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Originate, Create, Renovate, and Innovate: Leading Revolution in the Academic Library

Gifts Nobody Wants: The State of the Art in Dealing with Unwanted Donations

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Abstract

As academic librarians and archivists, we continually face the same problem: what to do with well-intentioned but inappropriate gifts. This presentation will look at current best practices in dealing with unwanted gifts before they enter the collection and removing unwanted materials from existing collections. Examples of effective collection management policies that cover both acquisition and deacquisition of items will be provided, together with suggestions for creating a cooperative understanding between the library/archive and the development office.

Gifts-in-kind are a constant issue for librarians and archivists. They provide an additional means of collection growth and a way to enhance social relationships (Korolev, 2002); at the same time, they may be burdensome to process, duplicative, a strain on limited storage space, and a nightmare when disposal becomes an issue (e.g., Norris, 2003). The current increased level of interest in the topic is sparked by a number of factors. On the part of donors, downsizing -- whether prompted by economic hard times or the aging of the population -- has made reductions in personal collections desirable. Hard-to-store book collections can, in some cases, be replaced by ebooks, and the idea of donating print volumes to a repository, with a tax deduction attached, is appealing. Donors also look to archives and special collections to see that their personal history will be preserved even if they lack the capacity to store the relevant items.

On their side, libraries are experiencing real or perceived space issues. Traditionally, libraries have had a particular cultural resonance as unchanging sources of communal memory or "sacred space" (Maxwell, 2006). However, today they have become providers of range of additional services that compete for the same physical territory. They house cafes, meeting rooms, computer centers, teaching labs. The role of the library as the seat of an *enduring* collection worthy of reverential treatment is diminishing, at least on the part of administrators. Thus the shift to electronic resources, which opens the possibility of discarding the collection's print copies, becomes a very attractive option. And, at the same time, the gifts keep coming.

While some gifts-in-kind have been seen as a partial solution to reduced library collections budgets, there are some types of gifts that are more trouble than they are worth. In the discussion below, we will provide some background for the increased focus on gifts-in-kind, identify some types of gifts that always present problems, and evaluate current strategies for dealing with unwanted gifts.

Background: Some Publicity is Bad Publicity

Why do gifts in kind pose a significant problem? Put simply, at a time when libraries feel under threat from competitors and shrinking budgets, nothing creates as much negative publicity as the "dumpster full of books" scenario. Johnson (2009) summarizes three incidents succinctly:

Libraries have run into political problems when their communities have discovered withdrawn materials in dumpsters and landfills. Nicholson Baker attracted national attention with his 1996 *New Yorker* article on massive withdrawal and discard projects at the San Francisco Public Library. The University of New Mexico Library made the news in 2001 when faculty members protested withdrawing back runs of several hundred math journals. The library faced severe space constraints and was, at the time of the withdrawal, providing online access to the titles through JSTOR. As a result of the protest, the library reacquired or replaced all withdrawn volumes. In 2004, East St. Louis citizens discovered ten thousand deselected books and albums in a decommissioned library building. The items had been withdrawn and left behind when the library moved to a new, smaller building in 2001. The intention had been to sell the materials, but a new library director knew nothing about the collection or the intent to sell it. The discovery resulted in an imbroglio and bad publicity for the library and East St. Louis. (p. 152).

Nicholson Baker's *Double Fold* (2001) and *New Yorker* articles (Baker, 2000, 1996; see also Bee, 2008) created so much unease in library circles that the Association of Research Libraries devotes a web page to his work and related rebuttals, reviews, and responses (Association of Research Libraries, 2008). Though Baker has done much to promote preservation and to publicize the value of libraries, he has fostered an atmosphere of deaccession paranoia on the part of librarians and archivists. Thus the lament by archival scholar Richard J. Cox (2000, para. 29, 34): "Should we save all old buildings, old books, and printed ephemera? Should everything always be saved in the original form? Or, is this a misunderstanding of just what the responsibility of librarians and archivists represent? Archivists, for one, have always operated on the premise that they must be selective...Nicholson Baker might think of himself as a Greek hero, calling others to join in his epic quest to save America's past. But....Baker reminds me, unfortunately, of Sisyphus."

Beyond Baker's role, new methods for redistribution of unwanted gift books have emerged as possible solutions to the deaccession problem. A few businesses have stepped up to fill some of the gaps. For example, the Borders bookstore chain, after its acquisition of Waldenbooks, received considerable attention when its plan to toss old Waldenbooks inventory became known; in response to a Facebook campaign titled "Donate, Not Dumpster!," Borders abandoned the plan (Mui, 2010). It eventually made an arrangement to donate some -- but not all -- of the books in question to Gifts In Kind International, a non-profit organization that distributes corporate donations. However, the products, including books, must be new. For libraries faced with multiple old book donations, the proliferation of online booksellers and auction sites may be a partial remedy, whether by Amazon.com, Alibris, eBay, or other vendors (e.g., Clark, 2006).

Obviously, museums and archives are also affected by space and economic factors. The "surreptitious" consignment for sale by auction of rare books from the University of San Francisco's library collection aroused widespread dismay. Belanger (2009) found the sale inappropriate in at least two respects. First, "the University president seems to have taken over and is attempting to micromanage deaccessioning, something that I would think should be the responsibility of the Library Dean and Library staff members." Second, "Ironically, President Privett has stated that money made from the sale of Rare Book Room items will go towards the renovation of the room itself. Once collections are compromised and books, manuscripts, artworks, ephemera and related items have been cannibalized from them, for what purpose will the Rare Book Room be renovated?" (para. 7, 10). Similarly, the New York Public Library's 2005 sale of nineteen famous artworks was viewed as damaging to the institution's credibility (Druga, 2010).

Several controversial museum deaccessions in the 2000s have also raised concern. The issue is particularly pressing for universities with "embedded" museums: is it appropriate for boards of colleges to sell off pieces in order for the larger institution to stay fiscally solvent? Museum ethical codes, i.e., those of the American Association of Museums (AAM) and the Association of Art Museum Directors (AAMD), require that deaccessioning originate from curatorial decision-making and be intended to improve the quality, scope and appropriateness of the permanent collection (Fincham, 2010). Sale proceeds are not to be used for operating expenses, salaries or building repairs (White, 1996), much less for unrelated expenses of the parent institution.

However, attempts to subvert these rules -- not to mention donor intent -- have increased as institutions search for ways to make up for budget shortfalls. The financially troubled Brandeis University's attempt to close its (apparently quite solvent) Rose Art Museum, reopen it as an arts center -- and thus eliminating its status as a "museum" -- in order to sell its collection is a case in point (Jen, 2009; Chen, 2009). In 2007, Randolph College's surprise removal of four paintings from its Maier Museum of Art for sale at auction to raise money for the college's general budget aroused similar alarm and dismay (Katzman & Lawson, 2009).

Moreover, as repositories are making their way through their collections, often as part of digital archive initiatives or metadata projects, they encounter entirely undocumented items of unknown status. Were they outright gifts, or loans? Unfortunately, many undocumented collections went unprocessed simply because they never should have been accepted by the repository in the first place. Is it safe to deaccession and dispose of them?

Library and archives organizations are well aware of these issues. In 2008, International Federation of Library Associations and Institutions (IFLA) issued its best practice guidelines for gifts and donations to library collections. As authors Cassell, Johnson, Mansfield, and Zhang. (2008) properly noted, "The question may be asked as to why a written set of *Guidelines* is needed for gifts and donations. While gifts and donations are free of purchase costs, they are not without costs to the receiving library" (p. 1). In the case of ordinary book donations, the costs may be related to transportation, inspection, cataloging, and space. In the case of archival material -- manuscripts, photographs, realia, rare books -- the potential costs become more onerous and complex. Benedict (1984) mentions that "library solutions to collection management problems do not offer much guidance in dealing with unique documents" (p. 44), and certainly the consequences of accepting or rejecting a gift are heightened.

And academic libraries are dealing with a growing need to cultivate donors, regardless of whether the interests of the repository and the campus development officer are consistent. In tough economic times, libraries have been placed in the position of having to pay more and more attention to development activities (Browar & Streit, 2003). Martin (2000) notes that there are immediate problems when academic libraries launch development efforts, the first being that “no one ever graduated from the library” (p. 565). In other words, the donor tends to think of the institution as a whole, or possibly the relevant academic department, before the library. This may mean more pressure to accept gifts-in-kind that are not within the scope of a library’s collection, with a consequent loss of autonomy and direction on the part of the repository (Wedgeworth, 2000). A survey of archivists in 2000 (Sauer, 2001) revealed that the primary reason respondents accepted out-of-scope collections was fear that a refusal would have a negative impact on the donor relationship.

The best recommendation is the simplest: a gifts policy is the best way to deal with these issues (Buis, 1993; Korolev, 2002; Bybee, 1999; Reed-Scott, 1984). Ideally, the policy should (1) identify the individuals who are authorized to solicit or accept gifts on behalf of the library (or, in the case of unsolicited gifts, who are authorized to accept the *offer* of a gift); (2) include language to the effect that the gift becomes the property of the library and may be disposed of at a later date, if circumstances so require; and (3) provide a procedure for deaccession, if a separate deaccession policy does not exist.

However, even if the repository is armed with a suitable gifts policy, it may falter in the face of certain types of gifts. The following sections address a variety of potentially embarrassing and burdensome gift situations, potential pitfalls, and current options for handling the problem donation.

The Gift You Keep on Getting

After Aunt Kate’s [Kate Hanson, the authors’ aunt’s] death [in 1968], we disposed of an estimated 4,000 books and every *National Geographic* magazine from 1917 on. (Bales & Bales, 2000, p. 293.)

If there is one magazine that has a particular durability in subscribers’ homes, it is *National Geographic*. The magazine was more expensive than other journals, available only by subscription, and known for its highly-praised photography. It had all the indicia of a “collectible” to middle-class households: pricey, prestigious, and rare, or at least uncommon. In the example above, Kate Hansen’s *National Geographics* went to Fort Hays State University; her papers went to her alma mater, the University of Kansas, which presumably already possessed a run of the magazines. Some repositories (for example, the Massachusetts Institute of Technology (MIT) Libraries) specifically note that they do not accept “popular magazines (i.e. *National Geographic*, *Smithsonian*, etc.).” (Massachusetts Institute of Technology Libraries, n.d.).

Other gifts of this ilk include *Reader’s Digest* condensed books; old computer manuals; materials in outdated formats (vinyl record albums, slide transparencies, obsolete computer discs); and, in the case of archives and special collections, documents that may have “historic value” only for their original owners. A listserv posting by Ann Tate, Library Director of the Stonington Historical Society, illustrates the dilemma:

I am getting tired of people coming into my organization with papers/check registers/whatever and giving them to us to “keep” for them. Whenever I tell them, if we can’t use it, do you want it back or may we dispose of it, I am looked at as if I have horns on my head and given a “how dare you even think of such a thing” look. As more people in our community retire to smaller homes or retirement complexes this is starting to happen frequently. (Tate, 2008).

The scenario Tate describes is all too common.

In addition, academic libraries may be perpetrators as well as victims of unsought largesse. One recurring strategy involves the shifting of back runs of scholarly journals, usually in the sciences, from one repository or campus unit to another. In a typical scenario, University Library A decides to deaccession a

long run of an agricultural journal from 1950 to 1980, and posts an inquiry on a listserv: does any other academic library want to fill in gaps in its own collection of the title? If Library B needs one or two volumes, it may not wish to admit it; at the least hint of interest, Library A will dump the entire deaccessioned run at Library B's doorstep, with the excuse that Library A "had no time to look for specific volumes." The multiple boxes of the journal are now Library B's problem. And a problem it is: as noted above, discarding books and periodicals seems to inflame public opinion in a way that few other disposal processes do.

So, even if a donation includes some items of interest scattered among multiple boxes, is it always worth accepting? Ballestro and Howze (2005) used a cost-benefit analysis to determine whether the acquisition of a large gift from the Economics Department at Southern Illinois University to the campus library was worth the transportation and labor (processing) costs involved. The gift included 906 monographs, 189 of which were eventually added to the collection. Was the gift worth the effort?

The answer: possibly more so for what it revealed than for the added titles themselves. The gift titles overlapped with the library's collection by 83%. As the authors noted, "had [the Economics Department] given us their copies when they were new, we could have avoided a significant duplication of effort....[Moreover,] It is doubtful that the Economics Department is the only department on campus with its own clandestine library or reading room" (p. 63). Strnad (1995) described a similar situation in which McLure Education Library at the University of Alabama was offered the contents of the College of Education's Belser-Parton Reading Lab, which were dated, in poor condition, and in obsolete formats. A potentially tense situation between faculty and library as resolved cordially when librarians were able to point to the repository's mission and collections policy statements; the documents stated that the library was designed to house a current circulating collection, and was not established as an archival repository. A Kent State University library study found, not surprisingly, that library-purchased books were used significantly more than gift titles (Kairis, 2000).

The best way to handle duplicative and always-undesirable donations is to follow the lead of MIT and refuse them immediately by means of a prominently displayed list of exclusions. For most potential donors – who will certainly never refer to or comply with a collections or gift policy unless it is short, readily available, and unambiguous – clear and specific language is necessary. This course of action may not always be feasible; in that case, the Library of Congress provides a suitable alternative: "The Library welcomes inquiries about donations of library materials but cannot accept everything. Prospective donors should NOT send the item(s), but instead, send gift offers identifying the item(s) to be donated" (Library of Congress, n.d.).

However, if donors choose to ignore the exclusions list, or the library already has a back room stuffed with old gift books, there are still some options:

Recycling and Pulverizing

For widely-held books and periodicals, there are always recycling centers; however, most require the removal of covers and spines of hardcover books, and may have issues with glued text blocks as well. If a library is willing and/or able to pay for their services, companies like the unpleasantly-named Book-Destruction.com will utterly obliterate the material:

When your load of books arrives at our facility, it will immediately be ground into tiny fragments, baled and then sent to the paper mill to make new paper. A vast majority of book recyclers remove the back spine and discard that, along with the front and back hard cover into the landfill destroying only the inside of the book. Our process destroys the entire book, and in many cases, even the cardboard boxes they come in. (Grossman Environmental Recycling, 2009, para. 5)

Old Books as Art

Another recent development is the use of unwanted gift books in student art assignments or scrapbooks, in “altered book” projects (see, e.g., Abrams, 2007; International Society of Altered Book Artists, 2010; Thompson, 2010), or even as furniture: stools, tables, counters, and, yes, bookshelves (see Fenton, 2010; Furniture Made of Books, n.d.). These options are clearly preferable to pulping, but they may still engender some animosity. As book artist Nicholas Jones (Weil, 2008, para. 9) explains:

A number of people find what I do with books abhorrent, but I have to take that criticism on board, but not think about it too much and be singular in my vision. The greater majority of my work is fabricated from remaindered or discarded books, so I feel somewhat vindicated in my making of new works from this ostensibly recyclable material. Some librarians detest what I do and funnily these are the same people who send thousands of books of to their landfill graves and see no irony in the very fact that they can get up on their soapboxes and accuse me of being an iconoclast.

In the end, these are ingenious but, as yet, small-scale solutions. Donating unwanted books and magazines to a more suitable repository or organization -- if one exists -- has appeared to be a more promising route (but see “The Gift Re-Gifted,” below).

Online Sales

This option certainly has the support of used book dealers; representatives from Albris and Better World Books have promoted their services at library conferences (Kane & Agner, 2009). The for-profit company Better World Books, in fact, avers that it will take any and all books donations from libraries, regardless of quality or condition; however, since these items cannot, as a practical matter, be resold, libraries can only be left wondering if books bearing their institution’s labels and stamps will turn up in those well-scrutinized dumpsters again.

EBay and other online auction sites have been used successfully by libraries as a collection development tool (Zumwalt & Konieczny, 2008), and some have ventured into the resale market as well. Kackley, Cawla, Beygo and Miller (2003) describe a pilot project conducted at the University of Maryland’s Engineering and Physical Sciences Library in that year. The library sold gift books on the internet via eBay and Amazon.com, resulting in gross sales totaling \$9,326, a net profit of \$6,917, for only 96 calculated staff hours. The authors believed that the project was an excellent public relations activity; the funds were used to purchase titles requested by university faculty, library staff were enthusiastic, and unwanted gift books that would otherwise have required disposal were converted to cash. However, after three years of operation and over \$18,000 in sales, the Library Administration Earned Income Committee banned the book sales project; it issued an administrative memo stating that the UM libraries had the primary mission of facilitating access to information, and thus they were not to engage in retail sales business (with the stated exceptions of photocopying services, room rentals, or bulk sales to commercial vendors). The University of Iowa avoided this issue by choosing to sell its unwanted gifts by consignment via a book dealer (Wachel, 2003).

Public libraries have also ventured into online sales. One public library enlisted its Friends group to sell donated or withdrawn books on eBay; the group sold 167 titles in eighteen months, earning \$6,700 (Hill, 2003). Other librarians relate similar stories (Pierce, 2004; Baxter, 2000), or simply advocate the use of eBay and online sales in general as tools for managing collections (Clark, 2006). Moreover, if libraries have been relatively slow to recognize the potential of the online markets, others have; Beinhoff (2000) notes that inflated price estimates on online auction sites have promoted library book theft. One example: felony charges were brought against a Springfield, Illinois public library assistant, Lori Burger, who removed over 1,000 donated books from the library over an 18-month period and sold them on half.com, eBay’s fixed price section, earning slightly more than \$10,000. (Rhodes, 2005).

Deaccession and even disposal of archival material is a much more sensitive issue. This is exemplified in both the current existence of a Society for American Archivists’ Deaccessioning and Reappraisal Development and Review Team, and the caveat contained in the group’s meeting minutes for August 13,

2009: "Those concerned about their institution objecting to their participation in the group might consider using a personal gmail or aol account for team communication." (Laver, 2009, para 1). Some archivists oppose deaccession except in the most extreme situations. Others disagree, often referencing Ham's (1984) comments on the dilemma of archivists in the era of "overabundant" records, and his view that "deaccessioning must become an integral part of collection management" (p. 17). In a famous 1981 article, Rapport acted as provocateur when he noted that "every repository of public records has on its shelf records which, if offered today, we would not accept...none of us, as far as I know, reappraises holdings systematically and periodically. That is what I am proposing we do. Under this proposed reappraisal procedure we would be obliged to make a case for continuing to retain records rather than for getting rid of them"(p. 143, 145). Benedict (1984) responded with a rebuttal entitled "Invitation to a Bonfire," protesting that Rapport's policy would encourage "piecemeal dismemberment" of collections according to transitory criteria.

Doylen (2001) describes an experimental use of online auctions by the Division of Archives and Special Collections at the University of Wisconsin-Milwaukee. Artworks, photographs, coins, and other duplicative or out-of-scope donated items (only items with a value of \$1,000 or less were selected) were listed on eBay; during an approximately six-month period, the archive completed 101 transactions online and generated \$2,300. However, Doylen raises a possibly unanticipated objection to online sales: the possible negative impact on archival acquisition programs. In other words, "on-line auction sites increase the possibility that individuals may prefer to profit from the sale of their records and manuscripts rather than donate them to an archival repository" (p. 361).

In general, archives and museums have been slow to embrace online sales. In Britain, the Museums Association included the following statement in its "Disposal Toolkit" (2008): "Some museums may think about selling items through eBay. When considering this method museums are advised to weigh up the benefits of openness and transparency that this would bring, and the potential damage to their reputation for using a largely unregulated site" (p. 18).

The Gift that Smells Bad

In 2005 the PANL [Provincial Archives of Newfoundland and Labrador] commissioned the destruction of some 200 boxes containing various documents. The contracted shredding company, after leaving the boxes sitting on their warehouse floor for approximately four to five months, sold the boxes to a local antiques collector for \$500. The local collector in turn attempted to sell the boxes to the Memorial University Maritime History Archive, but the archivist found the collector's story of how he obtained the documents to be somewhat dubious. The archivist contacted police regarding the documents, charges were laid against the collector and a trial followed in 2008. Over the course of the trial it was revealed that the documents within the boxes contained information that held great cultural and historical relevance to the province... The MU archives were prepared to pay \$122,000 for the boxes, and appraised the entire collection to have an approximate value of \$200,000. When the Provincial Archives was questioned about why these documents, deemed to be of such value to the province on both a monetary and cultural/historical value, were to be shredded, the archives responded saying the documents were in poor condition; due to animal, bug, and mold infestations that made them a possible health threat. Interestingly, the archivist at Memorial University found the records to be in rather good condition, hence the institution's willingness to pay over \$100,000 to acquire them. Following the trial the documents were returned to the Provincial Archives where they are currently available for public use. (Wall, 2010, para.11.) [Citations omitted.]

Perhaps this is why our friends at Book-Destruction.com assure prospective clients that "we will NEVER resell your material under any circumstance." (Grossman Environmental Recycling, 2009). Some gifts are moldy, water-damaged, spotted, crumbling, musty, and/or insect-ridden. However, as the anecdote above indicates, simply discarding a gift in poor condition may have unexpected repercussions – particularly since "poor condition" may have a different meaning depending on the item or collection's rarity.

Again, a gifts policy should give the library the ability to reject items based on condition. Some authors recommend the use of a checklist to give guidance to possibly-uninformed donors who, for example, may not realize that highlighted and ink-annotated books are undesirable for library collections. In other cases, the library or archive may be unable to provide adequate conservation for a damaged collection, and should be able to refer the potential donor to another repository.

Others gifts may “smell bad” in a metaphorical sense. These include gifts of questionable provenance, which is an invitation to litigation. In *Charash v. Oberlin College*, 14 F.3d 291(6th Cir. 1994), plaintiff Helen Charash was the sole heir of artist Eva Hesse. After Hesse’s early death in 1970, a trunk containing 44 of her drawings was allegedly lost; it reappeared several years later at the gallery of Donald Droll, Hesse’s art dealer. At some point thereafter, Droll gave the 44 Hesse drawings to his brother, Philip; Philip later donated the drawings to Oberlin College. According to Charash, in 1988 she was shocked to discover that Oberlin was displaying the drawings as part of its collection. She demanded that Oberlin return the drawings to her, claiming that neither of the Drolls had her authorization to dispose of them. Oberlin refused, and Charash filed suit in 1991.

The published opinion in the *Charash* case deals with a jurisdictional issue; it does not detail the final resolution of the ownership of the drawings. What happened? Unfortunately, according to a communication from Andria Derstine, Curator of Collections at Oberlin’s Allen Memorial Art Museum, “by order of the court, all information about the case must be kept confidential by both parties” (A. Derstine, personal communication, October 10, 2010) Obviously, the parties reached a settlement. The key element in cases like *Charash* is the time of discovery of the alleged theft. *O’Keeffe v. Snyder*, 83 N.J. 478 (N.J. 1980), is the best-known case in this area; it involved a theft of paintings from a New York art gallery. When the paintings resurfaced 30 years later, artist-owner Georgia O’Keeffe brought suit to recover them from a subsequent bona fide purchaser. The court held that the statute of limitations did not begin to run until O’Keeffe knew, or should have known, of the identity of the possessor of the paintings; only at that point did her cause of action for replevin (or the return of the paintings) accrue.

Provenance issues, particularly those related to inadequate or suspect documentation, are prominent in cases involving stolen cultural property: antiquities, World War II era confiscations, and Native American burial and sacred objects (see FitzGibbon, 2009; Gerstenblith, 2003-2004; Phelan, 2000; 2004; Redman, 2008). The complex analyses involved in cultural property cases go far beyond the scope of our discussion here; however, it is interesting to note that large-scale deaccessions and restitutions have been the result.

The Gift with Strings Attached

If a gift comes with special conditions or restrictions attached to it, these elements should be clearly stated from the outset. Many repositories have a backlog of gifts or loans that were accepted with minimal formalities and inadequate documentation; this was often part of a now-lost institutional culture of handshake agreements.

A couple of cautionary tales illustrate the importance of this advice. Becker (1993) details the tumultuous relationship that ensued when Rutgers University agreed to house the editorial offices of the *Partisan Review*, a well-known but financially-strapped literary journal, and to add its editor, William Phillips, to the faculty. As part of the arrangement, Rutgers also wanted the journal’s archives for its library. The parties reached an accord in 1963, which, unfortunately for Rutgers, was informal and represented only in a short letter from Rutgers’ then-provost to Phillips. A key sentence read: “It is to be understood that in coming to Rutgers you will bring with you the files of the *Partisan Review* to be deposited in the Rutgers Library.” (p. 322). Accordingly, the papers in question arrived at Rutgers and grew with periodic additions over the next 15 years; the university library maintained, described, and serviced the collection, expending over 1 million dollars in the process.

The relationship between Rutgers and the *Partisan Review* soured in 1978, and Phillips approached Boston University about providing it with a new home. Boston University agreed, but only if the journal’s

archive, and the ownership rights thereto, accompanied it to Boston. So began the legal battle between the parties. The case hinged on the meaning of the word “deposited” in the 1963 letter. Phillips and the *Partisan Review* argued that Rutgers had simply agreed to house the papers; Rutgers claimed that “deposited” was used in the terminology of depository libraries and copyright law (in which deposited copies became the property of the Library of Congress), and meant a transfer of ownership in addition to physical possession. The parties eventually reached a settlement; Rutgers microfilmed the pre-1978 *Partisan Review* material it had held, while the originals and the journal itself decamped to Boston. “Thus what was originally meant to be a permanent enduring relationship ended in legal controversy, expense, and a great deal of embarrassment to the university and the *Partisan Review*.” (Becker, 1993, p. 327.) It also prompted Rutgers to reexamine other agreements using the word “deposit” in an attempt to clear up similar ambiguities.

It is important to note that the lack of documentation was not the only problem in the *Partisan Review* incident -- though it did not help matters. A more significant issue was the continued personal entanglement of journal editor William Phillips with the archive; in fact, it was Phillips' mandatory retirement under Rutgers policy that prompted the journal's (and the archive's) departure. In these instances the “gift” should be a separate and discrete transaction from tangentially-related “deals.”

The lesson Rutgers learned was also an expensive one. The library should clearly establish any restrictions or special conditions attached to a gift from the start, so the cost and service implications can be weighed against the value of the gift (both monetarily and in terms of its value to the collection). This is especially important for archival collections, which may include significant arrangement, description, and storage costs. Purcell (2005) notes that the U.S. National Archives accepts personal as well as governmental papers; however, “because of other NARA projects and the emphasis on developing online catalogs, since the early 1990s work on creating inventories and finding aids for old and incoming donated materials has been largely ignored” (p. 63). In fact, many archives are now insisting that manuscript donations be accompanied with a money donation sufficient to pay for the processing of the collection.

Other “strings” may involve the gift's reproduction rights. Commonly the donor may wish to retain intellectual property rights relating to the gift. In these cases, any consideration of the item for acquisition must take into account the way in which requests for permission to use the material will be handled with the donor. In *Marshall v. Music Hall Center*, No. 95-CV-70910, 1995 U.S. LEXIS 17904 (E.D. Mich. 1995), a photographer donated a picture of Dizzy Gillespie to the Graystone International Jazz Museum. The gift became problematic when the museum permitted the use of the photograph as a program cover for the Montreaux Detroit Jazz Festival. The photographer, Marshall, filed a lawsuit alleging copyright infringement. While the museum argued that Marshall should have stamped the photograph with a copyright notice, or otherwise indicated his retention of intellectual property rights in the image, the court determined that no such effort was necessary. Moreover, the documentation related to the gift in no way suggested that it included a transfer of copyright ownership. In these cases, even if museums are unable to acquire copyright to collections, they should consider obtaining certain usage rights via a license agreement at the time of acquisition (Browar, Henderson, North & Wenger, 2002; Laver, 2005).

Other financial motivations for gift-giving exist; a common one is the tax deduction. The University of Saskatchewan Library sought to deter donations when it eliminated tax receipts for gifts-in-kind below \$5000 in value; these gifts did not tend to lead to later monetary donations and consumed too much staff time. Under their old policy, the library was dealing with “a scenario that permitted a potential donor to buy an average trade book, read that book, and then subsequently donate that book to the library and expect a charitable donation tax receipt for it” (Canevari de Paredes, 2006, p. 57). After the change, the average number of charitable gifts-in-kind dropped by 15%, and the number of “simple” gifts-in-kind also diminished.

It is also important to note that some gifts, and their related endowments, may impose significant restrictions on an institution; the dispute between Princeton University and members of the Robertson family over the use of the \$900-million-dollar Robertson Foundation endowment is a prime example

(Eason, 2007; Gose, 2008). While this article will not discuss the law of charitable trusts and the doctrine of cy pres, we will note that endowments create particular complications for deaccession.

Other strings attached to gifts may include donor-imposed access limitations on a gift (e.g., closing the collection to researchers for 25 years, requiring a vetting process for access). Yale University acknowledges this in its manuscript donations website (Yale University Library, 2005) :

Sensitive material may, at times, be found within collections. Manuscripts and Archives staff will discuss with a donor the possibility of restricting parts of a collection to protect the privacy of the donor or of others. Although desiring to make all papers and records freely accessible to researchers, the department will normally agree to reasonable and equitable restrictions for limited periods of time.

In these instances, the donor should identify any restricted materials before the library takes possession, and the restriction on access should be for the shortest time possible.

Finally, some gifts may carry associations the library may or may not wish to embrace (see, e.g., Kertesz, 2001; Rappaport, 2003). The extra baggage may be political, social, or even personal. An egregious academic example is the endowed scholarship given by Ophelia Glatman to the University of Denver in 1968, to “perpetuate the memory of my son Harvey,” who, more precisely, was the serial killer Harvey Glatman. (Harvey was executed by the State of California in 1959.) Years later, the Harvey Glatman memorial scholarship for University of Denver accounting students was renamed when Harvey’s criminal background was brought the University’s attention (Pettem, 2009). Some investigation of highly-publicized or conspicuously-bestowed gifts is always a good idea.

The Gift Re-Gifted

Two recent examples of dubious large “gifts” to libraries help to underscore the importance of considering the costs of actually using some gifts and the importance of thinking creatively to resolve public relations situations. In 2000, the Maricopa County Southeast Regional Library in Gilbert, Arizona was one of the libraries that received a very dubious gift of 15,000 books. The article reporting this gift explains that the books arrived somewhat unannounced and “comprised only ten titles and included 11,496 copies of a single 1960s children’s book.” (*American Libraries*, 31(6), 28-29., Jun-July 2000). After negotiation with the company giving the books, a better accommodation was reached and the library used the books as give-aways to preschool, Head Start and other programs. The books were all but useless for the library’s collection. This incident is similar to the settlement by a Federal Court that required music companies and distributors to compensate libraries in a price fixing case by giving libraries free music CDs. The libraries involved in the class action suit received hundreds of titles each that were “non-sellers” and had been sitting in warehouses. Some libraries went to the expense of cataloging and processing these items but most were far more selective and invested in only a few of the titles for their collections. A large proportion of the CDs were not worth the cost of processing and storing in prime real estate in the library with the expectation of little or no use. These and other library gift stories make it imperative that a library understands both the political and public relations issues that surround gifts and has the good sense to sometimes “just say no” to unsolicited, inappropriate, and costly gifts. (Arizona State Library Archives and Public Records , n.d., para. 4)

“Re-gifting” appeared to be a perfect solution to the gifts problem: both giver and recipient benefited, and the books were spared from destruction (see, e.g., Cooper, 1990; Leonhardt, 1997). Recent articles still advocate making use of charitable organizations to solve the gifts problem; Allen (2010) suggests Books for Africa, The Prison Book Club, shelters, hospitals, and thrift stores. In practice, however, one man’s trash just may be another man’s trash. Librarians with actual experience in African libraries have bemoaned the inappropriate and/or worthless titles they have received. Hite (2006) avers that “sending inappropriate books is more harmful than sending no books,” (p. 7), and includes examples in support of her position:

However, throughout my eight years of work, U.S. Peace Corps workers, other foreign nationals and African librarians working in developing countries have told me .horror stories about donated books. One US Embassy librarian reported a library in West Africa getting about 20 copies of Vanna White's biography - Vanna being a US television game show hostess whose claim to fame is that she turns letters around on a board. Another person told about finding ski instruction manuals and microwave cookbooks in a non-electrified village in Zimbabwe. Perhaps these are apocryphal stories. But in my own experience at Zenzeleni High School, Mseleni, South Africa I found a wonderful, though old, set of encyclopedias . but every book was a copy of Volume A. At another South African school library they had the dress code for 1905 co-eds at the University of Pittsburgh and at a provincial book depot I found mounds of donated books from American service organizations that included books with whole sections missing, directories of health care providers offered by an HMO in Connecticut and a book from the 1920s of Negro folk songs with lyrics in pidgin English and caricatured racist drawings of thick lipped stupidly grinning black faces singing on the cover. (Hite, pp. 5-6; see also Totemeyer, 1995, Martin, 1997.)

The "books by the pound" approach has severe limitations. The American Library Association (ALA) provides a list of book donation programs at its website (American Library Association, 2010). However, it is important to note that many of the organizations listed limit the types of books they will accept, either by subject matter or condition (e.g., no highlighting or discoloration).

Similarly, the Health Sciences Library at the University at Buffalo (UB) established a web page for non-profit donation programs for books, journals and media in 1998. The site still exists, though it is now constituted as a wiki and is rather modestly re-titled "book_donations" – somewhat of a misnomer, since one could assume that it deals only with donations to the Health Sciences Library itself. Instead, it collects a wealth of information about national and international institutions, agencies and programs seeking material. However, it also contains familiar advice for donors: "Contact the institution or program in advance to make sure that materials are still being accepted and that what you have is what they need. Sending inappropriate materials is more harmful than sending none. Plan your shipment by first sorting, weeding, and discarding inappropriate materials." (University at Buffalo Health Sciences Libraries, 2010; see also Rose, 2003.)

The Gift No One Remembers

As we have observed, "deaccession has become something of a dirty word in museum circles" (Goldstein, 1997, p. 216), and many archivists share this opinion. There are obvious reasons for caution when one is dealing with unique or rare items; if they are discarded, they may not be replaceable, even with an equivalent item. In the archival and museum settings, gifts often carry additional restrictions on use or disposition; repositories may have public trust or fiduciary obligations. Finally, the existence of entirely undocumented items in these collections – some of which may be prime candidates for deaccession – raises the question of the proper procedures to be followed to avoid potential liability (Simms, 2006).

First, there is the distinction between abandoned property (for which owner intends to abandon all rights), old loans, and undocumented property. If no documentation can be located for an item in a collection even after a thorough search, the property is referred to as FIC (for "found in collection"). Why are so many acquisitions undocumented, or poorly documented? Buck and Gilmore (2007) provide a list of collections "bad practices" that were the result of the informal nature of early museum (and archive) work: irregular documentation systems, heavy reliance on volunteer labor, lack of tax law restrictions and general lack of litigiousness, and sometimes-excessive collegiality with donors and board members.

Beyond these issues, archivists and librarians simply wanted to build collections, often at the expense of focus or good sense. A well-known example of an institution that put itself in serious financial distress is the New York Historical Society, which "had a long history of accepting anything and everything that was given to it with little regard for the quality of the gift, the institution's capacity to absorb it, or the relevance

of the gift to the Society's mission" (Guthrie, 2008). While most repositories have not gone to these lengths, more often than not they have collected a substantial assortment of items they would rather not retain. As Cox (2004) states, "The good archivist is as good a destroyer as a preserver" (p. 7; see also Wojcik, 2002).

In recognition of this problem, many states have enacted Museum Property Laws; Kansas and Missouri are two of them. Both sets of statutes cover old loans and FIC items, and both explicitly apply to libraries as well as museums. For undocumented items, the Kansas act provides that "A museum may acquire title to undocumented property held by a museum for seven years or longer with no valid claim or written contact by any person, all verifiable through the museum's written records, by giving notice of acquisition of title to undocumented property" (K.S.A. § 58-4006). A claimant has one year to respond to the notice, the language of which is substantially set out by the statute. If the claimant does not contact the institution within that time, establish ownership, and arrange to collect the property, his or her claim is waived. For old loans, notice must be sent by certified mail to the lender's/claimant's last known address; again, the details that must be contained in the notice are prescribed by the statute (K.S.A. § 58-4003). If proof of receipt of the letter is not returned, the same notice procedure that applies in the case of FIC property should be followed: the notice must be published at least once a week for three consecutive weeks in a newspaper with circulation in both the county where the museum is located and the county of the lender's or claimant's address, if any. Further, lenders are now directed to notify institutions of any change of address, institutions must notify lenders of changes of address or dissolution, and certain record-keeping obligations are imposed. (K.S.A. § 58-4001 et seq.) The Missouri law is quite similar, except the time for a claimant to respond to the notice "by filing with the museum a notice of intent to preserve interest" in the loaned or undocumented property is much shorter: ninety days, rather than one year (Mo. Rev. Stat. § 184.104 et seq.).

The Museum Property Acts at least provide a mechanism to clear title to mystery collections and to allow potential deaccessions to move forward. They also attempt to resolve old loan issues, or, as we call them, gifts bestowed by "mistake."

The Gift Bestowed by "Mistake"

In 1943, Edward Low, age 12, unearthed a small sandstone tablet carved with faces and birds near his home in Parkersburg, West Virginia. The "Indian rock," as he called it, remained in Low's sock drawer for many years, an interesting curio, but nothing of great importance. In 1971, Low, then living in Ohio, read a news story about the curator of archaeology at the Ohio Historical Society (OHS), Raymond Baby. Low decided to show the curator the tablet in the hope of finding out more information about its origin. He left the tablet with Baby; three months later, Baby contacted him and offered to buy the tablet. Low declined the offer, but agreed to allow OHS to keep it for public display for an indefinite period. In exchange for the loan, as Low understood it, he was given a lifetime membership in OHS. The "Indian rock" turned out to be a 2,4000-year-old Early Woodland Adena cultural artifact with an estimated value of up to \$200,000.

In 2007, Low decided to reclaim the tablet in order to donate it to the Blennerhassett Museum of Regional History in Parkersburg, located near the site of his discovery. OHS refused; it acknowledged that it had no records proving a transfer of ownership, but this was not unusual for donations made in the 1970s. It did, however, produce two letters from OHS's director 1971 thanking Low for his "gift;" neither letter was on OHS letterhead, and one was unsigned. The gift was also allegedly acknowledged in OHS's newsletter. Low sued OHS in 2009 for the return of the tablet; OHS's attorney characterized the lawsuit as "frivolous." Low died in September 2010 at age 77, before the case went to trial, but his widow is continuing the lawsuit (Johnson, 2009, 2010a, 2010b).

Gift or Loan?

The difference between long-term loans and outright gifts is often barely discernable -- especially when the unfortunate oxymoron "permanent loan" is attached to an item. Some legal cases dealing with the issue are illustrative. *Magruder v. Smithsonian Institute*, 758 F.2d 591(11th Cir. 1985), involved a crib

known as the “Washington Cradle;” the item was given or loaned to the Smithsonian’s U.S. National Museum in 1932. The case is a prime example of the attenuated dispute process that may accompany even apparently unambiguous donations.

The owner, Marshall Magruder, wrote a letter to the Smithsonian’s Assistant Secretary, offering the cradle to the museum as a gift on behalf of his 20-year-old son, Peyton. He received a letter from the Smithsonian acknowledging the gift. Peyton was told by his sister that the cradle had been placed with the Smithsonian for “safekeeping,” but did not inquire further. Marshall Magruder died in 1956; in 1974, Peyton wrote to the Smithsonian on an unrelated matter, but also included an inquiry about the cradle’s condition and the statement that he “would like to obtain possession of the piece.” The Smithsonian responded, asserting that it had received the cradle as an outright gift; after various demand letters and replies, Peyton filed an administrative tort claim for the return of the cradle and damages of one million dollars in 1981. He died in 1982, and his residuary beneficiary took up the case.

One of Peyton’s arguments was that he was a minor at the time the cradle arrived at the museum, and thus he could not have legally made a gift to the Smithsonian. The court’s response was a classic “even so, so what”: by Peyton’s own admission, he knew of his father’s actions in 1974, if not earlier. Under the Federal Tort Claims Act, which applied to claims accruing on or after January 1, 1945, Peyton had two years to file his claim after his demand for the cradle was refused. As a result, his claim was time barred, and the cradle remained with the Smithsonian.

Some cases treat similar facts as involving bailments, or instances in which Party A (the bailor) entrusts his property to Party B (the bailee), with the expectation and agreement that the property will be cared for properly. *King v. Trustees of Boston University*, 420 Mass. 52, 647 N.E.2d 1196 (1995), involved a 1964 letter containing a “charitable pledge” by Dr. Martin Luther King, Jr. to Boston University (BU) of certain papers King had deposited there. (It is somewhat ironic after the Rutgers-*Partisan Review* dispute that BU turned up in yet another case of “deposited” papers, though the term was not at issue in the *King* case.) A relevant portion of King’s letter stated, “I intend each year to indicate a portion of the materials deposited with Boston University to become the absolute property of Boston University as an outright gift from me, until all shall have been thus given to the University. In the event of my death, all such materials deposited with the University shall become from that date the absolute property of Boston University.” (*King*, at 1119.) The papers were placed at BU in July 1964; in April 1968, King was murdered. By the mid-1980s, the Martin Luther King, Jr., Center for the Study of Non-Violent Social Change had been established in Atlanta, Georgia. The King family wanted the BU papers in Atlanta. In 1987, Coretta Scott King, as administratrix of her husband’s estate, sued BU, contending that the estate, not the university, held title to the papers.

However, a jury in 1993 found that the letter, coupled with the bailment in which BU assumed the duty to attend to the papers with “scrupulous care,” was sufficient evidence of King’s donative intent and BU’s reliance on his promise; the case was affirmed on appeal, and the university prevailed. Incidentally, archival scholar James M. O’Toole, an expert witness for the King estate, noted that BU had done “a very poor job” in its 30 years of possession of the papers, pointing to disordered record series, misfiled and “removed” documents, a disorganized finding aid, and the storage of the collection directly under a sewer pipe. (O’Toole, 2002, p. 27-33). Obviously, these factors were not dispositive.

Robeson v. Howard University, 2002 U.S. Dist. LEXIS 1370 (S.D.N.Y. 2002), involved similar facts; under an “agreement of deposit,” singer Paul Robeson transferred an assortment of his papers to Howard University in 1978 and 1979. In 2000, Robeson’s son contested the university’s title to the papers, noting that a signed deed of transfer was never completed. The opinion in the case deals with jurisdictional issues; however, given that the agreement of deposit stated that “the depositor hereby declares the intention to transfer to Howard University, for the benefit of the Research Center, title to the entire collection,” one might expect a resolution similar to that of the *King* case if the case reached a trial court. Indeed, according to the National Union Catalog of Manuscript Collections, it appears that the largest single collection of Robeson’s papers resides at Howard University’s Moorland-Spingarn Research

Center; for some reason, however, it is very difficult to find information about the collection on Howard's own website.

No such evidence of donative intent appeared in *In re Estate of McCagg*, 450 A.2d 414 (D.C. Ct. App. 1982). In 1917, Terese Davis McCagg loaned two paintings to the National Gallery of Art (later renamed the National Museum of American Art). There was no loan agreement per se; the arrangement was evidenced by correspondence alone, and the duration and termination of the loan were not mentioned. McCagg died in 1932, leaving her residuary estate to her siblings; neither they, nor her executor, seemed to be aware of the existence of the paintings. There the matter rested until 1979, when an art dealer brought the existence of the paintings to the descendants of the legatees' attention. The estate was reopened by petition in 1980 based on the newly-discovered assets.

The court characterized the loan of the paintings, without any limit on the time for demanding their return, as a bailment for an indefinite term. As such, the museum had no duty to return the paintings until the owner (or her heirs) demanded them. The museum, clearly unhappy about the revival of McCagg family claims some 63 years after the loan of the paintings, argued that the heirs were required to assert their continued ownership within a "reasonable time" after McCagg's death. The court, however, disagreed and refused to impose a limited time for making a demand, instead stating that the facts of the case must determine the implied contractual terms of the agreement: here, "the nature of the loaned property indicates that a loan spanning several decades would not be unreasonable, since, with appropriate storage or display, oil paintings can last for centuries. These circumstances establishing the reasonableness of a very long term loan distinguish this case from those in which a finite reasonable time standard was applied." (p. 9-10). The paintings were to be returned to the estate.

What can we determine from these cases? First, apropos of *Magruder*, the preference of courts to resolve disputes on procedural rather than substantive issues, if at all possible, is a given. Second, the court will look to the alleged donor's intent controls. In *Magruder*, young Peyton's father unambiguously gifted the cradle to the Smithsonian; in spite of Peyton's lack of desire to bestow what he saw as his birthright on the museum, Marshall Magruder was the owner of the cradle and able to do with it as he saw fit. Other cases are less clear-cut, and that brings additional factors into play.

Third, the nature of the repository and the nature of the item that is the subject of the bailment may be significant. In *McCagg*, the court noted that loans of paintings to museums could be of extended duration; the lack of a legal agreement, or anything beyond some correspondence, to establish the terms of the loan, was not untypical of the era, and it also provided some explanation for the lack of notice to McCagg's heirs. On the other hand, the King and Robeson collections predominantly or wholly consisted of papers, which tend not to be loaned for decades at a time; they required appropriate archival storage and processing (regardless, per O'Toole, of the *quality* of such processing), and thus an investment of time and effort; and, apparently, the contesting heirs were always aware of the existence and location of the papers. Further, the gifts, while not transferred with all formalities, carried with them sufficient documentation from which donative intent could be determined. (For a different result in the arts setting, see also *Desiderio v. D'Ambrosio*, 190 N.J. Super. 424, 463 A.2d 986 (1983), in which a claim for the return of three cast-iron statues was barred by laches, or unreasonable delay; the bailee in the case was a neighbor, the statues appear to have been displayed outdoors, and the artist-bailor knew or ought to have known that he had failed to reclaim his property in a timely manner.)

Two cases decided in 2010 involved bailment issues. *Lackawanna Chapter of the Railway & Locomotive Historical Society v. St. Louis County*, 606 F.2d 886 (8th Cir. 2010), involved an action for the return of a historic locomotive "No. 952," then on display at the Museum of Transportation in St. Louis, Missouri. The museum (or its precursor in interest, the National Museum of Transportation) had been in possession of the locomotive since 1953 for "permanent exhibition" or as a "permanent loan," according to various pieces of correspondence over the years. In 1990, the Historical Society began efforts to reclaim the locomotive; in 1995 it requested its release, or at least a temporary loan. The museum unequivocally rejected these options. The Historical Society filed suit in 2002.

The “permanent loan” was treated as a bailment by the court, so the Historical Society had to make a demand for the return of the locomotive. The museum argued that the demand and refusal took place in the 1990s, as witnessed in the discussions and letters between the parties; if so, the statute of limitations (five years for a replevin action) had already run. The Historical Society claimed that it did not make a demand until 2002. The court found in favor of the museum, stating that the correspondence, while not expressly using the word “demand,” clearly constituted an attempt to assert ownership and control of the locomotive, and an equally clear refusal by the museum. The court neatly skirted Missouri’s Museum Property Law, noting that since the statute of limitations had run, there was no need to discuss how the law might have applied.

Whittington v. Indianapolis Motor Speedway Foundation, 601 F.3d 728 (7th Cir. 2010), involved a 1979 Kremer Porsche owned by Whittington and either loaned or given to the Indianapolis Motor Speedway Hall of Fame Museum. Whittington alleged that he loaned the car to the museum in 1980 for an indefinite period of time, only realizing in 2004 that the museum claimed ownership of the car when he sought to display it elsewhere. There was no written documentation relating to the car’s status (the President and CEO of the Speedway Foundation stated that the museum’s gift and loan procedures were a bit “loosey goosey”). Under Indiana law, Whittington had the burden of proving his right to possession of the car, and the court found that his post-transaction behavior was inconsistent with a loan -- especially since he did not contact the museum about the car for over 20 years. In addition, the court noted that the museum possessed the car, there was testimony that the car was referred to as a “gift” in initial negotiations, and the museum listed it as an asset.

What these cases indicate -- especially when coupled with the Museum Property laws -- is that disputes regarding very long-term loans (not including cultural and confiscated property claims, which are beyond the scope of this article) appear to be in disfavor. While courts appeared reluctant to impose an affirmative duty on the part of the bailor to “check up” on his or her property in earlier cases, the statutes now place an affirmative duty on both the bailor to at least maintain minimal contact with the museum bailee. It appears that both legislators and courts are leaning toward the opinion that, absent truly extraordinary circumstances, it is unreasonable for a repository to be faced with claims 20, 40, or 60 years after the contested donation came into its uninterrupted possession and control. On their side, repositories are expected to make good faith efforts to locate “missing” donors, either by searching their own records, providing actual notice via mail and, if these efforts fail, constructive notice by publication (Dean, 2004)

Conclusion

Institutions regularly accept gift collections of marginal value, often because it is so hard to say no to donors. DeWitt (1988) notes that “refusing the offer is poor public relations, and no one wishes to hurt the reputation of the institution for which they work” (p. 358); he characterizes the motives for gift-giving as altruistic, egoistic, strategic, or a combination of all of the above. Citing Csikzentmihalyi and Rochberg-Halton’s *The Meaning of Things* (1981), DeWitt notes that photographs ranked second and books ranked fifth when people were asked what things they valued most: “Photographs ranked high because of their association values and the memories they invoked for the owners. Books, however, were highly prized by their owners for the ideals the books represented, both because of the message within and the intellectual associations they inspired” (DeWitt, p. 360). Despite the mass production of many titles and the relative ease of photo duplication, it is still a good idea to be aware of a donor’s sentimental attachment to these items – all the more so when the proposed gift is seen as an enduring legacy by its donor.

Today libraries and archives are in a difficult position: disposals and deaccessions are being subjected to more public scrutiny just as donors must be encouraged and cultivated. Clearly some gifts are simply not useful, or too labor-intensive, or too tied up with extraneous conditions. They should be avoided, and this is best accomplished by a readily available and clearly-written library policy document that presents a neutral and objective approach to the topic. Similarly, with regard to archives, well-known archivist Mark Greene (2006) believes that “reappraisal and deaccessioning can be as *public and transparent* a part of

our work as cataloging and reference, without harming the reputation of the repository—in fact, being open and honest about reappraisal and deaccessioning can positively help a repository in its relationship with not only resource allocators and peer institutions, but also with donors and researchers” (p. 7). Greene includes an example of a deaccession policy statement as an appendix to his article.

A policy aimed at gifts – whether a separate document or a section of a larger collections policy -- should at the very least include several specific elements: a statement of purpose for the institution or collection, criteria for acquisitions (including formats), loan procedures, reasonable access standards, and deaccession criteria and procedures (Marshall, 2002; Phillips, 1984). In Marshall’s 2001 study, only about 1/3 of the college and university archives sites surveyed included deaccession statements. This is easily remedied, as many institutions have made their policies available; they can serve as adaptable models for other repositories.

An important proviso should be included: the library’s right to accept donations on the condition that it reserves the right to dispose of any items which are later considered to be duplicative or unwanted. Two examples:

Once a gift has been accepted, it becomes the property of the Board of Trustees of the University. The Board delegates to the Library responsibility for determining the most effective way to use the material. The library may add the items to its collections, use them for exchange purposes, or otherwise dispose of them in accordance with Library policy. In general, it is not the policy of the Library to retain duplicates or items in poor condition, or to accept conditions with regard to the processing or housing of a gift that might restrict access to the materials. (University of Pennsylvania Libraries, 2010, para. 3)

Cassell, Johnson, Mansfield, & Zhang (2008) provide the following recommended language:

Disposal. Should any part of the gift/gift collection be found by the library to include materials that the library deems inappropriate for retention with the collection or for transfer to other collections in the library, the library shall offer to return the materials to the donor and allow the donor sixty (60) days from the date of such offer to reply. If the donor does not wish to receive said materials or designate another repository to receive them, or has not responded to the library’s offer by the end of the aforesaid sixty (60) days, the library may dispose of such materials in accordance with its procedures for disposition of materials not needed for the library’s collections.

In any event, libraries and archives can only strive to avoid the gifts nobody wants and hope to obtain the donations that are truly useful. As Massey (2005) concludes in a discussion of gifts to academic libraries, “the diamond in the trash does keep us hoping and looking” (p. 82).

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