

# “What Do You Mean the Museum Went Bankrupt?”: Lending Artifacts to Outside Institutions

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## Abstract

Archives regularly lend material to other institutions for exhibition. Lending items promotes the collection and expands the reach of the lending archives. Loans are usually beneficial to both parties. This case study describes what happened when the Ohio State University Archives loaned artifacts to a museum that subsequently declared bankruptcy. It recounts lessons learned during and after the process to advise archives that lend material.

Archives lend artifacts and other materials to outside institutions for a variety of reasons. Lending items expands public access to them. It promotes the archives in distant locations. It fulfills the archivist's mission of outreach and engagement. At the same time, archivists borrow artifacts from other archives and museums to add unique items to an exhibition or to enhance a case with three-dimensional artifacts when the collection only includes paper. In most cases, the exchange of artifacts and documents for exhibition is beneficial to both the lender and the borrower. The artifacts on display enrich the exhibition and the borrowing institution. The lending institution receives publicity and perhaps revenue or future patronage by those who see its materials. But collaboration, unfortunately may not always be mutually beneficial. This article describes what happened when the Ohio State University Archives (OSUA) lent artifacts to a museum that filed for bankruptcy during the loan.

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### Lending Materials for Exhibitions

Museums often borrow artifacts and other materials to complement exhibitions they create or host. Sometimes, they borrow just a few items to augment artifacts that come primarily from their own collections. At other times, museums mount traveling exhibitions that consist primarily of items borrowed from external sources. In both cases, museums are expected to follow certain protocols.

Complications or problems between institutions rarely arise when standard procedures are followed. The American Association of Museums' *Code of Ethics for Museums* describes what the association expects of all American museums. The code states that "acquisition, disposal, and loan activities [must] conform to [the museum's] mission and public trust responsibilities."<sup>1</sup> Loans should be done carefully to ensure the items borrowed meet the needs of their patrons. Collections in the museum's custody, owned or borrowed, must be "protected, secure, unencumbered, cared for, and preserved."<sup>2</sup> Additionally, the association's "Guidelines on Exhibiting Borrowed Objects" states that "museums have an obligation to record and maintain documentation of important activities, including the process of borrowing for exhibitions."<sup>3</sup>

David Dean examines every aspect of exhibitions in *Museum Exhibition Theory and Practice*. Dean states that a "loan agreement clearly defines the roles and expectations of both institutions."<sup>4</sup> Lenders should use their own loan form rather than the borrower's or, at the least, should carefully scrutinize the latter for extra restrictions, fees, or handling concerns. A satisfactory loan agreement includes a description of the object, accession or catalog numbers, purpose of the loan, duration, insurance requirements, credit lines, any special conditions or restrictions, transportation, and signature lines. These criteria for loan agreements are standard for museums.<sup>5</sup>

Archivists follow similar protocols. Before lending, an archives should have a loan policy in place approved by its governing authority. It should require that its agreement is completed and that it specifies conditions and responsibilities. Some institutions, such as the National Archives and Records Administration, state that staff "may make site inspections before and during the loan to ensure

<sup>1</sup> American Association of Museums, *Code of Ethics for Museums*, <http://www.aam-us.org/museumresources/ethics/coe.cfm>, accessed 14 December 2009.

<sup>2</sup> American Association of Museums, *Code of Ethics*.

<sup>3</sup> American Association of Museums, *Guidelines on Exhibiting Borrowed Objects*, <http://www.aam-us.org/museumresources/ethics/borrowb.cfm>, accessed 14 December 2009.

<sup>4</sup> David Dean, *Museum Exhibition: Theory and Practice* (New York: Routledge, 1994), 85.

<sup>5</sup> The National Park Service has an excellent handbook on museum records with a section on outgoing loans. The section includes sample loan forms and condition reports, as well as instructions and other references. The handbook is available at <http://www.nps.gov/museum/publications/MHII/mushb-kII.html>, accessed 7 October 2010.

compliance with loan requirements.”<sup>6</sup> Loan agreements should stipulate the environmental conditions of the facility exhibiting the artifacts, methods for mounting or supporting them, proper packing and shipping procedures, financial agreements, and customs issues for international loans.

Typically, the lender requires that the borrowing institution pay for a “wall-to-wall” insurance policy, which covers any loss or damage to the borrowed material from the time it leaves the lending archives until it returns at the end of the loan. Many insurance policies include exclusions that are important to review. Exceptions may include normal wear and tear, damage resulting from repair work, and terrorism.<sup>7</sup>

### The Case Study

Ohio State University Libraries (OSUL) follows an established procedure when loaning materials from its collections: The curator or archivist agrees to (or denies) the loan after consulting with the assistant director for special collections and archives and receiving approval from the Exhibits Committee. The borrowing institution must provide a facility report to prove that its facility meets museum standards and that the items will be secure. Borrowing institutions fill out either the OSUL loan form or, with permission, their own loan form, and they pay for transportation and insurance. The certificate of insurance covers the materials from the time they leave OSUL until they return. The lending curator fills out part of the condition report that describes the outgoing condition, and the borrowing institution completes the report to document the condition of the materials when they arrive.

The policy, in place with slight revisions since 1987, allows OSUL to expand the reach of its collections. Outreach is important throughout the university; the Office of University Outreach and Engagement states that “Our mission as a land-grant institution is to lead the way in making our knowledge more accessible to others,”<sup>8</sup> and lending items to other institutions is one way of doing so. It also builds goodwill among the wider profession and helps create interesting and useful exhibitions. Finally, it allows unknown, or less familiar, items a chance to shine.

OSUA, which is part of the university libraries and therefore follows the same policies and procedures, loans more materials from the Jesse Owens

<sup>6</sup> United States National Archives and Records Administration, “Frequently Asked Questions: Borrowing Documents or Artifacts for Exhibitions,” <http://archives.gov/exhibits/borrowing-materials.html>, accessed 12 January 2011.

<sup>7</sup> Brendan Connell, “Museum Loans and Insurance,” *IFAR Journal* 9, nos. 3–4 (2007): 41.

<sup>8</sup> Ohio State University Office of University Outreach and Engagement, “Frequently Asked Questions about Outreach and Engagement,” <http://outreach.osu.edu/FAQ.php>, accessed 14 December 2009.

Collection than from any other in the archives. The more than 400 artifacts in the collection range from Owens's 1936 Olympic gold medals and diary to trophies and plaques given to Owens decades later. During one recent month, museums in California, New York, and Washington, D.C., borrowed items from the collection.

In August 2007, a curator at the soon-to-be-established Sports Museum of America (SMA) in New York City contacted the University Archives. According to the material the curator sent to OSUA, as well as the SMA website, Philip Schwalb and Sameer Ahuja cofounded the museum in 2003. "In 2001, Mr. Schwalb first envisioned the opportunity for a national, collaborative museum of sports."<sup>9</sup> Schwalb believed SMA would be part of the revitalization of lower Manhattan, close to Ground Zero. SMA was touted as the "first national museum to celebrate all sports under one roof."<sup>10</sup> The governing board and staff, including Schwalb and Ahuja, had impressive resumes. All had years of experience, including the curator who had worked in several well-respected museums before working at SMA.<sup>11</sup> In addition, SMA's Board of Honorary Trustees included a long list of famous athletes, including Ohio State's two-time Heisman Trophy winner, Archie Griffin. Its press packet included letters from Mayor Michael Bloomberg, New York congressional representatives, and a press release from Governor George Pataki. It had articles from the *New York Times* stating that SMA would be the new home of the Heisman Trophy and that it would house the first hall of fame in the United States dedicated to women's sports. Museum contributors and partners included the Basketball Hall of Fame, Women's Sports Foundation, NASCAR, and the National Football League.<sup>12</sup>

The curator said that the museum staff hoped to add something from the Jesse Owens collection to its collection. After I explained that OSUA does not lend artifacts permanently, the curator asked if they could borrow several items, and, after returning them, borrow others as replacements.

SMA had all the right paperwork (loan forms, facility report, and insurance). We did not see any reason not to lend it the materials. Everyone agreed to the terms of the loan, and the loan was approved. The SMA curator agreed to use our loan form but asked us to use their loan form as well, which was even more detailed than ours. Having no reason to object, we agreed to use both. Seven items from the Owens collection comprised the first loan, including several 1936 Olympic artifacts: the camera he took to Berlin, his diary, and one of his gold medals. The date of the loan ran until July 2008. In June, I contacted

<sup>9</sup> Sports Museum of America, "People," [http://thesportsmuseum.com/about\\_founder.html](http://thesportsmuseum.com/about_founder.html), accessed 9 June 2010.

<sup>10</sup> Bill Pennington, "Sports Museum and Heisman Find Place in Lower Manhattan," *New York Times*, 13 April 2005.

<sup>11</sup> Sports Museum of America, "People."

<sup>12</sup> Pennington, "Sports Museum and Heisman Find Place in Lower Manhattan."

Appendix 2

The Ohio State University Libraries  
Condition Report for Materials Lent for Exhibition<sup>4</sup>

Exhibition Title: When the World Comes Together (Sports Museum of America)

Date of loan: July 8, 2008 – November 8, 2008      Inventory item no.: 257

Creator: Jesse Owens Collection

Title: Ebony Magazine Trophy

Date of object: August 1949      Medium: Wood and metal

Dimensions (length x width x depth in centimeters):

Object size: 23 1/2"Hx11"Wx11"D

Frame size: n/a

Description: Trophy with plate "To Jesse Owens 1936 Olympic Champion In Recognition of his selection as the greatest Negro athlete of all time in poll conducted by Ebony Magazine."

Condition: Wood base if worn, cracked on top, corner missing on back bottom.  
Figure on base back is missing most of second arm and laurel.  
Figure on top of metal cylinder is missing above shoes.

Condition report prepared by: Tamar Chute      Date: July 2, 2008

Condition report updated by:      Date:

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One copy of the form is to accompany each item lent for exhibition by The Ohio State University Libraries. Upon receipt of the object, the borrower is to indicate on this form (preferably in red ink) whether or not the material arrived in the condition indicated. Please write SAME in the blank below if the material arrived in the condition described herein. Should any differences be noted, please indicate them below.

This condition report form is to be completed and returned to the lender within five working days of its receipt.

Date of receipt of object: 7/10/08

Inspected by (name of person): Suzanne Prabuchi

Condition of object upon receipt: Front right and rear left figures are loosened.

<sup>4</sup> This form may be adapted by collection managers as they deem appropriate as long as the necessary information outlined above is included.

FIGURE 1. Condition report.

the curator to see which items should be in the second loan. Four new artifacts were chosen: a trophy from *Ebony Magazine* recognizing Owens as the "greatest Negro athlete of all time," a thank-you letter from the United States Olympic Committee, an invitation to be a guest of honor at the 1972 Munich Olympic Games, and another 1936 Olympic gold medal. SMA returned the first set of artifacts, and we mailed the second set to the museum.



In December 2008, it was time to retrieve our items and send out a third loan. I attempted to contact the curator who had initiated the previous loans, but I discovered that she no longer worked at the museum. Instead, the director of museum exhibits responded to my email message and asked me to extend the loan until after the holidays. He also asked if I could send him a CD containing photographs of all the Owens artifacts in our collection. The director requested some time to review the images and the finding aid to determine which new artifacts he would like to borrow. This seemed reasonable, and we agreed to extend the existing loan.

In January 2009, I contacted the director to see if he had given any thought to which items he would like to borrow. He said he would be in touch soon. On 23 February, we received a group email message from the director stating that “as of Friday, February 20, 2009, the Sports Museum of America has closed. I want to thank you for your support in making the SmA [*sic*] a reality. We are in the process of implementing an orderly process to ensure the safe return of all the artifacts.”<sup>13</sup> Unbeknownst to us, the day before, the *New York Times* had reported that SMA was plagued by low attendance, high construction costs, and lack of publicity. A law firm had been hired to restructure its debt, but the chief lawyer stated that “the museum would probably liquidate its assets and return memorabilia to the owners.”<sup>14</sup>

Organizing the materials in the museum for dispersal to all of the lenders would have been a daunting task. As explained in an article shortly after the museum opened, 98 percent of the artifacts in the museum were there on loan. More than 200 groups and 120 individual athletes contributed to the museum in some way.<sup>15</sup> The director of museum exhibits sent an email encouraging institutions or individuals located in or around New York City to pick up their materials. He said he would be at the museum that week handling returns. The director stated that the museum would return items to lenders outside New York as quickly as possible. The director’s message ended with the statement that “on Friday, the SmA will file for bankruptcy and a trustee will be appointed.” SMA staff would no longer be responsible for the artifacts, which would be transferred to a storage facility in New Jersey.<sup>16</sup>

Surprised at this turn of events, we immediately pressed the director for answers. When would our materials be returned, how would they arrive, and who would be the main contact during this time of transition? The director did not return our phone calls or email messages. We tried to fax the museum, but

<sup>13</sup> Sam Gordon, email to author, 23 February 2009.

<sup>14</sup> Richard Sandomir, “Financial Problems Cause Sports Museum of America to Close,” *New York Times*, 22 February 2009.

<sup>15</sup> Alan M. Petrillo, “Sports Museum of America Opens in New York City,” *Antique Trader*, 4 June 2008.

<sup>16</sup> Sam Gordon, email to author, 9 March 2009.

the number was no longer working. We felt slightly panicked, but we thought surely the mystery would be resolved quickly. We learned that the museum reported a debt of \$177 million and that a bankruptcy court trustee would now be in charge of everything formerly held by SMA.<sup>17</sup>

By April, we were very concerned. Were the materials ever coming back? Had we lost Jesse Owens's gold medal? How would the university president or the board of trustees react to the news? We had no choice but to wait, anxiously. Finally, on 13 April, a lawyer from a financial restructuring and bankruptcy group sent an email message stating that the court had appointed a bankruptcy trustee. "Please note, that per the law, the trustee is solely responsible for the affairs of the SmA at this time, and is the only person authorized to handle your inquiries."<sup>18</sup>

At that point, we started trying to understand briefs, motions, filings, and other court documents filled with nearly indecipherable legal jargon. On 14 April 2009, the trustee filed a motion in the United States Bankruptcy Court (Southern District of New York) to handle the artifacts that he was now responsible for evaluating. The trustee asked the court's approval to impose a fee on the owners of the artifacts to cover the expense of determining which artifacts belonged to whom. The fee was based on the number of artifacts that had to be returned to a specific entity or individual. Anyone who wanted to argue the fee had to do so within a week. Items that were not claimed would be sold at auction to pay off SMA's creditors.<sup>19</sup>

Immediately, we contacted OSU's legal department. What should we do? Who would pay this fee? We certainly could not let Jesse Owens artifacts be sold at auction! Our legal department determined that the university would have to retain legal counsel in New York to oppose the motion. The staff contacted the State of Ohio Attorney General's Office for guidance. The lawyers there contacted the attorneys in New York to discuss the case. The attorney general's office determined that the quickest, and least expensive, way to get the artifacts back was to pay the fee and fill out the ownership claim forms as soon as possible.

While we were willing, grudgingly, to pay the fee, other entities with legal representation in New York were not. As the *Wall Street Journal* reported, paying for the return of artifacts "doesn't sit well with many of the athletes and organizations that lent the items with the understanding they'd eventually be

<sup>17</sup> Phil Wahba, "Update 1-N.Y. Sports Museum Operator Files Bankruptcy," *Reuters*, 16 March 2009, <http://www.reuters.com/article/idUSN1652920620090316>, accessed 17 December 2009.

<sup>18</sup> Jeffrey D. Vanacore, email to author, 13 April 2009.

<sup>19</sup> Jeffrey D. Vanacore, email to author, 21 April 2009.

returned.”<sup>20</sup> For some smaller nonprofit institutions, such as the National Soccer Hall of Fame, having to pay to have items returned was a significant expense. “‘We’re being held up,’ said [Soccer Hall of Fame] spokesman Jack Huckel.”<sup>21</sup> Those filing objections included the Hockey Hall of Fame, Heisman Trophy Trust, and the Basketball Hall of Fame. They objected to the fee, questioned how the items would be given back to the owners, and argued that the trustee should not be able to sell or abandon any property.

What were the responsibilities of the insurance company that had accepted premiums from SMA to insure the artifacts? Did it have the responsibility to pay for the return of the artifacts? Was it still insuring the artifacts in the storage facility? The insurance company argued that it was no longer responsible for insuring the items since its client, SMA, no longer existed. The trustee, answering the legal challenges, stated that the trustee should not “bear the risk XL [insurance company] knowingly took—in exchange for an insurance premium—in connection with insuring property. XL should bear the risk relating to its policies.”<sup>22</sup>

On 5 May, the trustee sent another email message with a Notice of Abandonment that stated that the trustee no longer had anything to do with the borrowed items. The “...Trustee has determined the above referenced property... is of no value to the estate and therefore not necessary to the Trustee’s administration of the estate.”<sup>23</sup> All non-estate materials were being held at the storage facility, which would now be responsible for returning the artifacts. Included in the message were the telephone number and email address for the facility. XL insurance, it seemed, would be moving the artifacts.

Accordingly, we contacted the storage facility. At first, the receptionist took only names and telephone numbers. By mid-May, a staff member at the facility told me a coordinator had been hired and would start “soon.” On 1 June, I called again and finally talked to the storage facility director. He told me the artifacts were in hundreds of boxes with no inventory of any kind. It was complete chaos. However, the director also said that someone, he was not sure who, compelled the insurance company to hire one of SMA’s former registrars to identify owners and return the artifacts. Finally, we were getting somewhere! The director suggested I send another message to an email address that the storage facility had created for the person returning the items. Once done, the former registrar immediately replied, asking me to send all the paperwork to her at the storage facility. She would box our artifacts; we would need to pay for

<sup>20</sup> Reed Albergotti, “My Sports Bra Is Where, Exactly?” *Wall Street Journal*, 23 April 2009.

<sup>21</sup> Albergotti, “My Sports Bra Is Where, Exactly?”

<sup>22</sup> Lisa Indelicato, email message to author, 28 April 2009.

<sup>23</sup> Arent Fox, email message to author, 5 May 2009.



the return shipping and insurance. The next day I sent ownership claimant forms to the storage facility with all the supporting documentation—the loan form (signed originally by the same registrar now organizing the mess), certificate of insurance, and email correspondence with her regarding the loan. I spoke with a member of the university's risk management office who said we should pay for additional insurance from the shipping company, so we did.

On 21 July, the artifacts were returned to the archives. All the items were there—the 1936 Olympic gold medal, the *Ebony Magazine* trophy, the invitation to the 1972 Munich Olympic Games, and the thank-you letter from the United States Olympic Committee. The artifacts were wrapped in traditional packing material, as well as foam hands that SMA must have sold at its gift shop. The gold medal was tucked inside one of those. Three of the items came back in the same condition as they had left the archives. Unfortunately, the trophy did not. Two of the trophy's figurines were broken off and were wrapped separately. At least they were not discarded or lost during the many transitions. As I mentioned to a coworker, if we wanted to protest, to whom would we complain? We would have the university's conservator fix the trophy. At long last, we had everything back and secure in our stack area.



FIGURES 2 & 3. Before and after condition of Owen's trophy. *Ebony Magazine*.

## Lessons Learned

Our experience with SMA was certainly eye-opening for the University Archives and OSUL Special Collections. We thought our loan policy was standard. We required a certificate of insurance and a standard facility report, and the approval process went through proper channels. Everything went smoothly during the first loan, giving us no reason to suspect that anything would change the second or third time. SMA followed proper loan procedures and the American Association of Museums' guidelines. Its certificate of insurance covered loaned material on a “wall-to-wall” basis with traditional exceptions, such as gradual deterioration, nuclear reaction contamination, and risk of war. Its loan agreement looked similar to the sample agreement in several different museum management books.<sup>24</sup> Neither our loan agreement nor theirs covered closure or bankruptcy of the borrowing institution.

Would more financial information about SMA have made a difference in the loan? SMA was registered as an LLC (limited liability company) with the State of New York. Even if I had asked, I do not believe it would have shown me any financial documents because LLCs do not make their financial information public. Even if I had seen that information, I am not sure it would have mattered. A financial statement, or budget plan, could not have predicted the number of visitors to the museum or its final debts. Perhaps more importantly, should the archives have required that the insurance company cover closure, for any reason, of the museum and the return of our artifacts?

After the items were returned from SMA, we realized our loan form had not been reviewed by OSU's legal department since it was first written in 1987. The department advised us to add language:

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, limited, however, by any provisions herein expressed to the added contrary. This agreement shall be governed under the laws of the state of Ohio. Any actions, suits or claims that may arise pursuant to this Agreement shall be brought in the state of Ohio.

We also added a clause stating that the insurance company is responsible for returning material to us if the borrowing institution closes for any reason. The new stipulations have not been tested, but we hope to avoid any similar situations.

<sup>24</sup> A good example can be found in Marie C. Malaro, *A Legal Primer on Managing Museum Collections* (Washington, D.C.: Smithsonian Institution Press, 1998), 252–56.

### How All Archives Could Be Affected: Museums and Archives in Financial Difficulty

SMA is not the only museum to close or to lose significant funding. Even the wealthiest museums have been hurt by economic downturns. The Getty Trust, which funds two museums, was forced to cut 25 percent of its budget in early 2009. Some museums cut back or postponed exhibitions, while others reduced hours and staff. A survey by the American Association of Museums completed in early 2009 showed that some museums planned to merge while others considered closing.<sup>25</sup> The *Art Newspaper* reported that “a growing number of exhibitions are being cancelled because of the recession.”<sup>26</sup> This included exhibitions in Barcelona, Toronto, Philadelphia, and Chicago—some of which had been planned for many years. Either scenario could be a problem for an archives that lent materials to these museums.

Though lending archivists can do only so much to ensure the safe return of their items, they should make sure their loan agreement is explicit and that the required insurance coverage includes stipulations about the insurance company paying for the return of materials to the home archives if the borrowing institution is unable to do so. “Wall-to-wall” coverage covers physical loss or damage only, not the return.

While material is on loan, archivists should periodically review any available information about the borrowing institution, especially from media sources. The *New York Times* wrote about SMA’s demise before the first email message was sent to the lending institutions. If we had read the article, we could have pushed for SMA to return our artifacts before it declared bankruptcy while the staff was still employed. We might have had a staff member who was visiting New York City when SMA first closed pick up our material. Instead, we relied on the museum’s employees for information and solutions.

It is human nature to downplay mistakes, especially ones that could have been disastrous. Even if we, and other archivists, follow the advice above, there is no guarantee that doing so will mean avoiding a similar fate. However, I hope that others can learn from our mistakes—strengthen your loan agreements, pay attention to the ongoing status of the borrowing institutions, and always have good back-up documentation. By doing so, you may alleviate some of the hassles that occur when you attempt to retrieve your materials from a closed or bankrupt institution.

<sup>25</sup> Jason Edward Kaufman, “Troubles Deepen for Museums: Layoffs, Budget Cuts and Cancelled Shows,” *Art Newspaper*, April 2009.

<sup>26</sup> Jason Edward Kaufman and Martin Bailey, “Exhibitions Axed as Recession Bites,” *Art Newspaper*, June 2009.