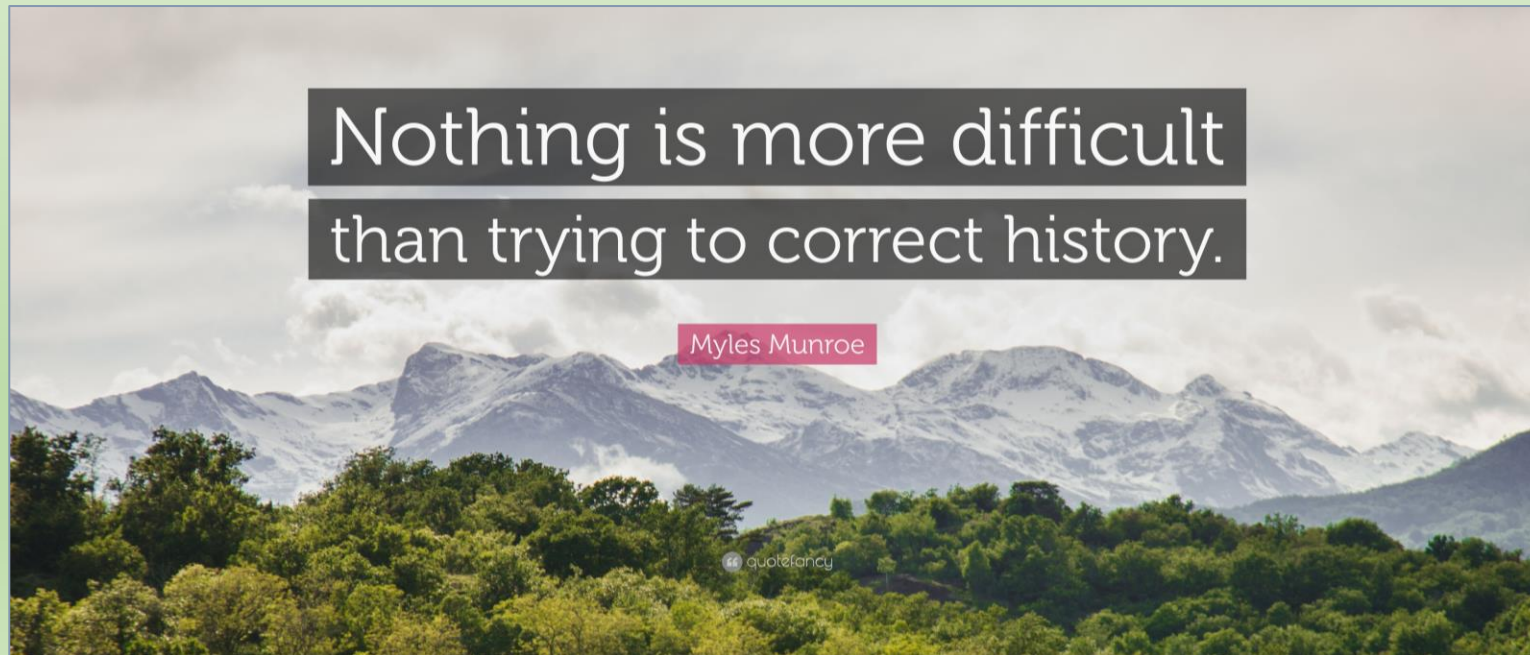


C&O Canal Company's 1890
Bankruptcy Case:
*The Establishment of
A Nearly-50-Year Trusteeship
And Related "Zombie History"*

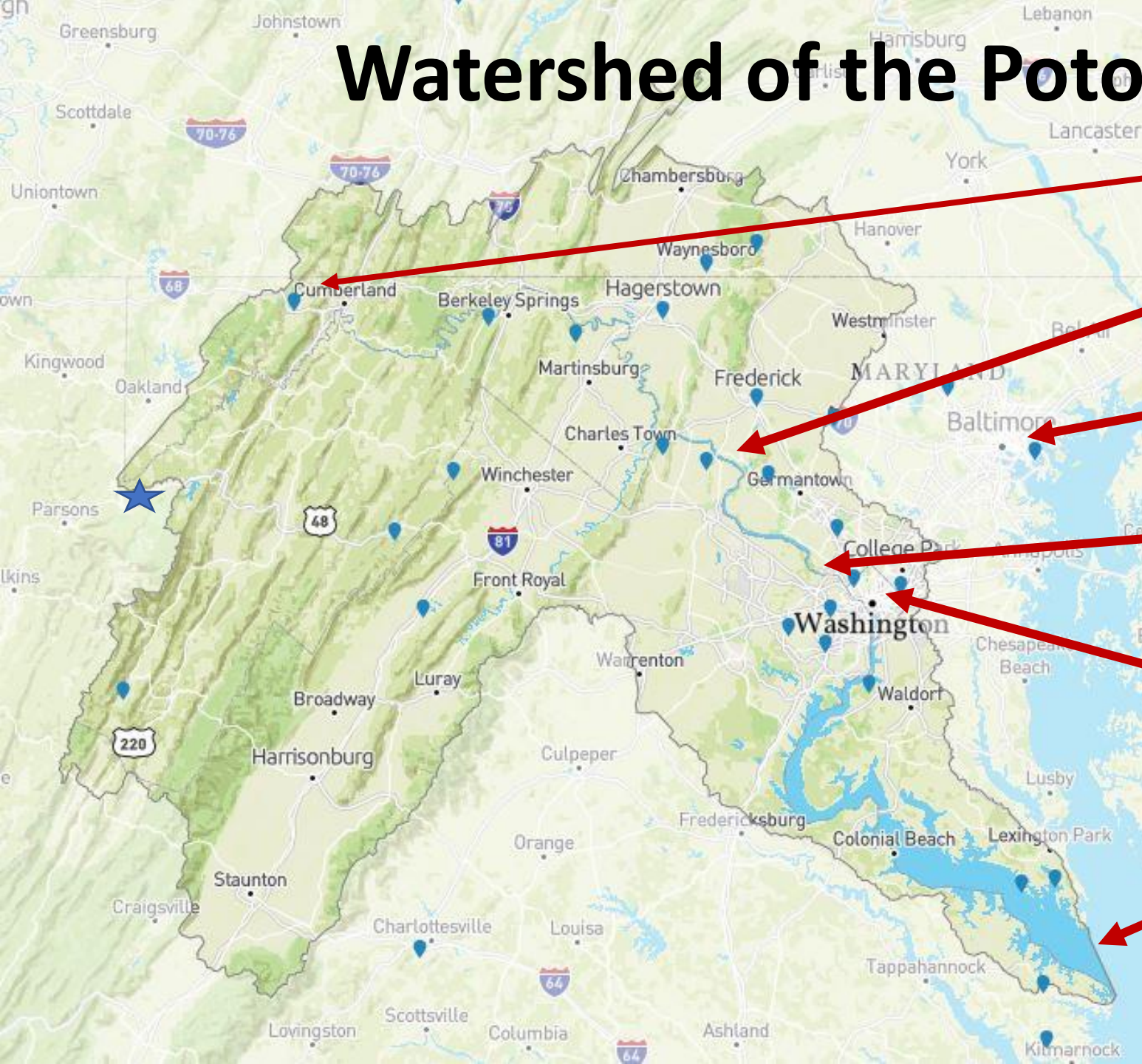
Zombie History is bad history we can't to get rid of.
While this presentation is about C&O Canal history,
it also addresses one of the themes of this conference,
that of **education, in this case highlighting wrong**
“history” that continues to be written and taught?



It will help to know that:

- The C&O Canal and B&O Railroad **both had their ceremonial beginnings on July 4, 1828.**
- Both works **shared the Potomac Valley from Point of Rocks to Cumberland, Maryland.**
- The **B&O's tidewater connection was at Baltimore** on the upper Chesapeake Bay and the **C&O's tidewater connection was the federal district** on the upper tidal Potomac.

Watershed of the Potomac River



Cumberland

Point of Rocks, MD

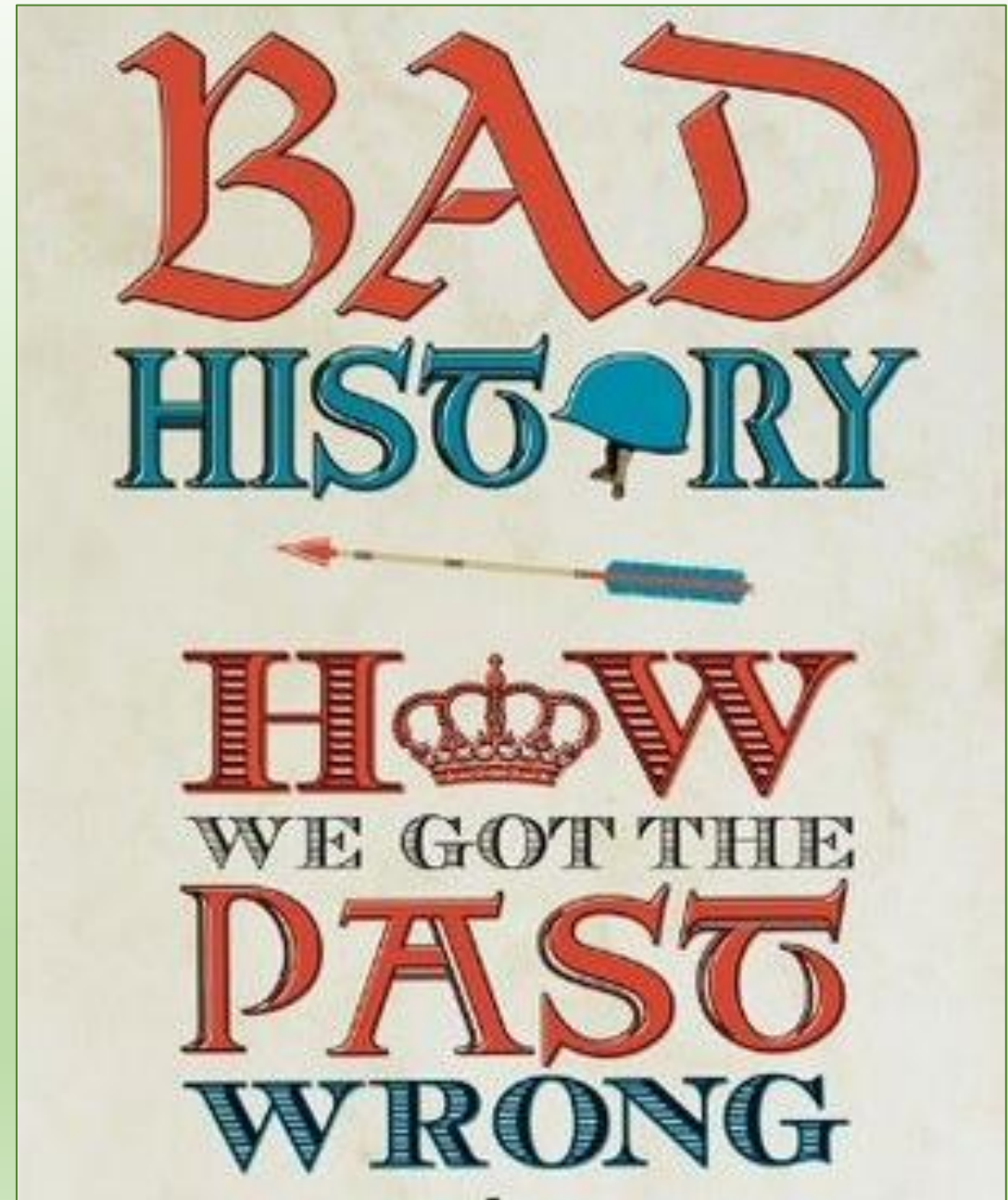
Baltimore

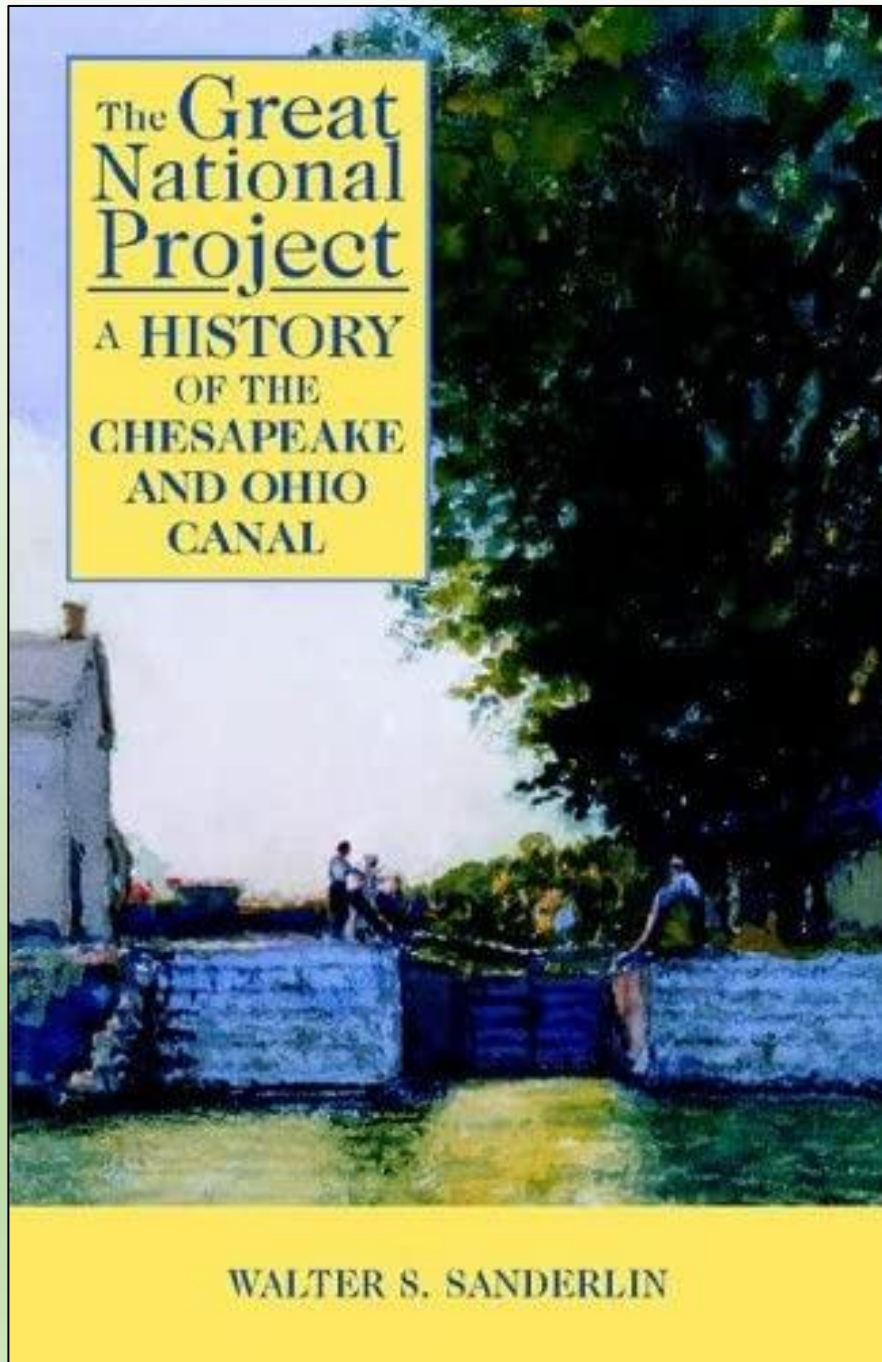
**Upper extent of tidal
Potomac at Little Falls
& District of Columbia**

**Mouth of the Potomac
at the Chesapeake Bay**

Zombie History v. Court Records

- Some of the most **durable myths and falsehoods in C&O Canal history** are found in its major secondary sources and still **show up in new material and interpretation**.
- I'll compare examples from those sources and the court records that challenge them.





“The Great National Project” IS THE MOST POPULAR AND WIDELY READ C&O CANAL SECONDARY SOURCE

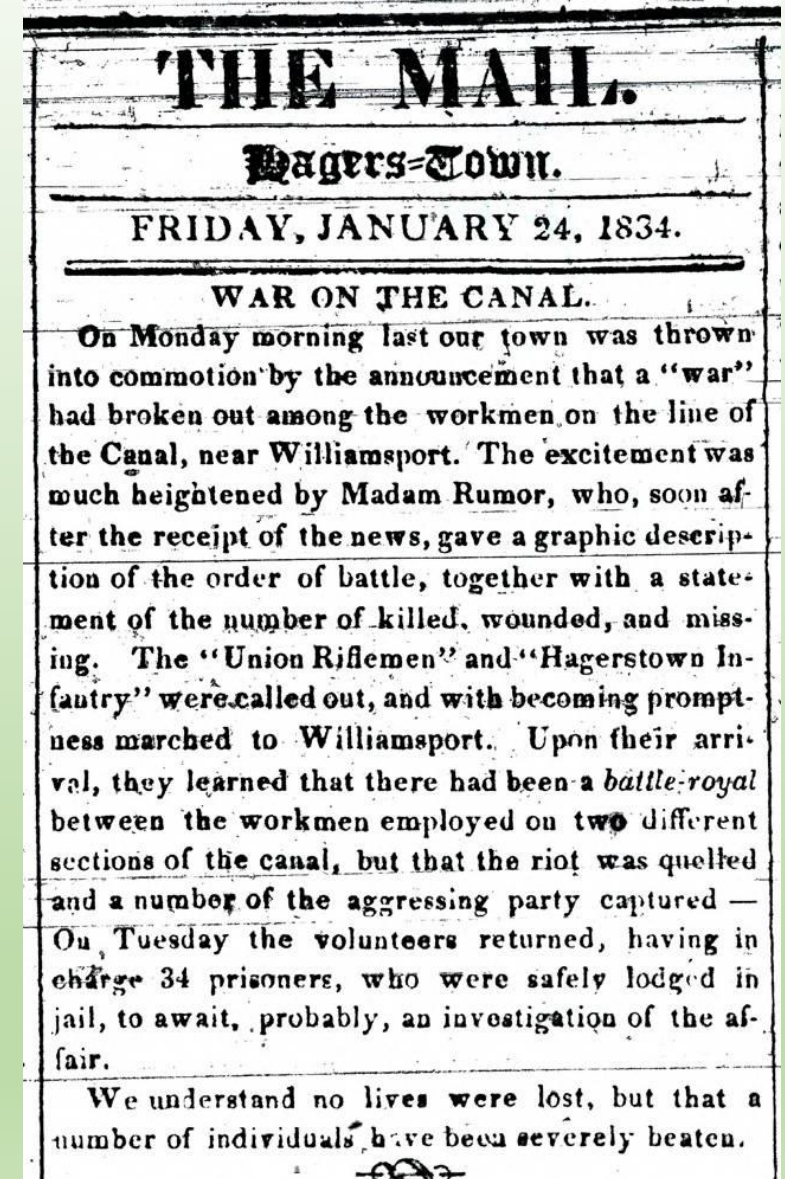
- Johns Hopkins Press, 1946 and reprinted in 1982 and 2005.
- Essentially a doctoral dissertation done at the University of Maryland.
- **Primarily an administrative history.**
- An **invaluable history** based largely on the C&O Canal **Company records.**

- The C&O Canal Company records are currently held at the NARA (National Archives and Records Administration) facility in College Park, MD.
- In National Park Service Record Group 79.12.2



What records are largely missing from our 20th C. sources:

- The human side. The life of the boat, lock, and maintenance people.
- The community's side: News reports, editorials, letters, etc.
 - ✓ Especially as regards the politics and people's thinking relating to the canal.
 - ✓ Detailed shipping information.
 - ✓ Reports on events happening along the canal, good, bad, and revealing.



Also missing: the information in the voluminous court records concerning the canal's 1889–1890 bankruptcy.



Washington County, MD Courthouse in Hagerstown where the C&O Canal bankruptcy cases were heard.

Today our concern is:

1889+ Court records that are:

- Narrowly focused.
- They lack a rich context,
E. g. the social and political
context for the laws and
precedents.
- But they **pick up where the
canal company records
become all but non-existent**
as record-keeping passed to
the 1890–1938 trusteeship.

Walter Sanderlin:

- Saw some of the court
documents and references
them.
- But others he appears not to
have seen,
- He clearly lacked the sources
essential for a full context and
the more accurate story of the
post-1889 history,
resulting in some **factual errors
and misunderstandings.**

Almost all subsequent works **built on and incorporated Sanderlin**,
Including:

Harlan Unrau's **handwritten** mid-1970s *Historic Resource Study*.

- A poor quality typed transcription was made in the early 1980s.
- From 2000-2007 volunteers transcribed the handwritten pages into MS Word, and that work (though never proofread) is **available in a free PDF version**.

**Historic Resource Study:
Chesapeake & Ohio Canal**

By

Harlan D. Unrau

United States Department of Interior
National Park Service
Chesapeake & Ohio Canal National Historical Park
Burgessville, Maryland
August 2001



Revised by
Karen M. Gray
Headquarters Library Technician
Chesapeake & Ohio Canal National Historical Park

NPS works such as Historic Structure and Landscape studies, etc., also incorporate errors due to inadequate and flawed source materials.

Currently new NPS studies are done by contract historians assigned a narrow subject.

However, they include flawed material drawn from Sanderlin, Unrau, and other 20th C. works.

So, for example, **from the new Georgetown Cultural Inventory:**

*“According to the work of canal historians Unrau and Chaffer, as a majority stockholder of Washington County, Maryland, the courts **granted the B&O Railroad receivership** of the C&O Canal on March 3, 1890.*

*The implication of the court proceedings **allowed the railroad to absorb the canal the waterway out of the railroad assuming responsibility for the maintenance of the canal.***

The **B&O RR did NOT hold any C&O Canal stock** let alone a majority of it.

Maryland became a majority holder of canal company stock in 1844 when the stock held by the US government was transferred to it.

The legal issues in the **1890 cases concerned bonds —NOT STOCK—issued by the C&O Canal Company** under Maryland authorizing acts of **1844** and **1878**.

The new Georgetown study is a good example of **Zombie history in new C&O Canal NHP documents**.

Sources of the Zombie History

Sanderlin's account of the 1890 bankruptcy, contains the following **erroneous statements**:

*“Judge Alvey and his successor **ultimately ruled in favor of the railroad's interests**”*

AND statements such as *“the **receivers** announced that they had **changed the terms of the lease** and were ready to repair and operate the canal*

And he **continues to refer to the actions of the “receivers” and the courts’ as reflecting the interests of the B&O RR.**

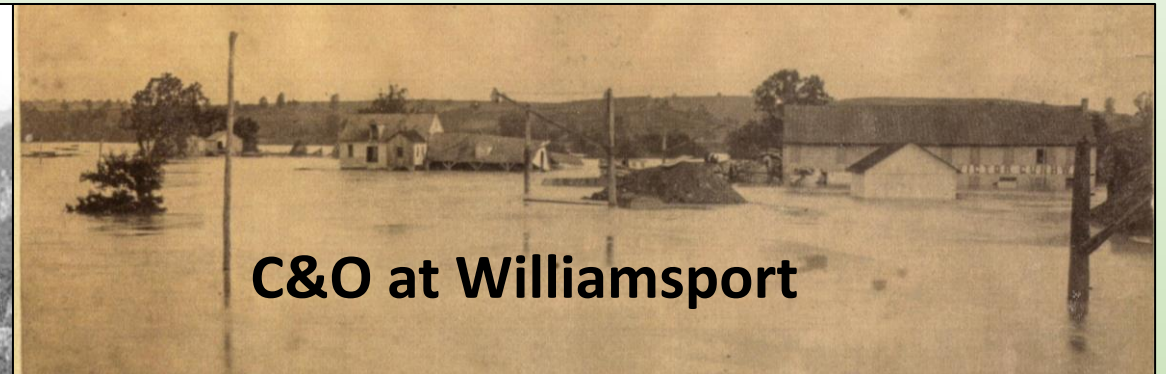
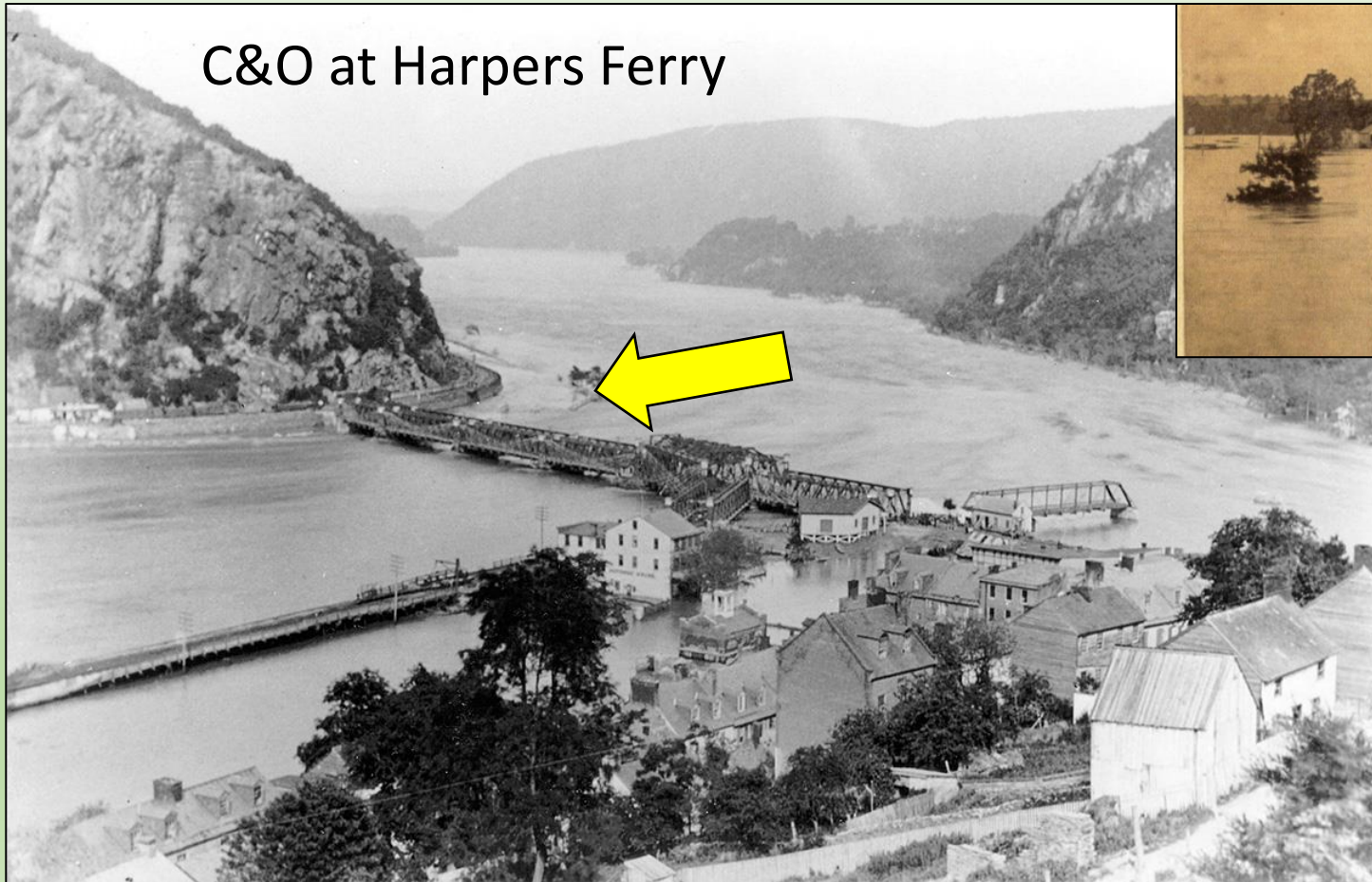
FALSE

As stated in one of the early Bills of Complaint to the Maryland court, the **great legal battle over the canal in 1890 all came about because:**

In May [31–June 1] 1889, a great storm along the line of this Respondent's Canal, and a freshet in the Potomac River swept away said Canal so as to make it an entire wreck, and that it has been closed ever since.

The President and Directors have reported that it will require three hundred thousand dollars to put the Canal in such repair that it can be again operated.

Although the canal was badly damaged, that it was “swept away” and was “an entire wreck” will prove to be a vast exaggeration.



BUT: *“The Respondent Company has made every reasonable effort to raise the water level of the Canal in repair and running order, but has been unable to do so, and it must remain as it is, unless assistance comes from some source outside of the Corporation itself.”*

And this is true!



The same storm resulted in the deadly Johnstown, PA flood on the west side of the Eastern Divide.



C&O Canal at Chain Bridge

- The first Bill of Complaint against the canal company was **filed on December 31, 1889** in the **Circuit Court for Washington County, Maryland** and given the number **4181**.
- It was filed by the **trustees for the holders of the C&O Canal Company bonds** authorized by the Maryland legislature in its **1844** session (but not issued until 1848).
 - For \$1,700,000 worth of bonds.
 - To **complete the construction of the canal** to Cumberland.
 - With the bonds mortgaging the **future tolls and Revenues** of the canal company that would be its profits.

Consider: The mortgage connected with these bonds depends on the canal being operated and earning significant income.

If it is not operated, the bonds would appear to be worthless.

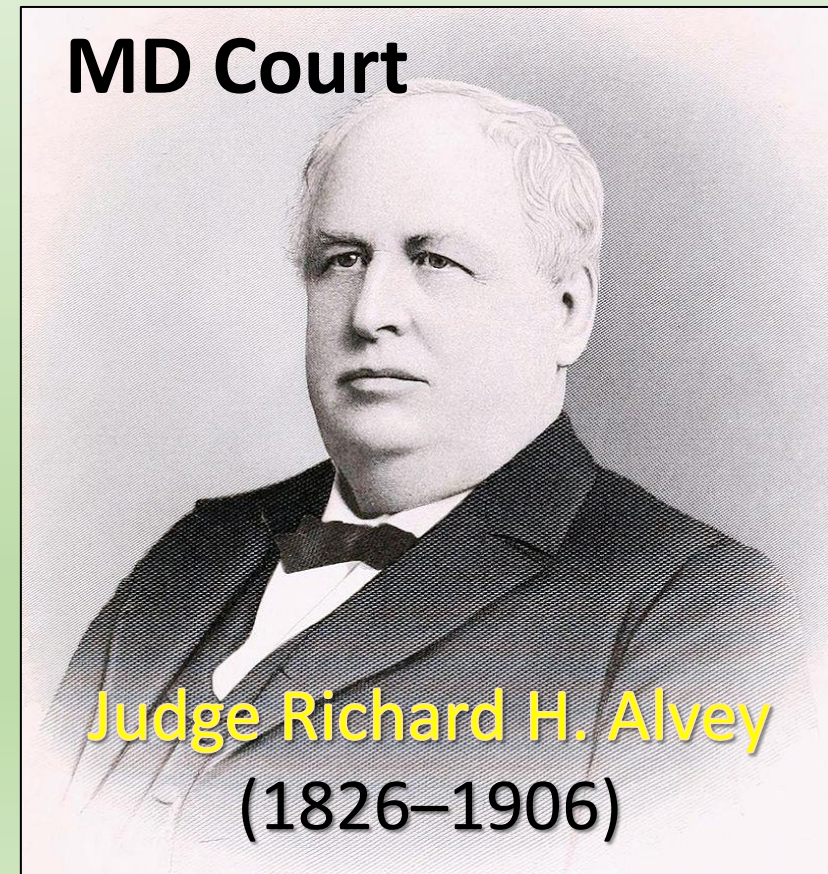
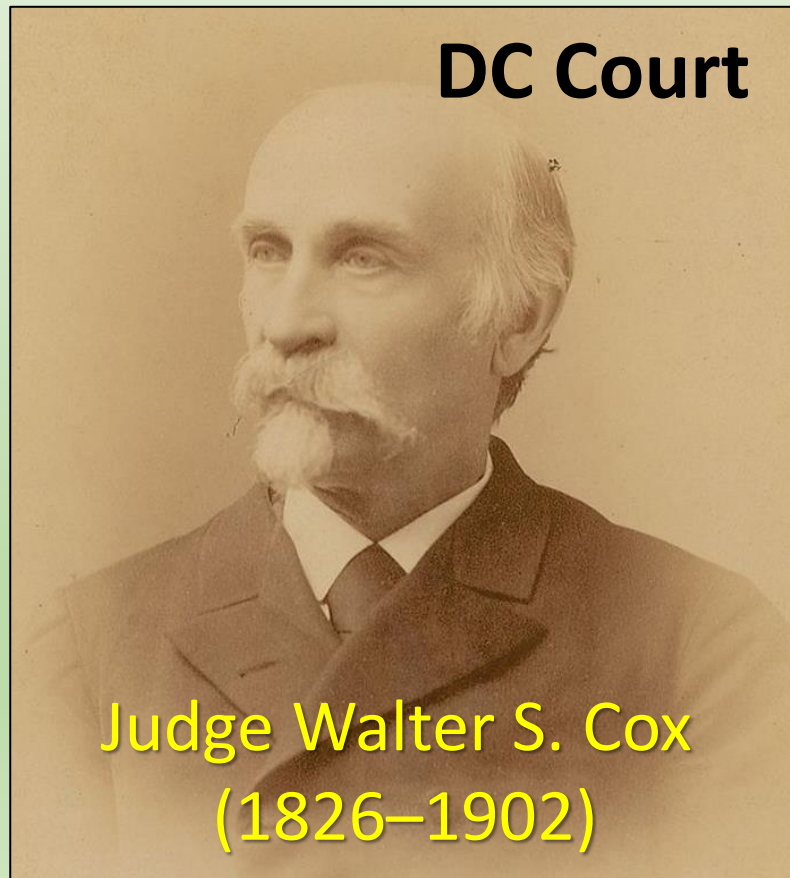
The 1844 bondholders' trustees asked for the appointment of
*“Receivers to take possession of the said property, its franchises...and everything belonging or pertaining to the said Company, with **authority to manage and operate** the said Canal, and to **pay over the net revenues due to the said Bond holders until their debts shall be fully paid.***

And that [these trustees] may have such other and further relief as they may require, and this Court is competent to afford.”

[There are other legal particulars in the story I'm telling, but I'm going to keep this as simple as possible.]

At the same time, the **1844 Trustees** filed a similar complaint with the **Supreme Court of the District of Columbia**, where it became **case No. 12,240 under Judge Cox**.

Note: 4.7 miles of the canal and valuable other property is in the District of Columbia, but 180 mi. of canal are in Maryland.



Then on January 14, 1890 the **trustees for the holders** of C&O Canal Company **bonds issued in 1878** filed a complaint in the Washington County, Maryland Court that initiates it's 2nd canal case, No. **4198**:

- In 1878 the Maryland legislature had granted the canal company permission to sell **\$5,000,000 in bonds for the repair of the canal** from the flood at the end of the boating season in 1877 and they **mortgaged the real property** (i.e. *corpus*) of the canal.
- **IMPORTANT: \$260,000 (the majority) of those 1878 bonds were owned by the B&O Railroad.**



1890 was also the year the B&O RR's "Royal Blue" flagship passenger train from NY to Cincinnati began service.

The 1844 bondholders appeal to the courts to protect their rights under *cestui-que* trusts, emphasizing that these bonds involve such a trust founded on the canal's existence and ability to earn tolls and revenue for all the bondholders.

But in the legislation for the 1878 bonds—the majority bond-holders specifically were given the right to petition for the sale of the canal if there was a default on the payments—as there had been.

BUT if sold, the canal almost certainly would not be used as a canal and there are many interests in using all or part of it for a RR!

The Upshot

On Sept. 1, 1890, Judge Alvey ruled:

*“Upon the whole case, I am of opinion that **the canal should be sold...***

*and I shall therefore **pass a decree for the sale of the entire work...**from one terminus of the canal to the other.”*

However, there are **stipulations in the decree that must be fulfilled first, before the sale can proceed so any **action to sell it is temporarily put on hold.****

Then on September 18, a petition is filed by the trustees for the **1844 bondholders** stating they:

- “*claim the right to **redeem the bonds** issued by the Chesapeake and Ohio Canal Company under and by virtue of the **Act of 1878**....*”
- *And upon payment of the principal and interest of said bonds to become **subrogated to all the rights of said [1878] bondholders.***

NOTE:

No major canal history source considers this or even mentions the redemption and subrogation.

The Upshot

[And they—the 1844 bondholders] “*further claim the right to **take possession** of the said Chesapeake and Ohio Canal and its works and **repair and operate** the same as a water-way,*

*and **appropriate the tolls and revenues** therefrom to the payment of:*

the expenses of operation and repairs and the principal and interest of the 1844 and 1878 bonds.

The Upshot

- On September 20, the 1878 bondholders' trustees signal their **acceptance of the subrogation**.
- And on October 2, 1890, **Alvey gives the 1844 bondholder trustees control and management of the canal's property and franchises, etc.**
- Then Alvey **sets aside his order to sell the canal temporarily for a four year trial period.**

BUT the four years will ultimately be **repeatedly extended** by the court until 1938.

And the appellate courts will support the extensions, putting the **burden on those opposed to the extensions to show:**

1. that there are **legal and equitable grounds to proceed with the sale;**
2. and that “*it clearly appears that the liens of the appellees are valueless*”—i.e. there is no hope of the canal ever being able to pay the bondholders.

Important factors in recognizing this history:

- The role of a detective who seeks to understand actions and decisions by “following the money trail”, is **not the role of the court** that is consistently guided by whether the trustee is:

“acting in good faith and without collusion, if what they ask is not inconsistent with the provisions of the trust.”

- Insofar as the B&O interests coincide with this standard, the court will appear to be doing what the B&O wants, but **the B&O desires are not driving the court decisions—the legalities of the cases are.**

While the B&O RR's control of the trusteeship will grow in the next five decades, it is never as simple as the superficial history has written it.

And the B&O's history in those decades includes it's own receivership in 1896, near bankruptcy in the 1930s, and complicated interests and difficulties that leave its relationship to the canal often unclear. It is a tangled web indeed!



BUT not surprisingly, the **appellate court** on February 20, 1891, in its “opinion and mandate” on Judge Alvey’s original rulings in 1890, **addressed the issue of B&O influence** on the court that was raised by the appellants, saying simply:

*“A good deal was said about the **veil which conceals the real motives** that have prompted this litigation.*

*Whatever they may be, **we must deal with the case as it is presented by the record**, and so dealing with it, we are of opinion that [Judge Alvey’s decree]...must be affirmed.”*

- **34 years later**, in the spring of **1924**, before the canal can be opened for the boating season, floods damage the canal, preventing navigation from being resumed.
- The Trustees ask the court to allow them to not fully repair the canal for the resumption of navigation, arguing that there is **not sufficient cargo to justify its operation at that time**. [An indisputable truth.]



Subsequently

The court allows this arrangement BUT:

- It requires the trustees to **maintain the canal at a level that would allow it to be quickly and with small expense put back into service if/when needed again.**
- It requires that the trustees **continue to earn sufficient income to cover its expenses** including the minimal maintenance and core employees.

This will be done with their ongoing water and land leases, etc. and other interesting means.

The Road to the Canal's Sale

- As the 1930s arrive and the B&O is in deep financial trouble, it **seeks to sell some 44 miles of the lower canal** between Point of Rocks and the District line.
- But this resulted in **a study by the office of the US Attorney General of the canal's ownership** and the legal requirements for such a sale.
- On November 14, 1936, the study was issued as a memorandum ***RE: The Title to the C&O Canal from Point of Rocks to the District.***

After summarizing in the first paragraph the situation that prompted the study, it states in the second paragraph:

“It is of course well known that the Baltimore and Ohio Railroad Company is not the owner of the Chesapeake and Ohio Canal.

*By reason of certain transactions...the Baltimore and Ohio Railroad Company has come to exercise a **dominant influence over the canal** and may be in a position to bring about a sale of the canal property.*

As any such sale must be made under the direction of the court, the railroad company cannot make a binding contract for the sale of the canal property or any part of it.”

Concerning any sale of the canal, the report concludes:

*“It may be necessary, in view of the **prior adjudications in Maryland**, that the **canal be first offered as an entirety and at public auction.***

And ultimately that is what happens, although:

- **Only the federal government makes an offer, which is for \$2 million;**
- **and the B&O is permitted to purchase for \$100,000 some narrow strips of land between Point of Rocks and Harpers Ferry, and down in Georgetown.**

The final income from the sale was therefore \$2,100,000.

One last piece of **zombie history**:

New sources typically still represent the B&O as receiving the \$2 million the government paid for the canal, but **the reality is:**

- It was the primary recipient of the sale income, with it receiving:
 - **A little over \$1,880,000**—a settlement challenged in lawsuits not concluded until 1945.
 - BUT of that amount a little over \$508,600 it received as the **assignee of certain claims** that Maryland law required to be settled if the canal were sold and thus **the RR was assuming responsibility to settle them**—or had done so.

SUMMARY: Our Zombie History states:

1. The decrees of the Maryland court in 1890 reflected the interests and will of the B&O RR.
 - No, they were determined by the relevant laws, principles and facts of the case and the B&O was limited to anticipating and adjusting to the courts' rulings, and to influencing the trustees.
2. The B&O RR gained control and ownership of the canal.
 - No, the B&O RR ultimately became the dominant force among the bondholders that the trustees represented, but it at no time owned any of the canal.

Our Zombie History

3. The B&O controlled the canal after 1890:

- No, the authority to operate the canal was vested in the trustees for the 1844 bondholders who were bound by the court to serve the trusts.
- And even the 1844 bondholder's trustees were **subject to the requirements in the court decrees AND**
- Significant decisions required the court's involvement and not all those decisions benefitted the B&O RR.

The idea that the B&O RR—seen as always the enemy of the canal out to destroy it—should acquire the canal in the end,

**Is just too good a story for people to let it go!
The Zombie History lives on!**

