kathern Miraglia, CUA's acquisitions librarian, meant that Bob Farkas, cataloger at Zubal Books, immediately recognized the CUA Libraries' stamp on some of the few dozen consigned volumes. Knowing what to look for, Farkas was able to detect all but invisible remnants of the ownership markings, setting in motion an investigation which continues to this day. To Rouse's considerable relief, it was clear from that first phone call that Zubal Books intended to act in a legal and completely professional manner.

Out of an abundance of caution Michael Zubal's initial contact with the university was made through the intermediary of attorney Toni Marsh, chiefly because he had no way of knowing which staff at CUA might be involved in the theft, or what the university's reaction might be. Book dealers are not always warmly received by the victims of book theft, who may on occasion either be apathetic about recovery of their material or impulsively send police to confront the dealer. Prior to the CUA case, Zubal had experienced a decidedly negative reaction. In 1998 the firm was offered a pristine Edgar Rice Burroughs title, *Tarzan and the lost Empire* (1925), by a young "collector." Though somewhat dubious, Zubal bought the book for cash, and only after the seller disappeared was the freshly erased bookseller's price notation found on the rear endpaper. Zubal immediately phoned two colleagues to get the word out, and within a few hours an irate suburban bookseller called to claim her pilfered stock. Although Zubal got no thanks, he was now the owner of the other dealer's monetary loss. Incidents such as this demonstrate the fact that booksellers themselves are often either directly or collaterally victims of theft, and have a personal and financial stake in preventing theft from libraries above and beyond that felt by librarians whose livelihood usually remains unscathed by losses from their institutions.

In attempting to "do the right thing" and return stolen materials to an institution, many members of the book trade have been met with indifference or even hostility. One bookseller reports that when he "can identify institutional markings" he employs due diligence, "using websites or referrals to identify staff to email about a piece or pieces in question. Most disappointing have been occasions when no one has replied to his enquiry at all. Some have

replied, confirmed ownership, been sent the material, and never acknowledged receipt. In neither case is the library-book trade relationship well-served.”<sup>1</sup> As the need for this conference attests, libraries may still be reticent on the subject of thefts from their collections, a situation that prevents honest members of the book trade, like the one just cited, from receiving the credit and appreciation that are their due. We believe that a library’s public recognition of dealers who cooperate in returning stolen books is required as a matter of courtesy and justice. Rouse is only too aware of this debt, and cannot stress enough her department’s enduring gratitude to the family and firm of Zubal Books for embarking on a costly and time-consuming good deed which resulted in the restoration of valuable property that, prior to discovery, was largely not even known to be missing. Other dealers have also assisted CUA Rare Books and are mentioned in the acknowledgments below.

In some cases institutional officials shrink from publicly recognizing thefts in the belief that the return of their materials can be effected only by courts or by prosecuting the offenders. But in many cases the thief is long dead and the unfortunate person at the end of the provenance chain has himself become a victim. In the CUA case, the consignor was completely cooperative and no legal action was required. Ultimately, twelve of the volumes, including one astronomy incunable, were conclusively proven to be CUA’s property and were returned to the library. In 2010 another CUA incunable, a 1482 Hyginus, also missing since 1965 and linked to the volume repatriated by Zubal Books, was discovered by Rouse in a catalog issued by Princeton bookseller Joseph Felcone. It required less than fifteen minutes of conversation and comparison of photographs for Felcone to acknowledge CUA’s title to this property. As he had purchased the book from Christie’s New York, Felcone stood to lose a considerable sum if the auction house did not refund his successful bid. To their credit, Christie’s returned Felcone’s money and CUA’s book, a repatriation likely involving some cost to themselves, since the book had been auctioned in 2007. It is not known if Christie’s was able to recover their payment to the consignor. We note that in this case, as in many others, the book dealer provided the valuable service of advertising the stolen property; without the part played by Felcone, CUA might never have located the book, and the badly doctored stamp would have led few people to conclude that CUA was the rightful owner.

CUA’s experiences with the exemplary actions of Zubal, Felcone and Christie’s have not always been the norm; not all booksellers have recognized ownership evidence even when it was plainly visible. In 2001, the Herzog August Bibliothek (HAB) was offered a copy of Schickard’s *Tarich...* (1628), a book from CUA which bore a perfectly legible institutional stamp on the title page, together with that of the famed Albani Library of Urbino, whose largest residuum is housed at CUA. It was not until a librarian at the Herzog August Bibliothek alerted CUA to the presence of this book on the market that the latter realized the 17<sup>th</sup>-century volume was missing. After some negotiations between the bookseller, who claimed to have bought it from an Austrian ILAB member, and the CUA Libraries, which declined to pay the over 1800 Deutschmarks to reimburse the dealer, the book’s sale to the HAB was finalized. The Herzog August librarian may have been disconcerted at the outcome but she certainly did her best in this case to repatriate the book. Rouse wishes that either or both of the dealers involved had asked more questions about the stamps, although distance undoubtedly made them less vigilant than if the library markings were those of the Württembergische Landesbibliothek. CUA Libraries might also have committed more energy (or money) to negotiating for the book’s return. Although agonizing over this past transaction is now beside the point, the episode serves as a reminder that there are likely thousands of stolen books on library shelves where the current custodians are unaware of the dubious provenance.

Librarians should realize that the probability of recovering stolen material is directly related to their institution's capacity for proving ownership. CUA did not claim from Zubal any items among the suspicious consignment which could not be proven conclusively to belong to the University. As Everett Wilkie observes, "positive forensic proof is required."<sup>2</sup> Mere association with known CUA books was not sufficient grounds for claiming unmarked suspect material, although CUA acknowledges that over the years, material could have left the library before being accessioned and stamped. Documentary proof of ownership useful in recovery included accession records, provenance information and old catalog records, none of it machine-readable, since the material in dispute had disappeared before CUA's adoption of an integrated catalog system. Rouse personally read through over 800,000 accession records in book or card form, and her department also reviewed the library's entire shelf list and card catalog (the latter alone comprising some 1.4 million entries).

Because of the preliminary investigation prompted by the Zubal consignment, the volume in Felcone's possession was identified more speedily. Those two related incidents prompted the realization that more CUA materials were still "out there" but that they could be recovered if sufficient evidence for ownership, as outlined above, could be presented. In cases of decades-old thefts, however, administrators may not see the point in worrying about past history, and may be reluctant to put any effort into documentation of vanished resources, not realizing that books have longer lives and better memories than librarians and are recoverable many years after their loss if the library has retained documentation proving ownership. Despite minimal staffing, CUA's Rare Books department has expended considerable energy in locating and preserving records which would identify the many other volumes yet missing but likely to appear on the market in the future. Even if a library does not recover a book until 40 or 100 years after its theft, it remains a worthwhile endeavour, and an integral part of the librarian's duty to facilitate recovery of stolen material. As one bookseller observes, "pursuing losses is part of ... responsible organization and maintenance of [materials] for the use of the institutional community and beyond."<sup>3</sup>

Moreover, curatorial experience suggests that it is preferable for the librarian to discover herself what has been lost from her collection than to learn of losses from other sources. Despite years of diligent effort to discover what has been stolen, Rouse nonetheless receives, several times a year, scholars' queries about books for which no in-house record remains, even though the title and its CUA provenance is documented in ISTC or in some obscure subject bibliography. CUA's known losses include: eight medieval/Renaissance codex manuscripts,<sup>4</sup> over 160 16<sup>th</sup>-century books, and several hundred 17-18<sup>th</sup>-century volumes, many of considerable value. Subjects include canon law, usury, Jansenism, Gallicanism, Vatican I, the Knights of Malta, the Pragmatic Sanction of Bourges, voyages of exploration, the American colonies, books with plates or maps, and very small formats. Missing are important editions of such noteworthy authors as Aquinas, Homer, Samuel de Champlain, Jonathan Swift, Cotton Mather, Frederick Douglass, John Henry Newman, Joachim of Fiore, Voltaire, and numerous popes. We know that rare books were being stolen as early as the 1930s and apparently still disappearing around 2000. One book acquired by CUA around 1923 as part of the library of the Archbishops of Baltimore escaped CUA library undetected at some unknown date. This was the so-called *Ragusa Book of Hours* (1512), the first book printed in Bosnian Cyrillic type, which was microfilmed in Europe before being returned anonymously to CUA, via Rome, in a plain brown envelope, also at some unrecorded date at which current staff can only guess.

The list of CUA's missing material is likely to grow as attention turns to portions of the collection not yet inventoried (and in some cases not even cataloged). We can only surmise that several early modern manuscripts, and incunabula are missing. Even as we write, an apparent sighting of one of CUA's medieval manuscripts has been reported, albeit rebound and with the CUA provenance expunged. Indeed, the authors of this paper are somewhat surprised that more books with CUA stamps have not been found by members of the book trade, but we believe that in many cases the identifying stamps have been successfully removed; in other cases the fugitive volumes are most likely hidden in private collections whence they will emerge some day when an estate is probated. Although ready cash is the book-thief's usual motive, stolen items may never go on the market during a perpetrator's lifetime, and libraries must be prepared to wait patiently as in the instance of the Lambeth Palace thefts, or in cases where a thief values the books' presence more for the non-tangible benefits which they confer on him.

As this paper is the result of bookseller/librarian collaboration, the authors seek not only to document a particular instance of theft from one library, but to offer some recommendations to our colleagues, which, if implemented, might help stem the tide of stolen books which today is so injurious to both the book trade and the library world.

#### ***Initial recommendations addressed to librarians:***

**Mark withdrawn books:** The easiest rule to follow is that deaccessioned materials be stamped to disambiguate legitimately withdrawn library material from that which has been stolen. Many libraries do not take the time to mark released material, and in the past some booksellers preferred that libraries sell such materials without the added defacement of a "released" or "withdrawn" stamp. We recommend that a discreet but clear statement of the library's action be placed on the last leaf of the volume, and we encourage the Rare Book and Manuscripts Section (RBMS) security committee to consider this proposal, which is a slight modification of the existing recommendation to "cancel marks of ownership when deaccessioning items."<sup>5</sup> Perhaps application of this policy can be limited to materials above a certain monetary value.

**Mark all library-owned materials:** The above recommendation presupposes that all library books are clearly marked to identify the owner. Unfortunately, as Katharine Kyes Leab has noted, libraries still have "huge numbers of unmarked materials,"<sup>6</sup> and some institutions currently fail to mark incoming material. Existing ACRL/RBMS Guidelines recommend "readily visible ... permanent"<sup>7</sup> marking by owning libraries, and this remains the minimal requirement of a prudent custodian.

**Include available copy-specific information in catalog records:** The authors' experience with obscured stamps and accession numbers leads them to emphasize the usefulness of recording such indelible clues to provenance as inked owners' names, marginalia, binding characteristics, worming, etc. in library catalog records. The number and identifying information for plates and maps is also essential. Most rare book librarians have known this for years, but increasingly financial concerns and the trend to cost-cutting in cataloging mean that such unique information is often omitted.

**Report losses/thefts:** This is an obligation of librarians and custodians of rare materials. As one bookseller notes, failure to pursue stolen materials "is fostering crime. Some might argue that it is virtual conspiracy to facilitate it."<sup>8</sup>

*Our recommendations for booksellers:*

**Accept the need for marking withdrawn library books:** The authors are pleased to report that all the booksellers contacted by them now agree to the necessity of stamping withdrawn books. We also offer them the comforting suggestion that, very likely, the resulting evidence of deaccessioning will be as interesting to a researcher of tomorrow as the pawnbroker's mark in a medieval manuscript is to the scholar of the present.

**Consider identifying consignors of stolen materials:** While consignors are often unwitting transmitters of stolen property, knowing where they acquired that property may be of use to the rightful owner or to law enforcement for clues that reveal patterns of transmission in large-scale thefts. The information may lead nowhere, but CUA would probably like to know who consigned the CUA book which Christie's auctioned in 2007.

*Recommendations for all rare book professionals:*

**Collaborate in creating a missing book database across professional boundaries:** Since the demise of BAMBAM (Bookline Alert: Missing Books and Manuscripts), a variety of missing book listing agencies have been conceived. Run by volunteers only, BAMBAM yet provided a very effective telephone notification system, but the effort was abandoned in 1994 when no financial support could be secured to make it a permanent resource. OCLC's Missing Materials Project was a library-oriented experiment which ended in 2012.<sup>9</sup> Still in existence is the Antiquarian Booksellers Association of America (ABAA) members-only electronic discussion list in the U.S. in which thefts can be confidentially broadcast to the trade. The public expression of this information may be found in the freely-accessible ABAA security blog, <http://www.abaa.org/blog/category/security>. The International League of Antiquarian Booksellers (ILAB) also maintains a database, to which League members may contribute descriptions of stolen materials, and to which temporary access by institutions may be granted. A publicly-accessible version of this list includes fairly full descriptions of missing books at [http://www.stolen-book.org/stolen\\_books.php](http://www.stolen-book.org/stolen_books.php) but limits coverage to items recently lost or stolen (2010 and later) and excludes some details pertinent to the theft. On the library side, RBMS republishes reports of theft incidents found in published sources. What is lacking, and perhaps unachievable, is a notification system and descriptive database listing to which all librarians and booksellers worldwide can contribute and have access. The ideal would be a comprehensive database with information and responsibility shared by the book trade, including groups such as ABAA, ILAB, and IOBA (Independent Online Booksellers Association) and library organizations, including ALA, RBMS, and SAA, accessible as well to non-members of those organizations. Many small libraries look to RBMS for leadership but do not have the resources for membership, and numerous independent booksellers are affiliated with no trade organization, yet all of us have a part to play in preventing theft and restoring materials to their owners.

We recognize collaboration on this scale might be unwieldy, and that problems of security could be involved with such a large number of participants. Publication of certain kinds of data in such a setting could be problematic; names of individuals suspected of theft might require confidentiality for legal reasons, and some identifying data for stolen books, if made public, could tempt thieves to remove such evidence, and in the process cause damage to books similar to that observable in the CUA case. Additionally, we recognize that there are dealers and librarians who remain sceptical that any database can be sufficiently flexible to cover the wide range of rare materials which still fall prey to theft. It is difficult to envision a

system that could consistently account for early books or manuscripts where great variation may exist in cataloging records. But the present piecemeal system leaves much to be desired even in the coverage of fairly straightforward antiquarian materials. There is, for instance, no missing book listing venue which at present could be used to enter the many still missing volumes which disappeared from CUA half a century ago. But for recovery of recent thefts and less complicated materials, the comprehensive database does seem a useful solution, and the incorporation of photographs could, at least for future thefts, solve some of the problems posed by manuscripts and early printed works. Some institutions currently photograph newly-acquired material on arrival, and such images could simplify recovery if retrospectively created for manuscripts or incunabula.

**Consider a structure of negotiated or monetary settlements in cases of disputed ownership:** Libraries don't want to pay for the return of their own property, but in some cases we believe it may be right to compensate booksellers who have unknowingly invested in stolen material and who stand to suffer considerable financial hardship by returning material to the rightful owner. Equitable considerations may include the relative sizes of the institutions or companies involved, and whether or not they are insured, to arrive at some mutual understanding that obviates the need for lengthy court actions. If two libraries claim the same material, it may be possible in this day to compensate one library with a digital surrogate of the book, with the provision that such an arrangement in no way obscures the chain of provenance and legitimate ownership. These are complicated questions but we feel they should at least be explored and discussed.

At present the importance of books is, for many libraries, greatly diminished; administrators, beguiled by the digital promise of the cheap and the easy, have little tolerance for dead-tree products to begin with, and the expense of legal proceedings for their recovery is one more disincentive to maintaining a rare book collection. In very small institutions where no special department exists for their maintenance, valuable rare materials often remain at great risk, perhaps locked away in a rarely-visited "treasure room" with no custodians, unused, uncataloged, and vulnerable to theft without anyone ever noticing their loss.

Central to the recovery of the materials discussed here, as in better-known theft cases, was, we must admit, an element of pure good fortune. It was lucky that Zubal Books took the CUA material on consignment, rather than paying outright, and incredible good fortune that the consignor of that lot approached a book dealer who knew Catholic University Libraries. It was almost miraculous that Rouse noticed the CUA Hyginus in Joseph Felcone's catalog. But librarians and booksellers must take all prudent steps necessary to ensure that something more than luck protects our profession against the ravages of theft and guarantees that the cultural property for which we are the custodians remains accessible for future generations.

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<sup>4</sup> Melissa Conway and Lisa Fagin Davis, "Directory of collections in the United States and Canada with pre-1600 manuscript holdings," *Papers of the Bibliographical Society of America* 109:3 (September, 2015): 300.

<sup>5</sup> *ACRL/RBMS Guidelines regarding security and theft in special collections*. I.8.f [http://www.ala.org/acrl/standards/security\\_theft](http://www.ala.org/acrl/standards/security_theft)

<sup>6</sup> Katharine Kyes Leab. Unpublished proposal for "Marked Improvements," a paper given at Mind the Gap Symposium. (2015)

<sup>7</sup> *ACRL/RBMS Guidelines regarding security and theft in special collections*. Appendix I.II.2. [http://www.ala.org/acrl/standards/security\\_theft](http://www.ala.org/acrl/standards/security_theft)

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