

Archival Issues

Journal of the Midwest Archives Conference

Volume 18, Number 1, 1993

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EDITORIAL POLICY

Archival Issues, a semi-annual journal published by the Midwest Archives Conference, is concerned with the issues and problems confronting the contemporary archivist. Submissions relating to archival theory and current practice are solicited. Diversity among topics and points of view is encouraged. Ideas and opinions expressed by the contributors are not necessarily those of the Midwest Archives Conference or its Editorial Board.

Material in a wide range of formats—including articles, review essays, proceedings of seminars, and case studies of specific archival projects or functions—will be considered for publication. Guidelines for authors of articles and case studies are available upon request from the editorial board chair.

Manuscripts should be sent to the board chair, Joel Wurl, Immigration History Research Center, University of Minnesota, 826 Berry, St. Paul, MN 55114. The editorial board uses the current edition of *Chicago Manual of Style* as the standard for style, including footnote format. Decisions on manuscripts will be rendered within ten weeks of submission. Offers to review books or suggestions of books to review should be sent to the book review editor, Ann Bowers, Center for Archival Collections, 5th floor, Jerome Library, Bowling Green, OH 43403.

MAC members receive *Archival Issues* and the *MAC Newsletter* upon payment of annual dues of \$16; institutional memberships are \$32. Single issues of the journal are available at \$3.50 plus fifty cents for postage and handling. An index to Vols. 1-8 (1976-83) is available at the single-issue price. Inquiries regarding membership or purchase of journal copies should be directed to Becky Haglund Tousey, MAC Secretary, Kraft General Foods Inc., Archives Dept., 6350 Kirk St., Morton Grove, IL 60053: 708/646-2981.

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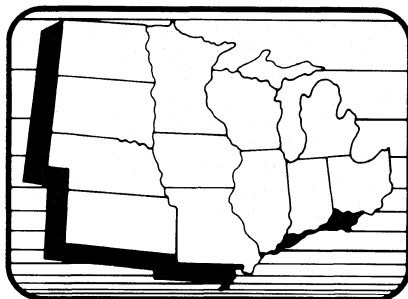
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MAC

MIDWEST ARCHIVES CONFERENCE



THE MIDWEST ARCHIVES CONFERENCE: A RICH HISTORY REVISITED

PATRICK M. QUINN

ABSTRACT: This article will recount the origins and evolution of the Midwest Archives Conference (MAC) from its birth in the Bismarck Hotel in Chicago on May 5 and 6, 1972, through its development into the largest and one of the most dynamic regional archival organizations in the United States. Although this article is grounded in the extensive records of MAC held by the Northwestern University Archives, it is more a personal memoir of a founding member and two-decade participant in MAC than a formal history. Such a history, well-deserved, will come, no doubt, in due time, crafted by another author with a less-prismed lens and sufficient distance from the events described below.

The central purpose of the Midwest Archives Conference is, and always has been, to confer, to get together, to exchange ideas and viewpoints and solutions to archival problems. Indeed the very name of the organization was deliberately chosen by the founders to convey this purpose. MAC is not the Society of Midwestern Archivists or the Midwest Archives Association or the Midwest Archives Organization—it is the Midwest Archives *Conference*. MAC has held forty meetings to date; one each Fall and one in the Spring. Every Spring meeting has been held in Chicago at the Bismarck Hotel, and each Fall meeting has been held in a different city in the MAC region—nineteen different cities in all. The very first Fall meeting was held in Chicago in 1972, but, beginning in the Fall of 1973, MAC hit the road, stopping first in Madison, Wisconsin on an autumnal odyssey that has taken it to eight states in the twelve-state MAC region. MAC has been to Illinois, Missouri, Michigan, and Wisconsin three times each; to Indiana, Ohio, and Iowa twice each, and to Minnesota once. MAC has yet to visit North and South Dakota, Nebraska, or Kansas, although its Kansas City meeting brought it to the Kansas state line.

An extension of MAC's mission to *confer* is its mandate to *communicate*—to communicate with those of its members unable to attend the two annual meetings and to communicate with the larger archival community outside the MAC region. This mandate led to the development of MAC's two publications—the *MAC Newsletter* and the MAC journal, *Archival Issues*, known until recently as *The Midwestern Archivist*. To date MAC has published seventy-five issues of its newsletter and thirty-two issues of its journal.

In addition to its annual meetings, MAC has sponsored other conferences and seminars, has received grants from the National Endowment for the Humanities and the National Historical Publications and Records Commission, and has had, from its inception, an active and prominent presence at the annual meetings of the Society of American Archivists.

While its meetings, publications, and other activities are at the center of MAC's existence, the essence of the organization is, and always has been, its members. MAC began very modestly in May 1972 with 111 founding members; today it has over 1,000 members. And it has been the energy, enthusiasm, and commitment of its members that has been the engine that has driven the organization throughout its existence. MAC has had twelve Presidents and twelve Vice-Presidents. It has had six Secretary-Treasurers. There have been seven editors of the *MAC Newsletter*, eight chairs of the editorial board of *Archival Issues* and four production editors of *Archival Issues*. Sixty individuals have served as members of the MAC Nominating Committee, over forty members have chaired program committees and over forty have chaired local arrangements committees. Hundreds of others have served as members of these and other committees, have been participants in MAC program sessions or have otherwise contributed to the organization. To call MAC a membership-driven organization is to understate the obvious.

What, then, was the genesis of MAC? What was its impetus? Why was it founded? To answer these questions one must turn to the situation in the American archival profession at the close of the 1960s.

During the last half of the 1960s, the American archival profession was undergoing a rather significant demographic change. The first generation of American archivists—those who had come to the profession in its infancy in the mid-1930s and during and shortly after World War II were retiring or otherwise passing from the scene. A second generation of archivists, albeit much smaller than the founding generation, was just beginning to achieve prominence, and yet a third generation, much larger than its two predecessors, was just entering the archival profession. The basis of this third generation was the significant expansion in the number of archival employment opportunities that had occurred during the 1960s, particularly in newly-established archival repositories in institutions of higher learning. Unlike most of the first two generations of American archivists, many members of this new generation of archivists had arrived at the archival vocation by choice instead of circumstance.

While there existed in the United States a scattering of small state archival organizations, for all intents and purposes the only "ball game" in town was the national professional organization for archivists—the Society of American Archivists. Founded in 1936, the SAA had, from its inception, held relatively small annual meetings in various cities. Many younger archivists either could not afford to attend the SAA meetings or were left home to tend the shop while senior archivists went off to the meetings. Many of the younger generation perceived SAA as a rather closed, elitist organization run by an "old boy" network. SAA meetings were regarded as stuffy, boring affairs, not at all congenial to newer or younger members. The SAA leadership was elected on uncontested slates and it was not easy to secure an appointment to the committees where SAA activities and projects were carried out.

At the same time the United States was experiencing one of the most turbulent periods in its history. The civil rights movement, the movement against the war in Viet Nam, the women's rights movement and a host of other movements for social, economic, and political change had created a climate that also fostered change in a great variety of cultural endeavors. The American archival profession was not immune from this climate. Within the SAA, movements to democratize the organization and to improve the status of women in the archival profession emerged, reflecting a growing sentiment across the country among archivists that not only did the SAA require reform, but something beyond the SAA was needed to meet the myriad archival needs not adequately addressed by the SAA, particularly the needs of those archivists unable to attend the annual meeting. These circumstances provided the crucible and formed the context in which MAC was founded.

No one really knows who originally came up with the idea of starting a regional archival organization in the Midwest. As there are numerous possible claimants to this honor, it is perhaps best to say that MAC was born of a collective effort on the part of a dozen or so archivists who perceived, for a variety of reasons, the need for such an organization. The idea was discussed informally at the 1971 SAA meeting in San Francisco. Among those receptive to the notion of starting some kind of a regional organization were Mary Lynn McCree and Mary Ann Bamberger of the University of Illinois at Chicago, Phil Mason of Wayne State University, Father Thomas Elliot of the Holy Cross Fathers in South Bend, Indiana, Archie Motley of the Chicago Historical Society, J. Frank Cook of the University of Wisconsin-Madison, and F. Gerald Ham of the State Historical Society of Wisconsin. These individuals, along with several others, held a meeting in December 1971 at the Hull House Museum on the University of Illinois campus in Chicago to plan a regional meeting of archivists in Chicago in the Spring of 1972. Through telephone calls and correspondence, planning continued over the next four months, resulting in the founding meeting of MAC on the first Friday and Saturday in May, 1972. In addition to attending program sessions, participants in the founding meeting decided to hold a second meeting in the Fall, adopted the name Midwest Archives Conference, elected a provisional steering committee of twelve, and delegated a committee to draft a constitution. Of the 111 founding members, thirty-six were from Illinois, thirty from Wisconsin, fifteen from Indiana, eight from Michigan, four from Iowa, three each from Minnesota and Missouri, and one each from Ohio and Maryland. As these figures reflect, the original geographical area that MAC encompassed comprised the states formed out of the old Northwest Territory. Although a handful of founding members were from Iowa, Missouri, and Minnesota, the founders of MAC did not envision an organization whose terrain extended west of the Mississippi.

The second MAC meeting, on September 29-30 in Chicago, was the only MAC Fall meeting ever held in Chicago. At this meeting, a constitution, drafted in the main by Phil Mason of Wayne State University, was adopted following a series of amendments proposed by J. Joe Bauxer of Northern Illinois University. After adopting the constitution, MAC members elected their first officers and Council members. Archie Motley was elected President, Father Tom Elliot, Vice-President, and Mary Ann Bamberger, Secretary-Treasurer. Six Council members were also elected, as were two members of a Nominating Committee.

In January 1973, MAC took its next step forward with publication of Volume 1, Number 1 of the *MAC Newsletter*, edited by J. Frank Cook with myself as assistant editor. Three more issues of the *MAC Newsletter* appeared in 1973, thus establishing it as a quarterly publication.

On May 4-5, 1973, MAC held its second annual Spring meeting at the Bismarck Hotel, and it was clear by that time that a very solid organization had been established. Already several now-legendary MAC institutions were in place, having been initiated the previous year, including the MAC mixer, for which MAC gained fame throughout "archivaldom." The idea for the mixer was simple: find someone willing to offer a hotel room for an evening, a room with a big enough bathtub to accommodate ice and beer—make sure that the beer was free and sufficient to last the evening, informally publicize the mixer, and let midwestern conviviality do the rest. Although this style of mixer is perhaps now obsolete, having fallen victim to the perils of our litigious times, twenty years ago there was only one problem to surmount. The Bismarck did not allow organizations meeting there to bring their own beer into the hotel. That problem was solved rather ingeniously by enlisting the assistance of the archival sisters from religious communities in attendance at the meeting. The sisters marched west down Randolph Street to Zimmerman's Liquor Store, secreted the purchases under their habits, and thus, with the most beatific of smiles on their faces, smuggled the beer past the Bismarck's ever watchful desk clerks and bell boys. Indeed, the MAC mixer proved so popular from the start that MAC began holding mixers at SAA meetings, where they quickly became highlights of these meetings. Its social function aside, one can assert that it is very likely that more MAC business and exchanges of ideas occurred at MAC mixers than at many Council and committee meetings.

While the first issues of the *MAC Newsletter* seem stone-age primitive compared to the issues being published today, they nonetheless included many special features that are still carried—the President's letter, Institutional Spotlight, News of Our Members, and "Dear Archivist, I Need Help," the predecessor of the "Midwestern Inquirer" column. "Dear Archivist" was based upon the "Dear Abby" syndicated newspaper advice column. There were several occasions when Jackie Haring, the all-around answer woman who wrote the column, was unable to submit text. The newsletter editorial staff, forced to concoct both the questions from readers and the answers, probably contributed greatly to the flow of archival misinformation to the membership.

In 1973, MAC made a decision that would have lasting consequences for the organization. It decided to take the show on the road. Since many archivists could not afford to attend two MAC meetings each year in addition to the SAA's annual meeting, it was decided that, as well as bringing the masses to Chicago for the Spring MAC meeting, MAC should be brought to the masses in the hinterlands each Fall. The first MAC Fall "road" meeting was held in Madison, Wisconsin, on September 7-8, 1973. Over the years, occasionally amidst heated discussion, MAC reaffirmed its commitment to meet twice each year. By holding Fall meetings in different parts of the MAC region, MAC would reach constituencies that otherwise would not have access to the organization.

The Fall meetings were not without their dangers. Such meetings offered opportunities for cooperation between MAC and the various state archival orga-

nizations within the MAC region, but they also created the potential for conflicts. Indeed, some members of state organizations saw MAC's coming onto their turf as a form of archival imperialism. The first few MAC Fall meetings went very well—held, as they were (with one exception), in states with no state archival organization. The 1974 St. Paul meeting brought a trainload of archivists from Chicago to the Twin Cities, cementing a strong bond between MAC and the staff of the Minnesota Historical Society which greatly strengthened MAC in the years to come. Prior to this meeting, MAC was primarily an Illinois/Wisconsin-based organization, with mere outposts in surrounding states. Under the leadership of Sue Holbert, Jim Fogerty, and Lydia Lucas, the Minnesota Historical Society quickly became a bastion of loyal MAC supporters. Likewise, with Nancy Prewitt, and later Nancy Lankford, of the Western Historical Manuscript Collections at the University of Missouri-Columbia providing another firm base of institutional support, MAC-land expanded to the south as well as to the west across the Mississippi.

The 1975 Fall meeting in Detroit strengthened ties with the hardy band of MAC supporters at Wayne State University. Although the Detroit meeting was relatively small, it was nonetheless memorable. Just a few days before the meeting, the hotel in which the meeting was to be held went bankrupt. Fortunately, Dennis East quickly secured a new host hotel, emergency notices went out to all registrants, and the meeting proceeded as scheduled.

The Fall 1977 meeting moved across the Mississippi to Iowa City, where MAC was royally entertained by its Iowa colleagues, led by Toby Murray, Pat Wildenberg, and Dale Mayer. In 1978, the falling leaves found MAC in Indianapolis where its first dust-up with a state archival organization occurred. The meeting was jointly sponsored by MAC, the Society of Indiana Archivists, and the Society of Ohio Archivists. Being the first such joint venture, it was perhaps understandable that some rough edges should develop in relations between the three organizations—edges that were eventually smoothed over, but not before a coterie of MAC archivists attempting to enter the SOA mixer at the meeting were barred at the door by a phalanx of burly Ohio archivists. From that moment on, the leaders of MAC made every effort to develop close collegial ties with the state and local archival organizations in the region to the mutual benefit of all. Once or twice since then, frictions between MAC and state organizations have surfaced, but, on the whole MAC has worked hard to erase the monster reputation it may once have had among the ranks of the state and local organizations. Much of this good will may be due to the fact that MAC's membership largely overlaps with the memberships of these organizations.

In 1976, MAC made another significant stride forward with publication of Volume 1, Number 1 of *The Midwestern Archivist*. *The Midwestern Archivist* was largely the child of Mary Lynn Ritzenthaler, who, along with editorial board members Ken Duckett, Frank Cook, John Fleckner, Holly Hall, and later, Nick Burckel, labored long and hard to develop a high quality archival journal. Succeeding chairs of the editorial board—Lydia Lucas, Anne Diffendal, Dave Klaassen, Anne Kenney, Nancy Lankford, Frank Boles, and Joel Wurl—have shepherded the journal, ably assisted by the unsung heroes of the process—the production editors who actually put the journal together: Frank Cook, Chuck Elston, Frank Mackaman, and Marion Matters.

It was also in 1976 that MAC held its first uniquely formatted meeting. The Fall meeting that year, held in Springfield, was organized around a series of seminars that replaced the traditional program sessions. This format proved highly successful. A second experimental meeting, held in the Fall of 1983 in Champaign-Urbana, was organized around tracks of sessions devoted to specific themes. During this period MAC also sponsored several seminars apart from the two annual meetings, including processing seminars at the Newberry Library in Chicago and at the State Historical Society of Wisconsin, and a national conference on archival networks held in Madison.

By the end of the 1970s MAC was becoming a truly regional organization, with its membership increasing significantly throughout the twelve-state region. Faithful stalwarts like Anne Diffendal and Joe Svoboda championed MAC in Nebraska, while the notorious "Ohio Gang," led by Dennis East, Paul Yon, Ann Bowers, Marge Haberman, and Bill Meyers brought the Buckeye State into the fold. Supported by Phil Mason, the Walter Reuther Library staff of Dione Miles, Warner Pflug, Pat Bartkowski, Valerie Gerrard Browne, and Marge Long carried the MAC flag in Michigan. Veteran archivists like Ken Duckett, and later Dave Koch, at Southern Illinois University-Carbondale and Maynard Brichford at the University of Illinois at Champaign-Urbana encouraged their staffs to become active MAC members. Meetings in Milwaukee in 1980 and St. Louis in 1981 strengthened MAC's presence in Wisconsin and Missouri, while the 1982 Ann Arbor Fall meeting reinforced MAC's strong links with the staff of the Bentley Historical Library at the University of Michigan.

During MAC's first decade, it was clearly the active and enthusiastic energy and commitment of both its officers and members that propelled the organization forward. During those formative years, perhaps three individuals deserve particular credit for shaping MAC into the organization that it would become. Each in his or her own way imposed a personality on MAC, to its very good fortune. The first of these is Archie Motley of the Chicago Historical Society, MAC's founding president. It would not be an overstatement to say that if MAC has a collective personality, it is Archie Motley's, marked by warmth, openness, good humor, and gregariousness. Archie always seemed to know every member of the organization, and he spent countless hours talking to them on subjects varying from the prospects of the Chicago Cubs to whether one should use legal or letter size Hollinger boxes. He was especially good at greeting new MAC members and making them feel welcome and comfortable in the organization. Never at a loss for words at MAC's business meetings, Archie also served as the spirited captain of MAC's intrepid softball team.

If Archie personified the spirit of MAC, two other individuals were its heart and soul. These were the two people who got things done during those early years. One is Mary Ann Bamberger of the University of Illinois at Chicago, MAC's first Secretary-Treasurer and its third President. In those years, there were, of course, local arrangements committees, but it was Mary Ann who shouldered the main burden of such work. She devoted countless hours of her own time on MAC's behalf, ensuring that the organization got off the ground. She left a solid foundation upon which her successors could build.

And then there was J. Frank Cook of the University of Wisconsin-Madison, MAC's jack-of-all-trades. Council member, Vice President, founder of the

MAC Newsletter, production editor of *The Midwestern Archivist*. Whenever a tough task had to be done, Frank was always there to volunteer, and without exception, he accomplished these tasks in an exemplary manner. Beyond his hard work, Frank's wisdom on numerous occasions cut through and resolved a thorny problem at a business meeting and frequently saved the organization from a potentially disastrous course of action.

Many others played key roles during MAC's first decade and deserve mention. Several come readily to mind. MAC's second and fourth Presidents, Jackie Haring and Nick Burckel were instrumental to MAC's success. Nick also served as a member of *The Midwestern Archivist* Editorial Board and was engaged in a wide variety of other activities on MAC's behalf. Joanne Hohler succeeded Mary Ann Bamberger as Secretary-Treasurer and was in turn succeeded by Jim Fogerty. Both did superb jobs keeping the MAC ship afloat.

Hard as it may be to believe, program committees in the early years had responsibility for planning *both* the Spring and the Fall meetings. Many MAC members chaired or served on those committees, but two deserve special mention—Jack Jallings and Steve Masar. As early program committee chairs for both the Spring and Fall meetings, Jack and Steve set the high standards that future MAC program committees had to emulate and MAC is very much in debt to them for their efforts.

In the mid 1980s, MAC set new records by reaching a membership of over 1,000 and an attendance of almost 400 at the Spring meeting. These figures suggest that MAC must have been doing something right—and that something was being responsive to and meeting the needs of its members. Excellent articles were being published in the journal, the newsletter was becoming better with each issue, program sessions were timely and informative, and MAC members, as they had from the beginning, were going on to play important roles in the Society of American Archivists.

Each year, MAC continued to celebrate the rites of Spring at the Bismarck in Chicago and highly successful Fall meetings were held successively in Kansas City; Columbus, Ohio; Hudson, Wisconsin; Columbia, Missouri; Cincinnati; Lansing, Michigan; Des Moines, Iowa; and Bloomington, Indiana. The innovative Hudson meeting, organized by Tim Ericson and his colleagues, was another of MAC's successful experiments, being based on three campuses of the University of Wisconsin system in three different cities.

MAC was very fortunate to have during its second decade a succession of highly capable leaders. Under the direction of Presidents Jim Fogerty, Mary Janzen, Bill Maher, Nancy Lankford, and Valerie Gerrard Browne, MAC continued to grow, and the quality of its meetings, publications, and other activities was greatly enhanced. The increasingly-demanding position of Secretary-Treasurer was very well served by Bill Maher, Dennis Meissner, and Kevin Leonard. Over the years, *MAC Newsletter* editors Frank Cook, Tom Elliott, Vicki Irons Walch, Dean DeBolt, Nancy Lankford, David Haurly, and Tom Rick honed the newsletter into a fine publication, filled with useful information.

Of course, setbacks also occurred during this second decade, the most glaring being the series of defeats administered to the MAC softball team, usually by the Society of Ohio Archivists. But in its second decade MAC also broke new ground by establishing a Public Information Officer, a Development Coordinator, and the Program Innovation Fund.

This article has scarcely given justice to the history of MAC's second decade, and one hopes that whoever writes the definitive MAC history will make amends. Over the past two decades, MAC has striven consciously to keep its yearly dues and meeting registration fees very low in order to make it accessible to archivists of every scale of pay. It has taken its mission of providing archival education and training very seriously by offering a wide range of innovative workshops and program sessions. It has made every effort to retain an open and friendly collective demeanor, a demeanor conducive to welcoming and embracing new members who quickly learn that there are no strangers in MAC. It has retained its twice yearly meeting format and peripatetic Fall meeting venues in order to reach as many archivists as possible. It has contributed to the enrichment of the American archival profession through its journal, newsletter, program sessions, and the involvement of its members in the Society of American Archivists. It has provided a forum for discussion of the most salient and pressing archival issues of our times, and has, when appropriate, acted on those issues. It has honored those who have contributed to or supported, in a distinguished manner, the preservation of our documentary heritage through the awarding of Emeritus membership status and by bestowing the President's Award. It has preserved the traditions that it has generated over the past two decades, while being flexible and open to the creation of new traditions.

What will the next twenty years bring? What challenges will MAC face in the 1990s and the first decade of the 21st Century? Can MAC sustain the collective energy and vitality that has characterized its first two decades? These are indeed difficult questions that defy easy answers. Few archivists are adept at crystal ball gazing, the author not excepted, yet one might nonetheless offer some provisional observation.

With all due humility, it is clear that the new, younger generation of midwestern archivists which, over the next decade or so, will replace the founding generation, will prove quite as capable as their predecessors in meeting whatever challenges the archival profession in the heartland will face. By and large, the future health of MAC will depend in large measure upon the value that society attaches to the preservation of its documentary heritage. If archival programs are considered cultural luxuries or frivolities and financial support for them diminishes, then MAC's well being, too, will be diminished. During its first decades, at least, MAC had the good fortune of riding an ascending wave of societal support for archival endeavors in the context of a relatively vibrant economy. The possibility of these circumstances being replicated in the coming decades, however, seems somewhat problematic.

Another danger facing MAC as it anticipates the new century is a discernable (and unfortunate) trend toward becoming too formal, too bureaucratic. MAC has thrived upon its informality and its tradition of members providing voluntary services. It should never attempt to mechanically emulate the SAA, nor should it price itself out of the range of its constituents by frequent dues increases and increases in annual meeting registration fees. It must also continue to emphasize the merits of grass-roots, democratic governance and a highly participatory membership. While these modest considerations will not, of course, guarantee that MAC will survive or prosper, they are necessary preconditions for the continuation of MAC's robust health.

The Midwest Archives Conference, what is it? It is a group of archivists from the heartland who come together twice yearly to confer about archives. MAC has indeed had a rich history—and if Shakespeare's immortal words from "The Tempest" emblazoned on the portico of the National Archives building in Washington, "What is past is prologue," have any meaning, the future would seem to hold much promise for MAC.

ABOUT THE AUTHOR: Patrick M. Quinn has been an archivist for the past twenty-eight years, the last twenty of which he has served as university archivist for Northwestern University. He is a founding member and past president of the Midwest Archives Conference. He originally presented this paper as a plenary address at MAC's twentieth anniversary meeting in May, 1992.

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ARCHIVES, OPTICAL DISKS, AND THE COPYRIGHT ACT OF 1976

HELEN HUMESTON

ABSTRACT: Recently many archival repositories have begun or are planning to copy portions of their holdings on optical disks. This article contends that, depending upon the copyrighted status of the material, using computer-assisted reprography might infringe upon the author's copyrights. This interpretation is based upon an analysis of the provisions of Title 17 of the United States Code, the legislative and judicial case history of copyrights, and the final report of the National Commission on New Technological Uses of Copyrighted Works. Extensive bibliographic citations are provided.

Introduction

Optical disks and the Copyright Act of 1976 seem to have as much in common as pickled herring and bowling balls. Both exist, but they occupy such separate spheres that, one might think, never the twain shall meet. Normally, in fact, that is the case.

But when machine-readable information systems, including optical disks, are used to store and retrieve copyrighted materials, this technology and the Copyright Act of 1976 come into sharp conflict.¹ More than ten years ago, Carol Risher, director for copyright and new technology for the Association of American Publishers, stated that the use of optical disk technology "is liable to infringe on copyright on all counts."² According to Risher, violations include employing the original to make a copy in a different physical form and serving multiple users with a single optical disk which "will affect the distribution and display rights as well as the market for a work."³ The purpose of this paper is to identify the provisions of the Copyright Act of 1976 that preclude the unrestricted use of optical disks to store and retrieve archival material and to discuss why these prohibitions exist.⁴

The thesis of this paper is that Title 17 of the U.S. Code proscribes transferring copyrighted materials from hard copy to machine-readable formats unless the institution doing so either owns the copyright, or has permission from the owner or owners of the copyright, or if no copyright "attaches" to the material. Government documents, for example, cannot be copyrighted and therefore may be recorded on optical disks without infringing upon copyrights. The same is true of materials on which the copyright has expired as is often the case with

"brittle books." Using computer-assisted reprography is not unlawful, but whether that technology can be used legally depends upon the copyright status of the material.

Since the mid-1980s a number of archival repositories have begun projects to transfer portions of their holdings to machine-readable formats, including optical disks. The National Archives' Optical Digital Image Storage System (ODISS) is one of the earliest and best-known of these initiatives.⁵ Some state archives, including New York, Kentucky, Indiana, and Virginia, are planning or beginning to use optical disks or video disks to store and retrieve some of their holdings.⁶ The Library of Congress and universities including Cornell, Harvard, Pennsylvania State, Princeton, Yale, Columbia, and Syracuse have begun similar projects.⁷

The reports of two of these programs indicate that using optical disks to store and retrieve copyrighted materials could be an infringement of the 1976 Copyright Act. The *Library of Congress Optical Disk Program: Guidelines and Principles for Print Materials* notes, "The Library [of Congress] has properly accepted the principle that these copyrighted materials should not be stored on a disk or disseminated from disks by the Library without the consent of the copyright owner in a license agreement between the Library and that owner."⁸ Elizabeth Carley Oddy observed in her report on the program at Syracuse University to record selected library and archival holdings on optical disks:

Although we were lucky enough not to become a test case, anyone working in this area [recording materials on optical disks] needs to keep a weather eye on developments in copyright law. The system we dreamed of could have become a case for debate between those supporting ownership of intellectual property rights and those supporting improved access to research materials. It is difficult to find a mutually satisfactory path between these competing interests, and copyright law is only beginning to deal with the new wrinkles brought by the advent of image systems. In the next few years there will no doubt be test cases in which some of the rules of the game are set down. Until then, caution is in order.⁹

Legal impediments to using optical disks to store and retrieve copyrighted materials have received scant attention in archival literature. Although a voluminous body of works exists on archival uses of optical disk technology, most of it is either anecdotal, or technical discourses on hardware and software applications, or articles that address the ways in which the new technologies challenge theories of archival science.¹⁰ There is also a fairly large body of literature on the Copyright Act of 1976 and how it affects archives.¹¹ The fact that, under certain circumstances, an archival repository's use of optical disks to duplicate copyrighted materials is illegal under the Copyright Act seems to have been virtually overlooked in the archival literature. This paper is offered in an effort to begin to bridge the hiatus in the literature.

It should be noted at the outset that no lawsuit has yet come before the courts to test the legality of transferring copyrighted material to machine-readable information systems. Consequently, no body of case law exists that can serve to interpret the relevant sections of the Copyright Act of 1976. Any law is, in the final analysis, what the court says it is. To date, the courts have not had occasion to rule on the use of optical disks to store and retrieve copyrighted materials. The conclusions reached in this paper are, therefore, based primarily on the

legislative and case history of copyright law in general, the text of the Copyright Act of 1976, the House and Senate reports that accompanied the passage of that Act, and the final report of the National Commission on New Technological Uses of Copyrighted Works.

Copyright Law: An Overview

A dictionary definition of copyright is that it conveys to the copyright owner the exclusive legal rights to reproduce, publish, and sell the matter and form of a literary, artistic, or musical work. A copyright is, in the most literal sense of the word, the right to make copies. For that reason the duplication of copyrighted materials lies at the heart of copyright law.

The basic premise of copyright law is that the expression of an idea is the intellectual property of the creator or anyone to whom the creator might assign the copyright. The owner's right to his or her creation is, like any other type of property, protected by law. The copyright owner may sell, give, or bequeath the copyright to another person or organization. The mere physical ownership of a manuscript, book, painting, or musical score does not, therefore, convey the copyright.¹²

There are certain caveats. Ideas are not copyrightable, but the precise verbal expression of those ideas is copyrighted from the moment that expression takes fixed form, i.e., placed in a tangible medium. Thoughts uttered in a conversation, for example, cannot be copyrighted because speech is not a fixed form unless, of course, a tape recording is made of the discussion. Factual matters, such as the date of a person's birth or death, or telephone number, cannot be copyrighted.¹³ As noted previously, government documents are not copyrightable. With those exceptions, virtually every other expression of an idea in fixed form is affected by copyright laws.

Copyright as Public Policy Legislation

As Americans, we are culturally conditioned to think of law as either prescriptive—specifying what we must do, or as proscriptive—defining what we must not do. Federal copyright law, however, belongs to a qualitatively different category of jurisprudence. Copyright law is most accurately understood as public policy legislation. That is, the copyright law is an act of Congress consciously designed to promote socially desirable ends. Much of the misunderstanding about copyright law may, in fact, stem from the failure to recognize that copyrights are intended to function as agents of social progress.

As public policy, copyright law is designed to achieve two goals. First, this legislation establishes legal authority to remunerate the creators of original works so that they will have a financial incentive to produce more. Second, based upon the premise that information increases by being used, copyright law assures that the public may have access to copyrighted materials and may lawfully utilize them so long as the use is "fair"¹⁴ and does not infringe upon the copyright owner's just claims to profit from his or her creation. The essence of copyright law, therefore, lies in balancing the creator's right to make money from his or her work with the rights of other people to use copyrighted materials in order to increase the body of knowledge. When both of these goals are achieved, society progresses.

Constitutional and Statutory History of Copyright Law

Article I, Section 8 of the United States Constitution establishes the legal basis of copyright law. This Article states: "The Congress shall have the power to promote the progress of science and the useful arts by securing for limited times to authors and inventors exclusive rights to their respective writings and discoveries."¹⁵

In 1790 the First Congress drafted separate statutes to govern copyrights to literary works and patent laws to cover inventions. The first federal copyright law, taken nearly verbatim from the Statute of Anne of 1710, provided copyrights only to books, maps, and charts; invested the copyright in the author for an initial period of 14 years with a provision that allowed renewal of the copyright for an additional 14 years; permitted the author to assign the copyright to a publisher; provided specifics about how to register a copyright; and detailed a system of fines for each page of a work that was illegally copied.¹⁶ Between 1790 and 1909, the law underwent three major revisions, which served primarily to broaden the scope of the types of materials that could be copyrighted such as illustrations, musical and dramatic works, and three-dimensional works.

Common Law Literary Property Rights

Prior to the 1976 revision, the federal copyright law applied only to published works. This does not mean that unpublished works were unprotected. On the contrary, manuscripts were regulated by common law literary property rights which placed more stringent conditions upon the use of unpublished papers than the copyright law did upon using published works.

Common law literary property rights gave the author or his or her heirs exclusive rights, in perpetuity, to first publication of a work. Fair use, moreover, applied only to published works. This may seem like a technicality, but it is actually a very important point. In the absence of a doctrine of fair use that applied to manuscripts, any quotation from an unpublished work, no matter how brief, usurped the author's right to first publication. According to a strict interpretation of common law literary property rights, a user could not quote from an unpublished work without having obtained permission from the author or from the author's heirs—all of the living heirs—regardless of how long the author had been dead.¹⁷ In actuality, as Linda Matthews has pointed out, scholars habitually have made verbatim use of unpublished works without attempting "to trace innumerable and often elusive heirs, claiming fair use of the material and pointing to publication for the public good."¹⁸ But quoting from unpublished sources without authorization is technically an infringement of common law literary property rights.¹⁹

The Copyright Act of 1976

The 1976 Act was the first comprehensive revision of American copyright law since 1909. The process of revision leading to the 1976 Act began in 1955 when Congress authorized the Copyright Office to undertake a study of the kinds of issues that the new law should address. Twenty-one years later the revised Copyright Act was signed into law. During those two decades the Copyright Office and Congress heard the testimony of hundreds of witnesses,

amassed thousands of pages of evidence, and drafted only to reject half a dozen copyright bills.

This seems like a prodigal expenditure of time and effort until one realizes that copyright law helps to shape the fabric of American society. Social progress rests, in large measure, upon generating and sharing information. Both the producers and consumers of information have rights that must be protected. Authors and publishers derive their income from selling copies of their works. Their livelihood may depend upon the kind of protection from piracy that copyright law affords. Archivists and librarians make their living by providing access to other people's intellectual property for use by educators, researchers, students, and the public at large. Because copyright law affects all Americans, revising the 1909 Act was an issue of such magnitude that it merited due deliberation.

Intellectual property rights are, moreover, inherently complex. In the post-World War II era, these problems were exacerbated by newly-emerging reprographic technologies. When the Copyright Office or Congress discussed the impact of reprographic technology upon copyrights, the debates usually focused upon photocopying. But as early as 1963, issue of storing copyrighted information in computers began to surface.

Between 1962 and 1963, Abraham L. Kaminstein, the Register of Copyrights, held a series of panel discussions in which he elicited opinions of attorneys, authors, publishers, educators, librarians, and archivists about the kinds of issues the revised copyright law should address. At a meeting held at the Library of Congress on February 20, 1963, Kaminstein raised the question of whether loading the full texts of literary works into a computer for purposes of analysis and criticism was fair use.

George Schiffer, a copyright attorney, responded: "I think that the only way to handle these things is to make machine uses, in all forms, subject to the exclusive control of the author..."²⁰ Schiffer warned that "to feed a book into a machine in its entirety and then make it available to the world at large (as will undoubtedly happen...) will inevitably hurt the copyright proprietor to an extent which cannot be intended here."²¹

James Skipper, representing the Association of Research Libraries, contended that inserting the full text into a computer for purposes of literary criticism was lawful, but to retrieve the complete text might violate copyrights. He cited a program at Cornell University in which members of the English Department were "feed[ing] the whole text of what the author wrote into the computer." Skipper continued, "with the potential of optical scanners, with the potential of indexing in depth, for information retrieval, it is becoming increasingly necessary to feed the whole text into the computer apparatus," but so long as the print-out was only an analysis rather than the entire work, there was no copyright infringement.²²

Stanley Rothenberg, a member of Margulies, Heit and Rothenberg, and a specialist in copyright law, disagreed. Rothenberg said that "the information storage systems being defined now will not be confined to use in a library for literary analysis." He predicted that computers would be networked so that "for example, law offices will have sending and receiving sets to obtain information from a storage system at the nearest large library."²³ Although information obtained from the computer at any given time might be fair use, the cumulative effect of multiple fair uses would destroy the value of the creator's copyrights.

From the transcript of this meeting, it appears that none of the panelists questioned whether the author should have exclusive rights over his or her copyrighted work if it were placed in an information storage and retrieval system. Panelists disagreed, however, about whether the author's copyrights attached when the text was first entered into a computer, or when a print-out was made, or when the text was flashed on a computer screen.

This meeting of the Register of Copyrights panel had both immediate and long-term consequences. In 1963 the Copyright Office wrote a preliminary draft of a revised copyright law in which one of the author's exclusive rights was to "reproduce [the work] in any form in the programming or operation of an information storage and retrieval system."²⁴ Congress rejected the preliminary draft. The Copyright Office nonetheless succeeded in putting the question of how to protect copyrighted materials in machine-readable information systems squarely before Congress. From 1963 on, this issue was never wholly absent from debates on copyright revision.²⁵

The computer industry in the early 1960s was, of course, hardly old enough to be bar mitzvahed much less to destroy publishing in America. There was, however, a good reason why machine-readable copies of copyrighted materials became a topic of debate so early in the process of revising the law of intellectual property rights. In 1908 the Supreme Court ruled in *White-Smith Music Publishing Co. v. Apollo Company* that a piano roll was not a copy of a printed musical composition on the grounds that a copy must be a "written or printed record...in intelligible notation."²⁶ In other words, only works in a human-readable medium were copies and, therefore, subject to regulation by copyright law. In subsequent litigation the courts held that phonograph records were not copies because they could not be read by the human eye.²⁷

Works stored on computers are not visually perceptible. If the logic of the *Apollo* and related decisions were applied to computer use of materials, then it was conceivable that computer input might not constitute copies in the legal sense of the term. In that case, machine-readable versions of copyrighted works could not be regulated by existing intellectual property law.

Computers and the Copyright Act of 1976

Assuring that computer-assisted reprography would be subject to copyright law was only one of the perplexities that Congress had to resolve in adjusting the law to meet the exigencies of the computer revolution. Others included unpublished works and first publication rights, the exclusive prerogatives of copyright owners, fair use, and exemptions for libraries and archives.

Unpublished Papers

The Copyright Act of 1976 brought unpublished papers under a federal copyright statute for the first time in American history. This Act provides that the copyright on manuscripts expires 50 years after the author's death, or 100 years after the work was created. At that time unpublished works enter the public domain.

The Copyright Act of 1976 was a significant departure from the long tradition of protecting unpublished works in perpetuity provided by common law literary property rights. For that reason the change was "grandfathered." The statute provides that unpublished works created prior to January 1, 1978, when the Copyright Law actually went into effect, are protected under copyright until

midnight December 31, 2002. This means, for example, that the unpublished papers of Stephen Vincent Benét, who died in 1943, did not enter the public domain in 1993, 50 years after his death, but will do so on January 1, 2003.

Unlike its predecessors, the Copyright Act of 1976 stipulates that it is not necessary to register a copyright in order to enjoy its protection. The copyright automatically begins at the moment the expression of an idea achieves fixed form. Based upon these two provisions, archivists are well-advised to regard every scrap of paper in their manuscript collections as being protected by copyright for at least the next ten years.

First Publication Rights

Recording unpublished papers on optical disks raises the thorny question of first publication rights. Safeguarding the copyright owner's right to first publication is one of the oldest and most important principles in intellectual property law. The reason for this emphasis, I suggest, lies in the assumption that the largest volume of sales, and therefore, the greatest profits will accrue when a work is first available for sale.

By definition, publication involves disseminating written materials to the public. Because one of the purposes of recording information on optical disks is to make the material available to users, one could argue that this is a type of publication. If this interpretation is accurate, making manuscripts available on optical disks might usurp the copyright owner's right to first publication.

As Linda Matthews has pointed out, in most cases economic gain from first publication of works based upon manuscripts in archival repositories is negligible:

Heirs who recognize that their right of first publication has been violated (and many will not know or care) will probably not bring suit because no real economic loss is involved and, often, because they are happy to see their ancestors' letters or other writings in print. Users, archivists, and publishers are likely to be much more concerned when the writings involved are those of a literary figure of some public acclaim. Profit from publication is more likely, as are concerns over privacy.²⁸

Matthews' observation was astute. Several years after her article was published the Salinger case went to the courts. In *Salinger v. Random House, Inc.*, Ian Hamilton, author of an unauthorized biography of J.D. Salinger, made extensive use of letters written by Salinger and deposited in various university libraries by their recipients. J.D. Salinger, claiming infringement of copyright, filed suit to stop publication of Hamilton's book. In November 1986 a Federal District Court ruled that Hamilton's use of Salinger's letters did not constitute copyright infringement. In January 1987 the Second Circuit Court of Appeals reversed the lower court's decision. Judge Jon O. Newman upheld Salinger, ruling that unpublished works "normally enjoy complete protection against copying any protected expression."²⁹ Although the Salinger case did not involve the use of machine-readable reprography, it certainly illustrates the kinds of legal restrictions that can be placed upon the use of unpublished materials deposited in libraries or archives.

In addition to issues raised by first publication rights, there are several other provisions of Title 17 of the U.S. Code that may impede transferring copyright-

ed materials to optical disks. These will be considered in the order in which they appear in the text of the Copyright Act of 1976.

Exclusive Rights in Copyrighted Works

Section 106 of the Copyright Act of 1976 enumerates the exclusive rights, subject to exemptions contained in sections 107 through 118, that the copyright owner has, or may authorize others to exercise, over his or her intellectual property. I suggest that using optical disks without permission could infringe upon several of these exclusive rights.

Section 106(1) gives the copyright proprietor the sole authority "to reproduce the copyrighted work in copies or phonorecords." The Act defines copies as "material objects...in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."³⁰ This clause eliminated the possibility, raised by the *Apollo* decision, that machine-readable duplication of copyrighted materials might not be defined as copies and, therefore, be outside the scope of intellectual property laws. The wording of this definition suggests that the copyright owner not only has the exclusive right to control machine-readable copies of his or her work, but also the sole right to authorize someone else to transfer the copyright owner's work to machine-readable formats.

The exclusive right "to prepare derivative works based upon the copyrighted work," is conveyed to the copyright owner under Section 106(2). Derivative works are defined as "a work based upon one or more preexisting works, such as a translation..."³¹ I maintain that the technological process of copying materials onto optical disks involves a type of translation. In order to transfer written words to machine-readable language, the computer must encrypt the script into a binary language. If encoding words into numbers is, in fact, a translation, then it is possible that this process could be construed as an infringement of the copyright owner's exclusive rights to derivative works, unless the owner waives his or her rights.

Section 106(5) grants the copyright owner exclusive rights "to display the copyrighted work publicly." This clause presents two problems for archivists who might be interested in recording manuscripts on optical disks. The first concerns the word "display." According to the definitions contained in Section 101, "to 'display' a work means to show a copy of it, either directly or by means of a film, slide, television image, or *any other device or process*..."³² Because this definition includes the phrase, "any other device or process," it could be argued that when an image stored on an optical disk is flashed on a monitor the computer is, in effect, displaying the work. This might seem to be a minor, even a laughable, point until one considers the difference between the way a photocopy machine makes a copy of a work and how optical disk technology operates. A photocopier does nothing with material except to make a duplicate of the original. But to use an optical disk, a computer searches its memory upon command, identifies the material sought, transforms the digitized image into a language intelligible to human beings and flashes, not a facsimile, but an altered version of the original on the screen. In effect, and consonant with the definition cited above, the computer is "displaying" the work.

Moreover, the definition of the word “publicly” states:

to transmit or otherwise communicate a performance or display of the work to [a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered] or to the public, by *means of any device or process* whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.³³

There can be little doubt that, first, unless privately owned and operated, an archives is a public place. Second, one of the major attractions of optical disks, especially WORMs, is that many users can access the information contained on the same disk.³⁴ It appears, therefore, that when a computer retrieves information stored on a disk and displays it on a monitor, the computer is giving, in a sense, a public display or performance of the original.

In short, recording copyrighted material on optical disks may infringe upon several of the exclusive rights of copyright owners. Those rights are not, however, unqualified. Because the essence of the copyright law is to balance the copyright owner’s right to profit with the public’s right to use others’ intellectual property, the exclusive privileges listed in Section 106 are tempered by the fair use clause.

Fair Use

The Copyright Act of 1976 broke from tradition by incorporating the doctrine of fair use into a federal copyright statute for the first time in United States history. Although fair use had been employed by courts in adjudicating copyright disputes since the 1840s, the concept had not been written into federal legislation until the Copyright Law of 1976 was enacted.

Fair use may be thought of as the fulcrum which achieves the balance between the author’s right to profit from the work of his or her intellect and the right of others to build upon the author’s intellectual property in order to add to the body of human knowledge, so long as that use is reasonable and does not result in financial loss to the author.

The United States Supreme Court first articulated the doctrine of fair use in *Folsom v. Marsh* in 1841. Justice Story wrote in the majority decision:

We must often, in deciding questions of this sort [justifiable use of copyrighted materials], look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work.³⁵

The acid test of fair use, therefore, was whether the proprietor of the copyright either had suffered a financial loss or might experience a financial loss at some future date because another person had expropriated the owner’s intellectual property. This fundamental economic interpretation of fair use remains a hallmark of copyright law to the present day.

Section 107 of the Copyright Act of 1976 is the fair use clause. Although the term “fair use” is not defined in the text of the statute, the Act does provide some guidelines which the courts might use in adjudicating disputes. These are:

1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work.³⁶

Common sense and the logic of public access to copyrighted materials suggest that the fair use clause should apply to manuscripts if only because they are copyrighted works, but the law is not always logical. In legislation and litigation, adherence to past practices is, in fact, often valued more highly than logic. The tradition of exclusive rights to first publication in perpetuity and the provision that protects copyrights on manuscripts militate against applying fair use as broadly to unpublished works as to published works. The Senate report on the Copyright Act notes that "the application of fair use to unpublished works would probably be very narrow."³⁷

The judicial concept of fair use had been used in court cases in awarding judgment in copyright disputes, but without exception these suits involved published works. Until recently no case law existed on the fair use of manuscripts.

Several cases have come before federal courts which have demonstrated that what constitutes fair use of unpublished works is more circumscribed than when applied to works that have been published. In 1985 the U.S. Supreme Court rendered a verdict in *Harper & Row v. Nation Enterprises* that illustrates just how weak fair use is as a defense in litigation involving infringement of copyright on unpublished works. In 1977 Harper and Row entered into a contract with Gerald Ford that granted Harper and Row first serial right to license prepublication excerpts of Ford's memoirs, *A Time to Heal*. Two years later *Time* Magazine negotiated a contract with Harper and Row in which *Time* agreed to pay Harper and Row \$25,000 for permission to publish quotes from the manuscript before Harper and Row released the work in book form later in 1979. The *Nation*, meanwhile, obtained a copy of Ford's manuscript from an unauthorized source. Working directly from the 655-page typescript of Ford's memoirs, Victor Navasky, The *Nation's* editor, composed a 2,250-word article of which 300 to 400 words were verbatim quotes from Ford's yet-unpublished work. Because the *Nation* had scooped *Time's* story, *Time* canceled its contract with Harper and Row. Harper and Row then sued *Nation Enterprises* for infringement of copyright.³⁸

By a 6-3 decision, the US Supreme Court upheld Harper and Row's claim. Justice Sandra Day O'Connor stated in the majority opinion, "We find the *Nation's* use of these verbatim excerpts from the unpublished manuscript was not a fair use...."³⁹ O'Connor explained that "the fact that a work is unpublished is a critical part of its 'nature'.... The scope of fair use is narrower with respect to unpublished works."⁴⁰ *Harper & Row v. Nation Enterprises* illustrates first, that in this case, fair use did not apply to manuscripts and second, that the court stringently upheld the copyright owner's prerogative of first publication.

Perhaps because unpublished works had never been subject to the kinds of statutory limits that the Copyright Act of 1976 imposed, and in the absence of case law to clarify fair use of manuscripts, the relationship between fair use as contained in Section 107 and exemptions for libraries and archives in Section 108 is one of the most problematic aspects of Title 17 of the United States Code. It is simply not clear at this point whether these two sections are or are not mutually exclusive.⁴¹

Reproduction of Copyrighted Materials by Archives

Section 108, "Limitations on exclusive rights: Reproduction by libraries and archives," was designed to give archives and libraries latitude to duplicate materials in their collections and to provide some immunities in the event of litigation concerning violation of copyright. Archives and libraries are limited to making one copy of a work provided the copy is made without any purpose of direct or indirect commercial advantage, the library or archives is open to the public or to specialized researchers, and the reproduction includes a notice of copyright. As I will show, Section 108 does not give libraries or archives carte blanche to transfer portions of their collections to machine-readable information systems. In fact, only two circumstances exist under which a library or archival repository may make a copy of a complete work for itself.

Section 108(b) authorizes archives to reproduce and distribute a copy of an unpublished work duplicated in "facsimile form solely for the purposes of preservation or security, or for deposit in another library or archives...." if the manuscript being reproduced is currently in the collections of the first library or archives. The operative word in this clause is facsimile. Precisely what did Congress mean, in 1976, by this term? Facsimile is not defined in the text of the Copyright Act of 1976. An analysis of the House and Senate Reports that accompanied this Act provides some insight into Congress's intent in drafting 108(b). The House Committee's *Report on Section 108* stated that when duplicating unpublished materials, "a repository could make photocopies of manuscripts by microfilm or electrostatic process, but could not reproduce the work in 'machine-readable' language for storage in an information system."⁴² The Senate report noted the same caveat in identical language.

Based upon the House and Senate Reports on Section 108(b), it appears that the term facsimile, as used in the 1976 Copyright Act, means only photocopies or microform copies. If that is true, then the use of optical disks or kinds of machine-readable information system may be illicit even when copying materials for preservation and security. Frederick J. Stielow noted recently that "whether copying for preservation purposes to a new media is legally permissible is an interesting question that may ultimately hinge on archivists' own policy development."⁴³

Section 108(c) allows libraries and archives to copy published works "in facsimile form" to replace "damaged, deteriorating, lost, or stolen" items unless an unused replacement copy can be purchased at a fair price. Because the term "facsimile form" is repeated in this clause, it appears that duplication of published works would also be limited to photocopies or microform copies.⁴⁴

CONTU and Section 117

Sections 101 through 108 established first, that the author had exclusive rights over his or her work being used in conjunction with computer systems and second, that archives and libraries could not reproduce copyrighted materials in machine-readable formats without the author's consent. Neither those sections nor any other provisions of the Copyright Act clarified whether the author's copyright attached when his or her work was first entered into a computer or at the time when the text was retrieved. This question, the one that the Register of Copyrights' panel had articulated so well in 1963, was crucial. If the

copyright began at the time when the material was first put into computer format, users might be denied access to information in this new medium. If the author's rights began at the time of retrieval, then he or she might be deprived of royalties because it is so difficult to detect whether a text has been duplicated using computer reprography.

The problem of determining when the author's rights began was compounded by the fact that no one knew how computer technology might evolve in the future. Congress had no wish to be caught in a technological trap by making policies predicated upon the present state-of-the-art that, at a later date, might prove to be too broad or too narrow.⁴⁵ To maintain the balance between copyright owners' prerogatives and users' needs, the Copyright Act had to be framed in such a way that it would be effective regardless of technical innovations yet to come.

If Congress confronted these issues directly, however, the debate over copyright revision might be prolonged interminably. In order to expedite proceedings, Congress acted upon two proposals. The first of these, Public Law 93-573, was enacted on December 31, 1974, and authorized the creation of the National Commission on New Technological Uses of Copyrighted Works (CONTU). CONTU's mandate was to study and make recommendations regarding legislation concerning the reproduction of copyrighted works in computer systems and the creation of new works with computer systems.⁴⁶ Senator John L. McClellan, of the Senate Judiciary Committee, explained the rationale for CONTU:

As the program for the general revision of the copyright law has evolved, it has become increasingly apparent that in one major area the problems are not sufficiently developed for a definitive legislative solution. This is the area of computer uses of copyrighted works: the use of a work "in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information." The Commission on New Technological Uses is intended, among other things, to make a thorough study of the emerging patterns in this field and, on the basis of its findings, to recommend definite copyright provisions to deal with this situation.

The Commission had three years to complete its tasks.

The second proposal Congress adopted to expedite copyright revision was Section 117 of the Copyright Act of 1976. Entitled "Scope of exclusive rights: Use in conjunction with computers and similar information systems," this provision said that the new Act would have "no effect upon the use of copyrighted works in connection with computers."⁴⁷ Section 117, according to McClellan, was intended "neither to cut off any rights that may now exist, nor to create new rights that might be denied under the Act of 1909 or under common law principles that are currently applicable."⁴⁸ In the event of a law suit, federal courts would have to decide whether State common law or the Act of 1909 would apply. After determining which of these laws was involved, the court's verdict was to be based upon what that law meant "on the day before the effective date of the new statute [of 1976]."⁴⁹

Section 117 is best understood as a political maneuver—a way to expedite passing a copyright revision bill without committing Congress to a position on computer-related issues until further study of the impact of new technologies upon copyrights could be completed. Section 117 was never meant to be perma-

ment. It was simply a stop-gap measure designed to preserve the status quo until CONTU could produce answers to questions that Congress had failed to resolve. Preeminent among these was whether copyright liability attached when an author's copyrighted work was put into a computer or when the material was retrieved.⁵⁰

CONTU's final report disposed of some of the controversies that had preoccupied Congress for so many years. The Commission solved the question about whether an author's copyright began at the in-put or at the out-put stage, by declaring simply, "the text of the new copyright law makes it clear that the placement of a copyrighted work into a computer—or, in the jargon of the trade, the 'inputting' of it—is the preparation of a copy."⁵¹ CONTU noted, moreover, that the exclusive rights listed in Section 106 prohibit "the unauthorized storage of a work within a computer memory...."⁵²

In regard to the issue of displaying copyrighted works on computer monitors, the Commission's final report stated that "under the new copyright law the information displayed or copied may often be a copyrighted work. The terms "display" and "copy" are important for the purposes of this Report, since each of those acts, unless authorized, constitutes a copyright infringement."⁵³

CONTU acknowledged that fair use would, "in limited instances" excuse loading copyrighted works into a computer-assisted information system without the author's consent. Examples of such fair use included preparing a concordance or performing syntactical analysis. But, the report noted, "to satisfy the criteria of fair use, any copies created for such research purposes should be *destroyed upon completion of the research project for which they were created.*"⁵⁴

I infer from the final report that the Commission concluded that the 1976 Act was quite clear on the subject of putting copyrighted works into machine-readable format and required no further elaboration other than the points mentioned above. The bulk of the final report is, in fact, devoted to copyrights in works specifically created to be used with computers such as computer databases and software programs. For that reason, when CONTU recommended that Section 117 of the 1976 Act be repealed and drafted a revised version of that Section, there was no mention of putting books or manuscripts into computer-assisted information and retrieval systems. CONTU's revision of Section 117 dealt with copying computer software and databases. The Commission's draft of Section 117 was passed in December 1980.⁵⁵

Conclusion

In summary, optical disk technology is available and is being used in some libraries and archival repositories. The Library of Congress has been involved in an optical disk program since 1982. The Library of Congress, however, acknowledged that copyrighted materials should not be stored on disks without permission and negotiated license agreements with each copyright holder. The National Archives is also using optical disks, but most of their records are produced by the federal government and are not, therefore, under copyright. If an archival repository either owns the copyright, has permission from the copyright owner, or if the material is not protected by copyright, then it is perfectly lawful to transfer holdings to optical disks.

In the absence of those conditions, however, Title 17 stands as a nearly insuperable legal barrier to using optical disks as storage and retrieval devices. Copying copyrighted materials using computer-assisted information systems is specifically prohibited according to the House and Senate reports. CONTU's final report underscores the fact that such action is a violation of the exclusive privileges that are reserved to the copyright owner. Before embarking upon a project to use optical disks to store archival material, the archivist would be well-advised to read the Copyright Act of 1976 very carefully.

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NOTES

1. 17 U.S.C. is usually referred to as the Copyright Act of 1976.
2. Quoted in Susan E. Brandehoff, "Satellite Chamber, Lasers Spur LC Preservation Effort," *American Libraries* 13 (July-August 1982): 478. During the 1970s, Risher served as the Information Officer for the National Commission on New Technological Uses of Copyrighted Works. See Nicholas Henry, ed., *Copyright, Congress and Technology: The Public Record*, 5 vols. (Phoenix: Oryx Press, 1978-1980), 5:253.
3. *Ibid.*
4. I contend that Copyright Act of 1976 prohibits using any kind of machine-readable information storage and retrieval systems and, therefore, applies to videodiscs, CD-ROMs, and similar kinds of reprographic technology as well as to optical disks. I have chosen to use optical disks to exemplify the problem because they seem to be discussed more frequently in archival literature than do the others.
5. This five-year pilot project, which culminated in 1988, was designed to test the feasibility of using optical disks to store archival materials. The final report of ODISS is contained in U.S. National Archives and Records Administration Archival Research and Evaluation Staff, *Optical Digital Image Storage System: Project Report, March 1991* (Springfield, Va.: Reproduced by U.S. Department of Commerce, National Technical Information Service, 1991).
6. *Archival Administration in the Electronic Information Age: An Advanced Institute for Government Archivists* (Pittsburgh: Pittsburgh University Graduate School of Library and Information Science, 1991), ERIC, ED 344 597.
7. *The Commission on Preservation and Access, Annual Report, July 1, 1990-June 30, 1991* (Washington, D.C.: Commission on Preservation and Access, 1991), ERIC, ED339 379. The program at Syracuse University is well-documented in Elizabeth Carley Oddy's *Kellogg Library and Archive Retrieval System (KLARS): Design and Development. Technical report No. 6* (Syracuse, N.Y.: Syracuse University, 1991), ERIC, ED 338 256. See also the regular column entitled "Preservation News" in *College and Research Libraries News*.
8. Library of Congress, Copyright Office, *Report of the Register of Copyrights: Library Reproduction of Copyrighted Works (17 U.S.C. 108) 2nd Report* (Washington, D.C.: Government Printing Office, 1988), "Attachment F." This statement was made in the context of assuring that copyright owners will receive a fair return on their investment and also using royalty collection mechanisms, such as the Copyright Clearance Center to collect royalties.
9. Oddy, *Kellogg Library and Archive Retrieval System*, 32.
10. In the "Annual Bibliography: Writings on Archives," *American Archivist* 53 (Fall 1990): 661, no fewer than 30 articles were listed under the subject heading, "optical disks." Some more recent sources include Judith Paris Roth, ed., *Converting Information for WORM Optical Storage* (Westport, Conn.: Meckler, 1990); Charles Dollar, *The Impact of Information Technologies on Archival Principles and Methods* (Macerate, Italy: University of Macerate Press, 1992); Avra Michelson and Jeff Rothenberg, "Scholarly Communication and Information Technology: Exploring the Impact of Changes in Research Processes in Archives," *American*

- Archivist* 55 (Spring 1992): 236-315; Frederick J. Stielow, "Archival Theory and the Preservation of Electronic Media: Opportunities and Standards Below the Cutting Edge," *American Archivist* 55 (Spring 1992): 332-43; and John McDonald, "Archives and Cooperation in the Information Age," *Archivaria* 35 (Spring 1993): 110-18.
11. See especially Gary M. Peterson and Trudy Huskamp Peterson, *Archives and Manuscripts: Law* (Chicago: Society of American Archivists, 1985); Michael J. Crawford, "Copyright, Unpublished Manuscript Records, and the Archivist," *American Archivist* 46 (Spring 1983): 135-47; Jerome K. Miller, *U.S. Copyright Documents: An Annotated Collection for Use by Educators and Librarians* (Littleton, Colo.: Libraries Unlimited, 1981); Robert Lee Chantrand, *Information Policy and Technology Issues: Public Laws of the 95th through the 100th Congresses, CRS Report for Congress* (Washington, D.C.: Congressional Research Service, 1989); and two publications by the Library of Congress, Copyright Office, *Copyright Basics: Circular 1* (Washington, D.C.: Government Printing Office, 1987), and *Reproduction of Copyrighted Works by Educators and Librarians, Circular 21* (Washington, D.C.: Government Printing Office, 1978).
 12. This point was illustrated in a lawsuit that involved the sale of a collection of letters written by Mary Baker Eddy. An auction house had bought the collection and intended to sell the letters at public auction. Eddy's estate brought suit to prevent the sale on the grounds that Eddy's papers were literary property. In 1912, the United States Supreme Court ruled that the pieces of paper upon which Eddy's letters were written belonged to the auction house and therefore could be bought or sold legally. The Court ruled that although the letters had no significant literary merit, the auction house could not use direct quotes from Eddy's letters in publications advertising the sale because the sentiments that Eddy expressed were, in fact, literary property and therefore protected by the common law. See Linda Matthews, "Duplication of Personal Papers in Archival Repositories," *Library Trends* 32 (Fall 1983): 225.
 13. *Feist Publications, Inc. v. Rural Telephone Service Company, Inc.* 111 S. Ct. 1282 (1991).
 14. "Fair" in this context means whether the use of copyrighted material was appropriate as a "reasonable person" might judge the situation.
 15. In 18th century parlance, the word science was used in the broad sense of knowledge. The term useful arts meant applied knowledge or technology.
 16. Maurice J. Holland, "A Brief History of American Copyright Law," in *The Copyright Dilemma*, ed. Herbert S. White (Chicago: American Library Association, 1978), 8-12.
 17. Matthews, "Duplication of Personal Papers," 227.
 18. *Ibid.*, 226.
 19. *Ibid.*, 226-27.
 20. "Transcript of Meeting on Preliminary Draft for Revised U.S. Copyright Law: Discussion of Sections 5-8, Library of Congress, Washington, D.C., February 20, 1963," in *Copyright Law Revision, Part 3: Preliminary Draft for Revised U.S. Copyright Law and Discussion on the Draft* (Washington, D.C.: Government Printing Office, 1964), 122.
 21. *Ibid.* Schiffer was a member of the New York City law firm of Schiffer and Cohen.
 22. *Ibid.*, 123-24.
 23. *Ibid.*, 126.
 24. Henry, *Copyright, Congress and Technology* 5:160.
 25. During the House Judiciary Committee hearings in 1965, Bella Linden, counsel for the American Textbook Publisher's Institute, presented one of the first thorough analyses of the legal implications of putting copyrighted materials into computer information systems. Linden pointed out that computer manipulation of data involves input, scanning, and retrieval. Each one of those steps was a potential infringement of copyright. See Henry, *Copyright, Congress and Technology* 1:348-66. There is a convenient summary of the legislative history of computer-related issues in copyright revision in Henry, *Copyright, Congress and Technology* 5:160-75.
 26. 209 U.S. at 17 (1908).
 27. *Corcoran v. Montgomery Ward & Co., Inc.*, 121 F.2d 572 (9th Cir. 1941) and *Capitol Records, Inc. v. Mercury Records Corp.*, 221 F.2d 657 (2d Cir. 1955).
 28. Matthews, "Duplication of Personal Papers," 227.
 29. Cited in Ruth Sievers, "Congress Considers Amending Copyright's Fair Use Doctrine," *Library of Congress Information Bulletin*, 10 September, 1990, 310. For reactions by publishers and the popular press to the Salinger case and related litigation, see Carol E. Rinzler, "Salinger and 'The Bell Jar': What Do They Mean to Publishers?" *Publishers Weekly*, 24 April, 1987, 20-22; and "Foul Weather for Fair Use," *Time*, 30 April, 1990, 86-87.

30. 17 U.S.C., Section 101. For an interesting analysis of derivative rights see Marilyn A. Van Bergen, "Copyright Law, Fair Use, and Multimedia," *Educom Review* 28 (July/August 1993): 33.
31. 17 U.S.C., Section 101.
32. *Ibid.* (Italics mine).
33. *Ibid.*
34. This acronym stands for "Write Once, Read Many (times)."
35. Cited in Leon E. Seltzer, *Exemptions and Fair Use in Copyright: The Exclusive Tensions in the 1976 Copyright Act* (Cambridge, Mass.: Harvard University Press, 1978), 33.
36. 17 U.S.C., Section 107.
37. Senate Committee on the Judiciary, *Report on the 1976 Copyright Bill* 94th Cong., 1st Sess., 61-63.
38. Mark A. Lillis, ed., *Decisions of the United States Courts Involving Copyright, 1985* (Washington, D.C.: Copyright Office, Library of Congress, 1992), 474-519.
39. Howard Fields, "High Court, 6-3, Sustains Ford Memoir Copyright," *Publisher's Weekly*, 31 May 1985, 17.
40. Quoted in Sievers, "Congress Considers Amending Copyright's Fair Use Doctrine," 309.
41. For insights into this controversy see Nancy Marshall, "Register of Copyright' Five-Year Review Report: A View from the Field," *Library Trends* 32 (Fall 1983): 175-76.
42. House Committee on the Judiciary, *House Committee Report on the 1976 Copyright Bill*, 94th Cong., 2d Sess. 74-79.
43. Stielow, "Archival Theory and the Preservation of Electronic Media," 336.
44. In using these exemptions archival repositories should also be sure to comply with the rest of the provisions of Section 108.
45. David Ladd, "Securing the Future of Copyright: A Humanist Endeavour," *Scholarly Publishing* 16 (October, 1984): 26.
46. Henry, *Copyright, Congress and Technology* 5:16.
47. Henry, *Copyright, Congress and Technology* 3:405.
48. *Ibid.*, 180.
49. *Ibid.*
50. Henry, *Copyright, Congress and Technology* 5:79.
51. *Ibid.*, 44.
52. *Ibid.*, 80.
53. *Ibid.*, 14.
54. *Ibid.*, 82. (Italics mine). This statement was made in the context of computer databases. It is impossible to determine from CONTU's report whether computer copies of other copyrighted materials, such as books or manuscripts, would have to be destroyed after being used in order to comply with fair use.
55. *United States Code Annotated: Title 17, Copyrights, 1993, Supplementary Pamphlet Covering Years 1978 to 1992* (St. Paul, Minn.: West Publishing, 1993).

MODERATION IN EVERYTHING, ACCESS IN NOTHING?: OPINIONS ABOUT ACCESS RESTRICTIONS ON PRIVATE PAPERS

MARK A. GREENE

ABSTRACT: Archivists have written extensively about access issues relating to case files (legal, medical, social work) and confidential information collected by governments. Meanwhile, the profession's official perspective on disclosing private information in "traditional" private papers such as collections of letters has undergone an important but much quieter transformation. According to some recent archival manuals, the release of any incoming letter in a manuscript collection may represent an invasion of privacy, so archivists are told to impose restrictions beyond the wishes of donors. These changes leave theory dangerously out of step with archival reality and raise troubling questions concerning the state of archival ethics.

A quarter century ago Theodore Schellenberg pronounced that "The end of all archival effort is to preserve valuable records and make them available for use. Everything an archivist does is concentrated on this dual objective."¹ Since that time there have been important discussions and changes concerning various aspects of access: legal, intellectual, and physical. While I believe that the profession needs far more thoughtful discussion of intellectual and physical access issues, it is legal access which concerns me here.² Of all the changes in legal access matters, archivists have been most eager to explore those related to case files, both private and public; that topic has received extended and generally thoughtful study in the professional literature.³ Another area of legal access has also received concentrated study: the complex access issues associated with the administration of personal information collected by government and held in public archives.⁴ What, however, of the theoretical and practical issues associated with disclosing private information in "traditional" private papers such as collections of letters or business records?

Privacy in such private papers has not exactly been ignored in the archival literature. But I will argue here that the profession's official perspective on access to private papers has become ambiguous, after having undergone an important but quiet transformation in the last decade. Not just the case files of physicians,

social workers, and lawyers—which have always been recognized by archivists as confidential—but every incoming letter in a collection of personal or business papers may represent a threat to privacy according to recent archival manuals. As a result, archivists are being urged increasingly to impose restrictions beyond the wishes of donors. These changes, it seems, leave theory dangerously out of step with archival reality and raise troubling questions concerning the state of archival ethics. Though the tension between access privileges and privacy rights permits no panacea, I will propose that there may be a better way than the one the official manuals suggest.

The evolution of the archivist's attitude toward restrictions within the "historical manuscript tradition" is a complicated one, because of the interplay of several competing trends, and need not be retraced here.⁵ Suffice it to say that between the 1920s and the early 1980s manuscripts repositories generally moved away from believing that they stood as "a mere trustee of private property"; and away, therefore, from acting as jealous guardians of the access gate who scrutinized each supplicant researcher to insure that the privacy and reputation of the creators and donors would be protected.⁶ Instead, curators came to believe that they were—at the very least—mediators between two equally important and compelling principles. Those principles are, simply, that historical resources ultimately have broad societal value on the one hand, and that the creators or owners of historical resources may have legitimate property and privacy rights which must be respected on the other. The trend, however, has been away from restrictions or qualifications on access and toward greater openness—at least until recently.

An important point to make about the tension between access and property or privacy rights is that manuscript curators in public or quasi-public institutions have to balance the two demands without the benefit (dubious as it may seem sometimes) of the specific legal guidelines which regulate access to private information in government records.⁷ The SAA Standards on Access, first published in 1974, make this plain: "Repositories are committed to preserving manuscript and archival material and to making them available for research as soon as possible," but "at the same time, it is recognized that...every private donor has the right to impose reasonable restrictions upon his papers to protect confidentiality for a reasonable period of time."⁸ Two of the key words in these guidelines are "private donor." Private donors have rights in their papers which repositories must take into account. As one writer noted in 1975, "Protection of privacy and a deepening desire to know have developed side by side.... The archivist...has become a central element in the conflict. He has had to become simultaneously an advocate and a protector of both sides of a complex and sensitive issue...." The archival profession has long positioned itself as an ally of open access: we accept donor-imposed restrictions only when necessary, and have worked to limit government-imposed restrictions based on "security." At the same time, we as a profession have taken seriously the injunction to protect privacy, by administering laws designed to protect data on individuals gathered by government and protecting the confidentiality inherent in social work, medical, and legal case files. But through the 1970s the balance was tilting toward access. Witness Sue Holbert's 1977 SAA manual on reference and access, which abjured archivists "that the burden of justifying a denial of access would fall on the repository," and suggested that we were more likely to get in trouble

by restricting collections donors wanted open than vice versa. The manual accepted that invasion of privacy may be an issue with case files reflecting confidential relationships (e.g., lawyer-client) and that such files should be restricted by a repository if not restricted by the donor, but it concluded that "the right to information is as valid as the right to privacy" and overall urged greater openness of records rather than greater restriction.¹⁰ Such an interpretation of archival standards and ethics appeared sound up until the middle 1980s.

While Holbert recognized the property and privacy rights of the donor, her concern for third-party material (that is, material sent to the donor/creator by someone else, or created by the donor to document someone else) was confined largely to case files and government records. The SAA Code of Ethics (first published in 1980 and revised in 1992) makes a broader statement about third-party rights: "Archivists respect the privacy of individuals who created, or are the subject of, documentary materials of long-term value, especially those who had no voice in the disposition of the materials."

This broader concern has been amplified by several authoritative sources. David Kepley, writing on Reference and Access in *Managing Archives* (1988), and both Mary Jo Pugh (1992) and Fredric Miller (1990) in their SAA manuals on reference and arrangement, respectively, argue that careful (possibly item-level) review of collections may be necessary but *not* to implement narrowly the donor's restrictions. Instead, they suggest that the archivist has the responsibility for going *beyond* donor-imposed restrictions to protect the privacy rights of those individuals and organizations who sent material to the donor. In making such arguments, these three authors follow the cautions given by Gary and Trudy Huskamp Peterson in the SAA manual *Archives and Manuscripts: Law* (1985): "Donors have been known to be cavalier about the release of information in their papers, particularly information relating to persons other than themselves. *If the donor does not specifically protect the privacy rights of persons named in the donated materials, the archives should to avoid potential lawsuits.*"¹¹

Having expanded archivists' responsibilities to include protecting third-party privacy rights by imposing restrictions when donors will not, Peterson and Peterson cite the basic reference book on torts to define broadly an invasion of privacy as "intrusion upon the individual's seclusion or solitude, or into his private affairs," or "public disclosure of embarrassing private facts about the individual." While they note that civil case law has to date recognized privacy only in a narrow range of files—such as legal or medical client case files—they suggest that privacy protection may extend much more generally, to include anything that might cause an individual "injury and embarrassment." The implication of a vast mine field of privacy concerns is taken by Pugh to the logical conclusion that

Privacy protects not only good reputation, but also any personal information that individuals want to keep from being known. Some people do not care if their age is known; others feel considerable interest in keeping such information to themselves, perhaps with good reason because they have witnessed or experienced age discrimination. The concept of confidentiality refers first to private communications. Confidential communication between two people

is restricted to them alone, and unauthorized inquiry into the content of the communication is forbidden. Communications resulting from friendship, may not be protected by law, but archivists may need to recognize and protect the confidentiality implied in them.¹²

By this definition, virtually every document not created by the donor of a collection is a potential confidentiality problem, if not a lawsuit waiting to happen.

If we take seriously the argument that curators are responsible for protecting not just privileged case file data and federally classified documents but potentially all correspondence, reports, and minutes of "those who had no voice in the disposition of the materials" in virtually every collection, the ramifications are immense. As a curator who works largely with 20th century personal, organizational, and business collections which not infrequently measure hundreds of cubic feet in size, I consider it a fond delusion to believe that we can realistically find "sensitive" material in large modern manuscript collections, that we can make tenable judgements about whether material represents a potential invasion of privacy, or that (as an alternative) we must self-impose lengthy restrictions on large portions of our collections.

In a thoughtful recent article on access to third-party material in private manuscripts collections, Sara Hodson recognizes that "there is no small irony inherent in the fact that, because of the massive size of many modern collections, we often cannot give them detailed attention, but that particular attention is precisely what we ought to give them because of their currency and the legal issues at stake," and she struggles to suggest methods for narrowing the search for potentially sensitive materials in large collections.¹³ The Petersons acknowledge, too, that "it is impossible to review every page of every set of records or personal papers for items that possibly should be restricted. Instead, each archives must decide on some general ground rules that give guidance on when to screen" and at what level.¹⁴

This would be fine advice, but for the fact that no clearly enunciated basis exists upon which to ground these rules. As the SAA manual on law explains with formidable understatement, "exactly what privacy means is a little hard to define...." The insurmountable barrier is that even if "sensitive" material is located absolutely no reasonable guideline exists for deciding whether or not it warrants restriction by the archivist. Neither the Petersons nor Pugh try to guide archivists toward determining just what constitutes an invasion of privacy in private manuscripts collections.¹⁵ Hodson does try, averring that the archivist should attempt to discover whether the information 1) is public knowledge, 2) "would result in embarrassment or injury" to the individual, or 3) "is in any way consistent with the individual's public persona or known ethos, or whether it is at variance with his or her customs and mores and therefore likely to cause embarrassment if revealed." But these guidelines, as she herself acknowledges, have no more substance than quicksand. Short of asking the individual directly, how is the poor archivist to make these judgements? And if made, how likely are any two archivists to make the same one? Hodson wishes to draw a line between what is truly an invasion of privacy and what may only be the archivist's "own sense of propriety," but surely that is a line impossible to draw.¹⁶

A striking illustration of the lack of criteria for making judgements as to the sensitivity of third-party material is Hodson's description of material in the

Kinross collection at the Huntington Library. Kinross, a homosexual, was a "confidante for dozens of his friends" who "wrote openly to [him] concerning rather intimate details of their lives" and sexual orientation. Kinross died in 1976, but many of the correspondents may still be alive. Pondering whether to impose institutional restrictions, Hodson has placed in the balance "that it is impossible to determine whether or not Kinross is the sole recipient of such information," that if the letters were to be restricted it would be hard to learn of death dates for most of the correspondents, and that "I have no concrete indication in most instances that the individuals would be embarrassed if their letters were opened for research." Would a decision to restrict this material indicate that the archivist was puritanical, or would it reflect due consideration for the unfortunate reality of the discrimination faced by homosexuals in our society? Would a decision not to restrict the letters indicate a "progressive" archivist, or would it reflect callousness toward those correspondents who have not chosen to make their sexual orientation public? The Petersons aver that a substantial "part of the trick of administering access to records is stating the problem clearly and accurately," but I would argue that having done so with the Kinross letters the answer is no clearer.¹⁷

Hodson states that even though "letters...are by their very nature private communications,...we would not therefore, in the name of guarding privacy, restrict all letters written by individuals still living."¹⁸ Yet until we have clear and widely accepted distinctions between what should and should not be considered privileged information—and Pugh suggests that even so commonplace a piece of information as a person's age may constitute an invasion of privacy—such a broad restriction seems to be the logical procedure if we accept the goal of protecting third-party privacy rights, for only the dead have no rights to privacy. If we do respond by preventing access to all collections which might contain private information until all parties represented in the papers are dead, how will we explain to our publics and our resource allocators this retrogression to the role of stingy custodians and arbiters of privacy and "legitimate" research?¹⁹ If on the other hand we decide to shoulder the responsibility for screening collections for material which invades the privacy of third parties, then we also invite the legal consequences if despite our efforts material later deemed to be an invasion of privacy is made accessible to a researcher. Surely we need not martyr ourselves on the altar of privacy rights.

There is, after all, an alternative. Many repositories, including mine, do not practice what the manuals and handbooks preach. These institutions have moved away from taking responsibility for determining what material should be restricted and instead place this obligation on the donor. In addition, decisions to grant access to the restricted portions of collections are made by the donor, for the specified duration of the restrictions. It is unclear the extent to which this shift can or will protect repositories from third-party invasion of privacy suits. (Hodson notes that "libraries and archives are not apt to be sued" over invasion of privacy,²⁰ and Peterson and Peterson offer no indication of just how much of a practical threat such lawsuits might be.) For the record, while the Minnesota Historical Society has been using donor-controlled access restrictions for at least 30 years, and has not engaged in item-level screening or processing for at least that long, no invasion of privacy suit has ever been filed.

Even so, our profession's official manuals warn us against this form of restriction in favor of broader, institution-imposed restrictions. The Petersons do

not object in principle to restrictions which permit individuals approved by the donor to obtain access, but they do object to such contracts because of the cavalier attitude of donors. Pugh and Hodson second this objection, and add that donors might permit unequal access.²¹ By giving the donor control over access, access *can* be unequal—the donor is able to grant access to one individual and deny it to another, essentially at the donor's whim. While this unequal access superficially contradicts SAA's access statement, in fact it does not. The "Standards for Access" to Research Materials states that "a repository should not grant privileged or exclusive use of materials to any person or persons...unless required to do so by law, donor, or purchase stipulations." At least one state court has upheld the soundness of such donor-controlled restrictions. This kind of restriction (with no clear end date) was negotiated by the State Historical Society of Wisconsin with Carl and Anne Braden in 1966. When the FBI argued that because the Bradens permitted some researchers to use the papers their right to deny access to others was compromised, the courts disagreed.²²

On the other hand, a potential advantage to such contracts—which incorporate donor-imposed restrictions specifying that researcher access is by the donor's permission only, as opposed to restrictions which deny all access to the records—is that the donors, by having to respond to researcher access requests, are made partners in the access process. Being partners in the process, they may feel less threatened by it. Our experience at the Minnesota Historical Society is that often this results in the increasingly liberal extension of permission by donors. This may be viewed with some alarm by those who fear cavalier donors will disregard the privacy rights of their correspondents. But are not the donors almost always in the best position to judge the sensitivity of their papers—sensitivity to the donors and to their friends and colleagues? Kinross, presumably, would be the first source to which a curator would go to ask about the propriety of making his incoming letters available were he still alive. But the overriding reason we use such contracts is that the alternatives seem wholly unrealistic, as well as ethically questionable.

To do as the manuals say, and to have the repository take on the responsibility of determining what should be restricted, is to place what would seem to be an impossible burden on repository staff—that of determining just what material does or does not constitute an invasion of privacy or breeches the confidentiality of business information across thousands of collections, hundreds of thousands of folders, and tens of millions of documents. In addition, we risk undermining the confidence of donors in our willingness to abide by contracts if we reserve the right to close collections which they wished to have open. What then, after all, is to prevent us from *lifting* restrictions imposed by the donor if we decide such action would serve the public interest or would keep us from being sued by a researcher?

Indeed, imposition of restrictions by the repository would seem to contradict the SAA Code of Ethics, which states that archivists may suggest to the donor that he/she restrict his/her papers but that "Archivists observe faithfully all agreements made at the time of transfer or acquisition." Anne Kenney, President of SAA, made just this point when testifying before the Senate Governmental Affairs Committee regarding the Thurgood Marshall Papers. The controversy over the Marshall papers is a clear example of the dangers inherent

in the archival profession accepting broad definitions of third party privacy rights and of accepting responsibility for imposing restrictions. Had the donor contract stated simply that the papers would be open upon Marshall's death, instead of being "made available to the public at the discretion of the Library," there might have been less fire directed at the Library. Even so, the Supreme Court justices, represented by Chief Justice William Rhenquist, who wanted the papers restricted despite Marshall's wishes could have cited the SAA law and reference manuals to support their contention of harm and embarrassment caused to them by the donor's "cavalier attitude" toward their privacy. That SAA's president apparently placed the donor's wishes above the embarrassment of third parties is heartening, but reinforces the disparity between archival manuals and archival practice.²³

In order for a policy of donor-controlled access to have any chance of passing ethical muster, the repository must undertake to explain scrupulously to donors just what donation of their papers means in terms of public access. Philip Mason's 1977 article on the ethics of collecting (sadly, the only article on this topic in the American archival literature to date) argues forcefully that archivists must discuss candidly and honestly with the donor the possible need for restrictions, even going so far as to ask specifically about "sensitive, highly personal, or potentially libelous material." While it may be impossible with large modern collections to review, as Mason wishes, the entire collection with the donor, surely it is both possible and imperative to ensure that the donor understands the ramifications of unrestricted access and the obligation to consider the privacy of his/her correspondents.²⁴ Such frank discussions with the donor may result in more restricted collections (Hodson argues that this is a course that is likely to "invite trouble"), but may hold the key to a workable and ethical approach for archivists to administer sensitive material. I wonder, in fact, whether manuscripts curators should not have a donor version of the Miranda card, specifying the points which donors must clearly understand before they can be said to have given informed consent to a donation.

Clearly there will be exceptions to this rule. Most obviously, the issue arises of what to do when the donor is not the creator/recipient of the collection, but rather a spouse or descendant, who may know little about the third parties represented in the papers. In such instances it may be unavoidable for curators to become the arbiters of privacy. But they should do so grudgingly, and ideally with a clear institutional policy in place which aims to minimize different restriction decisions based on the different sensitivities of different curators. Indeed, given the difficulty of defining "confidentiality," the wisest course may be to close all or part of any collection which might *conceivably* represent an invasion of privacy until all the correspondents can be assumed reasonably to be dead. Alternatively, the archival profession in the United States should spend some time attempting to formulate concrete and realistic guidelines (or a broad and useful body of case studies) for determining what kind of information would represent an invasion of privacy if opened to researchers while the creators were still living.

The third parties represented in a manuscript collection donated to a repository may have legitimate privacy rights. My argument is simply that the archival profession is not (and to the extent possible should not be) in the best position to determine whether those rights would be violated by permitting access to the

donated collection. The donor should have that responsibility, just as he/she has it up until the time the papers are donated. If "the principle of confidentiality is a specific application of the principle of promise-keeping in ethics generally,"²⁵ that promise was made between the third party and the recipient/donor, and the donor therefore has not only the best knowledge but also the ethical responsibility for determining the wisdom and morality of breaking such a promise. The donor's right to make such decisions is generally accepted not only by the donors but also by the user communities, and this merely reinforces for me the wisdom of leaning further toward donor responsibility for preventing (and permitting) access for a specified period of time and further away from repository responsibility.²⁶ Will curators be accorded the same support if they are perceived to be restricting extensively collections the donors of which wished to have open to research?

The argument within the archival manuals toward greater imposition of curatorial restrictions on collections of private papers in order to protect the privacy of third parties leaves many questions unanswered. We have not been given concrete evidence of the *actual* legal threat institutions may or may not face either for failing to protect privacy or for unnecessarily restricting records which the donors of those records wished to have open to research. The even murkier ethical question, of how far we should go to protect private communications which are not expressly protected by law (assuming we could identify them to begin with), has also been poorly articulated and the answers ill-defined. Nor have we given focussed attention to the importance of communicating with donors about the ramifications of a donation—either verbally or formally through the deed of gift—at least so far as the placement, control, and administration of restrictions are concerned. Finally, there seems to be a disquieting disjunction between our official manuals and broad archival practice. How many repositories handling 20th century material are doing item- or even folder-level screening on a routine basis?²⁷ How many impose their own restrictions on otherwise unrestricted series, how often, and using what criteria? And how many have forsaken, as the manuals suggest, contracts which permit donors to control access to their collections for a limited period of time?

It is incumbent upon us as a profession to think more rigorously about legal access issues. But in the meantime, I agree with Hodson that "we must be aware of the right to privacy but not paralyzed with apprehension or indecision as we deal with modern research collections."²⁸ If we err, let us err on the side of access.

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NOTES

1. Theodore Schellenberg, *Modern Archives: Principles and Techniques* (Chicago: University of Chicago Press, 1956), p.224. Thirty years later, *Planning for the Archival Profession* (Chicago: Society of American Archivists, 1986), p. 22, called "the use of archival records...the ultimate purpose of identification and administration."
2. It should not be forgotten that intellectual, legal, and physical access are intertwined; as Elena Danielson has noted, poor intellectual and physical access makes a mockery of legally accessible collections (Elena S. Danielson, "The Ethics of Access," *American Archivist* 52:1 (Winter 1989), 58). Recent archival literature has overflowed with discussions of intellectual access, mostly connected to the impact of the MARC AMC format and its attendant cataloging rules, though there is evidence that the system is not actually improving access. Ann D. Gordon, *Using the Nation's Documentary Heritage: The Report of the Historical Documents Study* (Washington, DC: National Historical Publications and Records Commission, 1992), p. 59, notes that "Only 9 percent of respondents to the survey [of various categories of researchers] selected computer data bases as an important way to find sources." Physical access has received little attention by the profession, although Gordon, p. 46, notes that "about 30 percent of respondents had been barred from collections" which were not yet processed, "and another 20 percent or more had been barred because records were in poor physical condition." Also see Bruce W. Dearstyne, "What is the Use of Archives? A Challenge for the Profession," *American Archivist* 50:1 (Winter 1987), 82, who cites laments about unprocessed collections found in the state assessment reports of California, Kentucky, North Carolina, and New York. A recent RLG survey indicates that up to one-third the volume of some repositories' manuscripts holdings are inaccessible to researchers (Fax received 11 September 1992 from William K. Wallach, Bentley Historical Library).
3. For examples of this extensive case file literature, see: Virginia Stewart, "Problems of Confidentiality in the Administration of Personal Case Records," *American Archivist* 37:3 (July 1974), 387-98; David Klaassen, "The Provenance of Social Work Case Records: Implications for Archival Appraisal and Access," *Provenance* 1:1 (Spring 1983), 5-30; David W. Weinberg, "The Other Side of the Human Experience: Providing Access to Social Service Case Study Files," *American Archivist* 53:1 (Winter 1990), 122-29; Brian Bucknall, "The Archivist, the Lawyer, the Clients and their Files," *Archivaria* 33 (Winter 1991-92), 181-87. Volume 18 (Summer 1984) of *Archivaria* was devoted to legal issues, and many of the articles focussed on case files.
4. See for example, Gary M. Peterson and Trudy Huskamp Peterson, *Archives and Manuscripts: Law* (Chicago: Society of American Archivists, 1985), 45-60, 68-71; M.D. Kirby, "Access to Information and Privacy: The Ten Information Commandments," *Archivaria* 23 (Winter 1986-87), 4-15; Roland M. Baumann, "The Administration of Access to Confidential Records in State Archives: Common Practices and the Need for a Model Law," *American Archivist* 49:4 (Fall 1986), 349-70; Heather MacNeil, "Defining the Limits of Freedom of Inquiry: The Ethics of Disclosing Personal Information Held in Government Archives," *Archivaria* 32 (Summer 1992), 138-44 and her *Without Consent: The Ethics of Disclosing Personal Information in Public Archives* (Chicago: Society of American Archivists and Scarecrow Press, 1992).
5. Raymond H. Geselbracht, "The Origins of Restrictions on Access to Personal Papers at the Library of Congress and the National Archives," *American Archivist* 49:2 (Spring 1986), 143-52. A briefer and more focused recitation of this evolution, may be found in David R. Kepley, "Reference Service and Access," *Managing Archives and Archival Institutions*, ed James Bradsher, (Chicago: University of Chicago Press, 1989), pp. 163, 166.
6. Geselbracht, quoting Edgar R. Harlan, curator of the Historical, Memorial and Art Department of Iowa in 1929, 146.
7. Standing between curators of private papers in public archives, and government archivists, are archivists employed in private institutional archives, who generally need be concerned less with societal values placed on historical sources, and more concerned with the property and privacy rights of their parent organization. This is because private records and papers are private property until and unless they are donated to a public institution. This may seem too obvious to mention, but the Historical Documents Study complained that 33% of researchers were prevented from using privately held documents. The report laments that "it is a significant challenge to change attitudes about rights to private property in or exclusive access to historical documents" (Gordon, 40, 46). Indeed, a country which cannot swallow socialized medicine is unlikely to swallow socialized personal correspondence and business records.

8. The SAA "Standards for Access and Appraisal of Gifts," *American Archivist* 37 (January 1974), 154.
9. Robert Rosenthal, "Who Will Be Responsible for Private Papers of Public Officials," *The Scholars' Right to Know Versus the Individual's Right to Privacy: Proceedings of the First Rockefeller Archive Center Conference, December 5, 1975* (New York: Rockefeller Archives Center, 1976), p. 3.
10. Sue Holbert, *Archives and Manuscripts: Reference and Access* (Chicago: Society of American Archivists, 1977), pp. 5-6. Interestingly, Trudy Huskamp Peterson mentions only "medical, sexual, and psychiatric information, information regarding birth legitimacy, economic information..., information on religious affiliation, and information developed or imparted during a client relationship..." as private and in need of restriction in "Privacy and Freedom of Information," *Janus* 2 (1992), 36-37.
11. Kepley, "Reference Service and Access," 167, 171-72; Pugh, 57- 59; Fredric Miller, 32-33, 41; Gary M. Peterson and Trudy Huskamp Peterson, *Archives and Manuscripts: Law* pp. 39-40, 42, 61 (emphasis added). To some extent, these authors also favor item-level review to identify all material in a collection which might pose an invasion of privacy. Item level screening may be a plausible strategy for special collection libraries focusing on 19th century materials or literary collections, but not for repositories collecting 20th century political, business, and organizational records. See K. E. Garay, "Access and Copyright in Literary Collections," *Archivaria* 18 (Summer 1984), 221.
12. Peterson and Peterson, 40, 53; Pugh, 56-57. See also Kepley, 166-67. Sandra Hinchey and Sigrid McCausland, "Access and Reference Services," *Keeping Archives*, ed. Ann Pederson (Sydney: Australian Society of Archivists, 1987), pp. 190-91 also maintain that archives "may also have to restrict access to records they have received which contain...personal information about a person other than the depositor," and that "personal details about a living individual should not be released to researchers unless the individual's permission has been obtained," but they do not give particulars about what "personal information" or "personal details" encompasses. Peterson and Peterson, 40, also note that "business information" is private and may be protected under civil law; their discussion of this subject, however, is exceedingly brief, and leaves unclear such issues as whether the business records donated by a retired executive as part of his personal papers would be subject to a civil lawsuit by the company if made accessible to public.
13. Sara S. Hodson, "Private Lives: Confidentiality in Manuscripts Collections," *RBML* 6:2 (1991), 116-17. Hodson's article is the only one of which I am aware that grapples directly with the tension between open access and the rights of third-parties. That she fails to provide satisfactory answers to the questions she raises is due to no failings of hers but to the failure of the archival profession to issue anything but vague platitudes and directives on what is a complex and potentially serious ethical (and possibly legal) issue.
14. Peterson and Peterson, p. 65.
15. Peterson and Peterson, p. 39. The Petersons do provide extensive guidelines for interpreting and administering the Freedom of Information Act (FOIA), but this Federal law does not apply (with a few exceptions) to personal or organizational records. Their one explicit example of material in a collection of personal papers which should be restricted by the archives if not restricted by the donor is "constituent mail" in a Congressional collection (p. 61). Unfortunately, their description of the series makes it seem that the materials at issue are probably constituent case files which (for reasons too complicated to explain here) may be covered in fact by FOIA.
16. Hodson, 110, 116. This topic has also found its way onto the Archives Listserv, though not in much depth. See, for example, the exchange between Julia O'Keefe and Dean DeBolt, 13 Jan 1993.
17. Hodson, 111; Peterson and Peterson, p. 61. Every repository, certainly, can cite their own examples, though most will be more mundane. At the Minnesota Historical Society recently we received a donation of 19th to mid-20th century family diaries and correspondence from a gentleman who was a descendent of the creators and recipients. While the family contained one "black sheep," he was fully cognizant of the contents of all the letters, and felt that, after all this time they posed no embarrassment to his family. Several months after the donation, the donor's cousin, who was directly descended from one of the letter *writers* in the collection, came to see me, furious that her cousin had donated this "sensitive" material without her consent. She did not want all this material made public, and in fact asked us to give it to her. We refused, politely, and refused as well her request to have the material restricted.

18. Hodson, 110.
19. A striking illustration of the potential impact of repository-imposed restrictions to protect third party privacy rights is the manuscripts collections of the Minnesota Historical Society. Currently only 69 of over 3000 collections are restricted (all under contracts which place access responsibility on the donors)—that is about 2%. Given that approximately half our collections contain material less than 75 years old and most of those contain third party correspondence, the potential retrogression of access is clear.
20. "Standards for Access," 154; Harold L. Miller, "Will Access Restrictions Hold Up in Court? The FBI's Attempt to Use the Braden Papers at the State Historical Society of Wisconsin," *American Archivist* 52:2 (Spring 1989), 181, 186-88; Hodson, p. 117.
21. Peterson and Peterson, paragraph 5, figure 3, p. 28; Pugh, p. 58; Hodson, p. 109. On the other hand, Barbara Reed, "Acquisition and Appraisal," *Keeping Archives*, pp. 104-06, and Holbert, 6-8, find nothing wrong with restrictions which permit donors to control access, so long as such restrictions are not indefinite. Ironically, the acceptance of donor-imposed restrictions on private manuscript collections was challenged from a very different direction within the archival profession as well. Raymond Geselbracht and Megan Floyd Desnoyers have argued that curators have long been too lax in permitting such restrictions to cover entire collections or series when restrictions should really be imposed only at the document level, that it was the responsibility of archivists to review collections at the item level to insure that only those documents which must be restricted under the terms of the donor contract were restricted (Geselbracht, 152, 161; Megan Floyd Desnoyers, "Personal Papers," *Managing Archives*, pp. 84, 89-90). I do not believe that item-level screening is practical, and I wonder whether there is solid evidence to support either Geselbracht's charge that donor-imposed restrictions too often are indiscriminate and restrict too much or the Peterson's accusation that donors are too often "cavalier" about permitting access to sensitive material.
22. Miller, "Will Access Restrictions Hold Up in Court," 181, 186- 88.
23. Kenney's testimony was summarized on the Archives Listserv by Robert Shuster, 15 June 1993 (8:42am). Also, see the Listserv comments of William Wallach (25 May 1993 [9:16am, 10:29am] and 26 May [2:01pm]). The brief contretemps over the Marshall papers occurred during the late editing stages of this article, and so is not dealt with here in any detail. It should be noted, however, that in addition to the question of third party privacy rights and repository-imposed restrictions, the controversy also focussed on the propriety of a repository's willingness to distinguish "scholars and serious researchers" from others.
24. Philip P. Mason, "The Ethics of Collecting," *Georgia Archive* 5 (Winter 1977), pp. 40-41. Both Dean DeBolt and Robert Shuster made similar arguments on the Archives Listserv during the discussion of the Thurgood Marshall papers (26 May 1993 [12:30pm] and 26 May 1993 [3:59pm], respectively).
25. MacNeil, "Defining the Limits of Freedom of Inquiry," 141.
26. The 1992 report of the Historical Documents Study's survey of a variety of researchers, *Using the Nation's Documentary Heritage*, did not even list "donor imposed restrictions" or "donor controlled access" as an obstacle to access, although it did list restrictions imposed by state privacy laws and by federal secrecy acts. For examples of scholars who accept the need to permit donors to impose restrictions and/or control access, see Norman A. Graebner, "History, Society, and the Right to Privacy," *The Scholar's Right to Know Versus the Individual's Right to Privacy: Proceedings of the First Rockefeller Archive Center Conference, December 5, 1975* p. 21; Joan Hoff Wilson, "Access to Restricted Collections: The Responsibility of Professional Historical Organizations," *American Archivist* 46:4 (Fall 1983), 446.
27. I may be wrong in posing this as a rhetorical question. It may be that institutions following the directives of these imposing sources is the cause of much of the enormous backlog identified by the RLG survey (see note 2).
28. Hodson, 117.



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COMING TO AMERICA: DUTCH ARCHIVISTIEK AND AMERICAN ARCHIVAL PRACTICE

MARJORIE RABE BARRITT

ABSTRACT: Most archivists acknowledge that the antecedents of archival theory in the United States were theoretical developments in France, Germany, and the Netherlands in the nineteenth century. The author describes the influence of the principles of *respect des fonds* from the French and *Registraturprinzip* from the Germans on Dutch archival development which resulted in the publication in 1898 of the *Manual for the Arrangement and Description of Archives* by Samuel Muller, Johan Feith, and Robert Fruin. The influence of the *Manual* and of the principle of provenance on early American archival practice is traced through the speeches and writings of Arnold J.F. Van Laer and Waldo G. Leland. The article also discusses Arthur H. Leavitt's 1940 English translation of the Dutch *Manual*.

As archivists we may have been introduced to archival history as part of our archival education. After learning about papyrus and clay tablets and archives in Assyria, the focus probably shifted to the history of archival development in Europe and the chronology was certainly: *respect des fonds* from the French, *Registraturprinzip* from the Germans, and the *Manual* of Muller, Feith, and Fruin from the Dutch. We learned that three Dutch archivists, Samuel Muller, Johan Feith, and Robert Fruin wrote a manual of archival practice in 1898, *Handleiding voor Het Ordenen en Beschrijven van Archieven*. A literal English translation of the title is *Manual for the Arrangement and Description of Archives*. However, no English title or translation existed until 1940 when Arthur Leavitt, working at the United States National Archives, published an English edition.¹

At first glance it seems the influence of the *Manual* on English-speaking archivists must have been minimal until 1940. But the spread of ideas and theories can be subtle; they often do not wait for translation to begin to affect change. In the case of the archival principles systematically written down and published in the Dutch *Manual*, several individuals championed them in the United States before the *Manual* was translated into English, most notably Arnold J.F. Van Laer and Waldo H. Leland.

Before tracing the migration of Dutch archival theory across the Atlantic, one should know more about Dutch *archivistiek* during the last half of the nineteenth century.² What was Dutch archival practice at the time of the writing of

the *Manual*? Who influenced Muller, Feith, and Fruin? Did Muller, Feith, and Fruin develop the one-hundred archival principles in the *Manual* out of whole cloth or did their work represent a continuum of the development of modern archival theory in Europe? Were *respect des fonds* and *Registraturprinzip* at work in the Netherlands prior to the publication of the *Manual* in 1898?

Good primary and secondary sources are available about the work of Dutch *archivistiek* at the end of the nineteenth century and about the work of Muller, Feith, and Fruin in particular. As for general archival practice at the end of the nineteenth century—the practice that according to Muller, Feith, Fruin, and others needed reforming—the best description may be that in the *Manual* itself, in the commentary on Rule 8:

There are archive repositories in which all documents, regardless of their origin are put in one chronological order. There are also places in which documents, which were created by various agencies and bureaucrats, and are therefore evidence of different government duties, are assembled in one series. Men have, for example, assembled all documents about charities, or about the military, regardless of whether they came from the province, a city, or a cloister, into one series.³

Much of the following recounting of the writing of the *Manual* is based on a 1986 article by Eric Ketelaar, currently general state archivist of the Netherlands.⁴ As Ketelaar stated in his introduction,

Only a few people know more about its [the *Manual*'s] authors than their names. Neither do colleagues abroad know much about the genesis of the *Manual*. My intention is to present the men and their *Manual*, as a contribution to the history of our profession.⁵

In his article Ketelaar introduced each of the three authors and several other Dutch archival luminaries of the time, especially P.J. Vermeulen and H.F. Van Reimsdijk. Vermeulen, who was Samuel Muller's predecessor as state archivist for the province of Utrecht, may be an important "missing link," in the migration of French archival theory to Holland. Ketelaar quotes a statement Vermeulen wrote in 1850:

Archives are more than a simple collection of historical manuscripts which have no other link than having been put together in the same room [and] which, relating to the same or related subjects, can be catalogued by serial numbers....Instead it seemed to me that in an archives catalogue an outline of the composition of the earlier administrations could and should be visible....one of the prerequisites for the scientific arrangement and inventorization [is]...to restore the original order which once had been the most practical and which...surely can not be replaced profitably by any other.⁶

Clearly, at least one Dutch archivist considered provenance and original order the proper archival methodology as early as the mid-nineteenth century.

Samuel Muller became archivist for the city of Utrecht in 1874 and in 1879 succeeded Vermeulen as state archivist for the province of Utrecht. Muller had also attended a few lectures in 1873 at the *Ecole des Chartes* (the distinguished training school for archivists in Paris) and remembered that "the professor who taught the organization of archives, never tired of preaching the *respect des*

fonds.”⁷ Muller in turn influenced H.F. Van Riemsdijk who, after serving as Muller’s assistant at Utrecht, became state archivist in the province of Gelderland in 1875. After leaving Utrecht, Van Riemsdijk had a meteoric career. He was appointed deputy national archivist (over Muller) in 1883 and general state archivist in 1887. In 1890, as general state archivist, he convened the first annual conference of state archivists with the intention of reaching agreement concerning the arrangement of archives in repositories. Van Riemsdijk and the state archivists developed classification schemes “based upon the Vermeulen-Muller-Van Riemsdijk principle that each archival group should be kept separate and that all documents from one provenance should be kept together.”⁸

At about the same time that Van Riemsdijk, as general state archivist, was proselytizing among the state archivists for the provenance-based classification of archives, a new force appeared in the Dutch archival world; the Netherlands Society of Archivists was founded in June 1891. Johan Feith, destined to become a co-author of the *Manual* was among the founders of the new society. Feith was a third generation archivist; in fact, in 1892 he became the third generation Feith to head the state archives of the province of Groningen. The new Society included forty of the forty-eight city and state archivists in its membership.

The *Nederlandse Archievenblad*, the journal of the Netherlands Society of Archivists, gives evidence that the “new” methodology was presented again and again at the annual meetings of the Society.⁹ Between 1892 and 1896, Muller himself presented papers on the ordering of archives, the organization of an inventory, and archives science and practice.¹⁰ Within the Society, a militant and polemic Muller and Robert Fruin, among others, promoted the new methodology with vehement persuasion. When it appeared that developing rules through discussions at the Society’s annual meetings would take too long, the Society decided to elect a committee to write guidelines for arrangement and description. Muller, Feith, and finally Fruin, who in 1894 had been appointed state archivist in Zeeland, were elected to the committee which began its work in 1895.

The committee’s work was careful and conscientious according to a 1938 letter from Arnold Van Laer to Arthur Leavitt at the time Arthur Leavitt was translating the *Manual* into English with assistance from Van Laer.

They [the committee] carefully weighed and considered every rule laid down and every technical expression used and submitted these for discussion at the meetings of the association of Archivists [Netherlands Society of Archivists]. After adoption by this Association, these rules and terms were once more discussed at the annual meeting of the archivists of the Kingdom, presided over by Dr. Th. F. van Riemsdijk, the Archivist General, who was not a member of the Association and who on some points held different opinions. Finally, the rules were submitted to the Minister of the Interior, who proposed some further changes. It is only in some such way that a satisfactory manual for the description and classification and transfer of archives in this country can be evolved.¹¹

The committee of three drafted strong rules, allowing for no equivocation. This autocratic tone found favor with Victor de Stuers, head of the Department

for Arts and Sciences within the Ministry of the Interior, and the person through whom the draft rules were submitted to the Ministry. De Stuers, Van Riemsdijk's superior, was a strong-minded builder of a centralized policy in the field of archives, monuments, and museums. In June 1897 he promulgated new ministerial regulations concerning archival arrangement and description which matched those being drafted in the *Manual*. There was good communication between the professional society and the national archival bureaucracy—at least between the committee and the ministry through de Stuers. Both the committee and de Stuers agreed about the force with which the new methodology should be stated. Thus the *Manual* rules reflected the “new” archival thinking as filtered through the Netherlands Society of Archivists' drafting committee and matched the “new” thinking as outlined in the Ministry's regulations of 10 June 1897.

Muller, Feith, and Fruin met several times, but most of their collaboration was in writing. They circulated drafts and each added comments to the original text and the amendments. Agreement was sometimes difficult. The evolution of the final text and the contributions of individual authors are revealed through P.J. Horsman's analysis of the original draft of the *Manual* preserved in the archives of the Society in the National Archives in the Hague.¹²

The introduction gives the flavor of the work, but especially of Muller who drafted it. Muller began,

This is a tedious and narrow-minded book. The reader is warned!... Why have we together written about such trifles so exactly? Because we are convinced that the uniform treatment of inventories, in the small points as well as the main points, is of the utmost importance.... We do not intend to impose this manual as a heavy burden upon the shoulders of our colleagues. We shall not look sourly upon persons who either in small details or large break from these rules. But we hope that our colleagues will discuss with us their criticism of these rules.... We are asking for criticism, much criticism.... Our hope is that in a few years a second edition will be published of our work in which the approval of the association will have been sought and received. The second edition will, we believe, not have to endure the sense of evil which clings to this first draft. It bears the weight of the break from its origins.¹³

A strange ambiguity and contradiction exists between the didacticism of the committee in creating hard and fast rules and their professed tolerance of expected criticism and resistance by their colleagues. But it is very Dutch to be both didactic and tolerant.

The *Manual* is divided into six chapters: “Origin and composition of archival repositories,” “Sorting of documents,” “The description of documents,” “Assembling the inventory,” “Further description rules,” and “About conventional terms and numbers.” This last chapter constitutes a thesaurus of archival terminology and discusses the dating of documents. Following each rule are long explanations, or commentaries, which give credence to this as the work of a committee.

As Ketelaar pointed out, it is within chapter one, specifically in Rule 8, that the principle of *respect des fonds* is articulated and the authors leave nothing to misunderstanding. They state that, “The various archive groups placed in a

repository must be kept carefully separated.” In the accompanying commentary they illustrate unacceptable practice [as quoted on page forty-four] and caution that these practices violate *respect des fonds*. The commentary continues, “Every document should be restored to the archive group of the administrative body or official to whom it originally belonged.”¹⁴

To the principle of provenance, the *Manual* added the principle of original order: not only should every document be restored to the archive group to which it originally belonged, but within that archive group to its original place. This was derived from the German *Registraturprinzip*. Original order is found in Rule 16, “the system of arrangement must be based on the original organization of the archive group (*archieff*) which in the main corresponds to the organization of the administrative body that produced it.... In the arrangement of an archive group, therefore, the original order should first of all be re-established as far as possible. Only thereafter can one judge whether, and to what extent, it is desirable to deviate from that order.”¹⁵ The minute instructions given in the chapters on the description of documents, the assembling of the inventory, the chapter on further description rules, and the chapter on conventional terms and numbers had a strong influence on Dutch archival practice, for in fact these 1898 rules mandated descriptive and procedural standards.

But what of the influence of the *Manual* and of Dutch *archivistiek* in the new world? Did the principles of provenance and original order make the crossing before Leavitt’s 1940 English translation of the *Manual*? Evidence exists of a pre-1940 migration and the principal instruments of that migration were Arnold J.F. Van Laer and Waldo H. Leland. In 1897, the year before the *Manual* was published, a twenty-eight year old Dutchman, Arnold John Ferdinand Van Laer, immigrated to the United States, settling in Albany. He had earned a degree in mechanical engineering at the University of Delft and had archival training in the Netherlands; sometime later he received a bachelor of library science from the New York State Library School. Van Laer headed the Manuscript Division of the New York State Library from 1899 to 1915. In 1915, he moved his life’s work of translating Dutch colonial documents to the New York Division of Archives and History, retaining the title of archivist. Van Laer is best known for his translations of New York’s colonial Dutch records. His contributions to the archival profession and his efforts to encourage the preservation of historical records are frequently overlooked.¹⁶ Although T.R. Schellenberg gave him the following credit, “The principle of provenance was first made known in the United States by Arnold J. Van Laer.... He applied the principle of provenance to the state archives, changing the method of arranging archives chronologically....” Van Laer is, perhaps, the most important, and yet least recognized, link in the transfer of Dutch *archivistiek* to the new world. In his “Arnold Johan Ferdinand Van Laer, New York State Archivist: Some Biographical Notes,” James Corsaro also points to Van Laer’s unheralded contributions.¹⁷

Van Laer and Waldo H. Leland made the principle of provenance and other “new” methodologies known to their American colleagues in the American Historical Association (AHA) through their writings and presentations. Incorporated by Congress in January 1889, the AHA sought to promote “historical studies, the collection and preservation of historical manuscripts, and...kindred purposes in the interest of American history and of history in America.”¹⁸ In 1899, ten years after its founding, the AHA established a Public Archives

Commission and included a report from the Commission in its Annual Report. Beginning in 1909, a conference of archivists was held in conjunction with the annual meeting of the AHA. Schellenberg credited the annual meetings of the Public Archives Commission with giving the principle of provenance exposure among American archivists.¹⁹ Waldo G. Leland's paper to the first conference of archivists in December 1909, "American Archival Problems," constituted the opening of the discussion of proper archival methodology in the United States.

Leland made extended visits to Europe in his capacity as head of the Carnegie Institution's historical mission to France. He attended the course on the *Service des archives* at the Ecole des Chartes; he also visited archival institutions in Belgium, the Netherlands, and England. In his 1909 AHA paper Leland said,

The problem of the classification of archives presents certain difficulties. In general, the principle enunciated by the Dutch, and adhered to in most European archives, the "herkomstbeginsel," the "respect des fonds," or "principe de la provenance," should be adopted. The archives should be classified according to their origin; they should reflect the processes by which they came into existence.... Nothing is more disastrous than the application of modern library methods of classification to a body of archives.²⁰

Van Laer's paper to the second conference of archivists in Indianapolis in December 1910, in which he reported on the international conference of archivists at Brussels in August of that year, established his role in the spread of European archival principles. Van Laer described the background and preparations for the Brussels conference, one of a series of international congresses arranged in connection with the Brussels Exposition, which "...for the first time brought together representatives from various countries for the discussion of questions relating to the care and administration of archives."²¹ The archivists' meetings in Brussels included about sixty persons with the Netherlands sending a delegation of nine members including Muller and Fruin; France, Germany, Austria-Hungary, Italy, Spain, and the United States each having from three to six members in their delegations; and Great Britain, Portugal, and Russia represented by one or two members. The American Historical Association, through its Public Archives Commission, sent Gaillard Hunt, Dunbar Rowland, W.G. Leland, and Van Laer. Van Laer gave a detailed account of the four-day conference to the archivists assembled in Indianapolis.

According to Van Laer, preparation for the conference had been thorough,

The organizing commission had at an early date consulted prominent archivists and librarians in various countries as to topics most suitable for discussion at the congress and prepared from the answers for each section a list of questions on which papers were requested. For the archives section the schedule embraced 25 questions.²²

The second topic of the first session on archives was the adoption of the "*principe de la provenance*" introduced by the archivist of the city of Rotterdam. Van Laer editorialized about provenance in his report.

This principle, which at present is accepted by nearly all the archivists of continental Europe as the only rational basis for the classification of

archives, has been frequently discussed in foreign reviews, but is, I believe, as yet but vaguely understood and rarely applied in England and the United States. It may not be amiss, therefore, to state that, according to Dr. Muller's definition, by the term "*principe de la provenance*," or "*Provenienzprinzip*," as the Germans call it, is meant a system of arrangement of public archives whereby every document is traced to the governmental body, administrative office or institution by which it was issued or received and to the files of which it last belonged when these files were still in process of natural accretion. In other words, the principle demands that documents shall be classified, not like books, according to their subject matter, but with reference to the organic relations of the papers, the files of each body or office being kept by themselves. Simple and logical as this principle may seem, it has been ignored in nearly all the earlier arrangements of archives in this country. As a result we find the papers of various legislative and judicial bodies and administrative offices combined in such miscellaneous series as "Colonial manuscripts," "Revolutionary papers," "Military papers," "Land papers," "Accounts," etc., which fail to reflect the functions and activities of each body or office, hide the gaps in the existing files, and make it difficult to ascertain the nature of the papers that are missing.

Van Laer recounted that the Brussels meeting adopted the following resolution, "That the '*principe de la provenance*' be adopted for the arrangement and inventorying of archives, with a view to the logical classification of separate documents as well as in the interest of comprehensive historical study."²³

Van Laer ended his report to the Indianapolis meeting with a summary of the ideas from the Brussels conference which seemed to him to be of special interest to archivists in the United States—the need to preserve modern administrative records, especially of large cities; an appreciation of the value of economic records; the unanimity among European archivists as to the importance of provenance for the arrangement of archives; and "A growing realization among the archivists of different countries of the need of cooperation in order to bring about improved and uniform methods of archive administration, which can not fail to benefit countries which like the United States are backward with regard to archival organization."²⁴ Van Laer's report brought praise from archival leaders such as Waldo G. Leland who wrote in 1911 expressing condolences respecting the New York State Library fire and noted "I cannot sufficiently express my admiration for your paper.... It is...the best thing the Association has ever printed on archives."²⁵

In *The Management of Archives*, Theodore Schellenberg used the *American Historical Association Annual Reports*, among other sources, to describe the history of archival methodology as practiced in the United States and to trace the acceptance of the "new" methodology within the American archival community. Even as late as the 1940s, according to Schellenberg's analysis of the Historical Records Survey's archival guides, "two thirds of the repositories arranged items chronologically, and about one third by subject, though a combination of methods was employed in many repositories."²⁶ According to Schellenberg, one of these combination methods,

The chronologic-geographic scheme of classifying records....evolved, late in the nineteenth century, in the Manuscripts Division of the Library of Congress.... The chronologic-geographic scheme represents the extreme

opposite of the archival principle by which records are kept according to their provenance, and led to the practice of tearing manuscript collections apart—a practice that has immeasurably retarded the development of an effective control over the documentary resources of the nation.²⁷

Schellenberg went on to recount that even in Van Laer's own manuscript repository there had been back-sliding. Shortly after Van Laer moved his translation work to the New York State Division of Archives and History, his successor in the New York State Library recommended a scheme in which classes were established for chronological periods. Likewise, Schellenberg reported, Gaillard Hunt, who had attended the Brussels conference in 1910, accepted the chronologic-geographic scheme of classification for naval records. Unfortunately, Schellenberg found that thirty years after the adoption of the principle of provenance by the Brussels congress, most archivists in the United States either ignored or misunderstood the principle and did not apply it to the records in their care. Schellenberg found that, especially in manuscript repositories, when archivists sought new methodologies they often imposed various artificial schemes, many of them library derivatives, upon the records. Inroads where being made, however, "With the establishment of the National Archives in 1934 the principles of Leland and others, which represented to a large extent views derived from European practices, were applied for the first time to a voluminous mass of modern records."²⁸

For forty years the principles of Dutch *archivistiek* as published in the *Manual* and translated into several European languages, were still coming to the United States by word of mouth, sometimes in words translated through several languages. But in March 1938 Arthur H. Leavitt of the United States National Archives sent Van Laer chapter one of Leavitt's translation of the *Manual*. Leavitt's publisher, the H.W. Wilson Company had asked Van Laer to review Leavitt's work. Leavitt wrote to Van Laer,

I should inform you that my translation was made in the first place from the French translation by Cuvelier and Stein, with occasional reference to the Dutch and German texts. In making the revision of Chapter I, which I am now sending you, I have consulted the Dutch original much more. I have been aware that the French translation departs to a considerable extent from the original. Although I do not know Dutch, I am able to follow it sufficiently to correct or improve my translation from the French work.²⁹

Evidently Van Laer owned no copy of the *Manual* because Leavitt and Van Laer sent the National Archives' copy of the *Manual* back and forth as they exchanged drafts and corrections. To Van Laer the translation of technical terms was the most troubling problem of the work.

The translation strikes me as being very well done, but as not wholly satisfactory in the use of certain technical terms, due to the difficulty of finding suitable English [sic] equivalents for French expressions like "dépot d'archives" and "fonds d'archives."... In a work of this sort it is essential to define once for all certain terms that have been agreed upon by a competent committee, so as to secure uniformity in their usage. As far as I am aware, this has not been done."³⁰

Van Laer also suggested that the footnotes be related to circumstances in the United States, "In other words, whether it would not be better to make the

English version more of an American adaptation, instead of a literal translation."³¹ After reviewing the whole of chapter one, Van Laer commented,

The fundamental trouble with the translation, as I see it, is that a number of technical terms, which occur in the very first definition and upon whose correct use the entire treatise rests, have not been satisfactorily rendered.

The Society of American Archivists has appointed a Committee on Terminology.... It seems to me that this Committee should propose to the Society a set of definitions of technical terms to be used in archival work and that an English translation of the standard work on the subject should not be undertaken until a consensus of opinion on the use of these terms has been reached. Without such agreement as to the use of the terms, the publication of an English translation of the *Manual* will only create confusion....

For a manual, which is to be consulted in the course of archival work and which is designed to bring about uniformity in the preparation of inventories and descriptions of archives, the matter of terminology is of the utmost importance....

The Dutch archivists have taken the utmost pains to arrive at a satisfactory solution of this problem of terminology. The compilers of the *Manual*, all three of them now deceased, were learned men, who were eminent in their profession and who had many years of experience.... The present translation, of course, does not attempt to supply such a manual, but it would form an excellent basis for the preparation of such a manual and it is important that the terms and definitions used reproduce as accurately as possible those of the original work.³²

Leavitt did not seem dismayed by these comments and his work continued. In April 1938, while revising chapter two, Leavitt wrote to Van Laer that he was comparing his translation to the Dutch text "learning the Dutch language as I go along." In July he wrote that he had "recently been put on the Committee on Terminology here in The National Archives for the present year and this may help me to get some additional help with regard to certain words."³³ Again in July 1938 while reviewing Leavitt's last chapter, chapter six on terminology, Van Laer commented that this would be the most troublesome chapter on account of the difficulty of translating definitions.

The extant correspondence between Leavitt and Van Laer about the translation of the *Manual* ends on September 30, 1939. Leavitt's translation was at the printers and was expected out in early 1940 and Van Laer was preparing to retire from "State service." Van Laer ended his correspondence with Leavitt with the following,

I am glad to know that the book will be out before long and wish you much success with it. I noticed in the program of the meeting at Annapolis that the name Muller was spelled with a German umlaut, "Müller." I hope that the printer will not make that mistake on the title page.³⁴

The care lavished on the translation by Leavitt (and Van Laer) was acknowledged by Theodore C. Pease who reviewed the just-published translation of the *Manual* in the *American Archivist*. Pease called the *Manual*'s one-hundred rules, aphorisms or principles of archival organization. He commented favorably on the translation,

Mr. Leavitt has done his work skilfully. His translation at once gives the flavor of the original, and the substance of irreproachable English idiom. He has been indefatigable in searching out the various meanings of the same technical term and assigning in each case the exact English equivalent....he has put the profession in the English speaking countries under heavy debt of gratitude to him.³⁵

When the Dutch codified provenance and original order and a standard terminology in the published *Manual* it represented the culmination of European archival development to that point. The *Manual* was important not only because it embraced, codified, and gave explicit implementation instructions for provenance and original order, but also because it attempted to impose standardization on archival practice from records management to the management of archival repositories, from the use of archival terms to the preparation of inventories. Of the principle of provenance in a 1940 *American Archivist* article, Ernst Posner wrote, "the well-known manual of the Dutch archivists gave the final sanction to this theory and a change in theory brought about a change in the character of archival institutions and of the work of archivists."³⁶

In the words of T.R. Schellenberg the *Manual* "became a Bible for modern archivists." Dutch archivist Joan van Albada quoted Schellenberg in his Summer 1991 *American Archivist* article, but cautioned that the Dutch archival profession is "on the move" and although "the average Dutch archivist pays more deference to the manual than to the Scriptures" the *Manual* is currently only a part of the archival Bible for Dutch archivists.³⁷

Archivists in the United States had no archival Bible to guide them through the founding decades of their profession. During this period when American archival practice was, in the words of Van Laer, backward, it was greatly influenced by the history and library professions. European archival theory as codified by the Dutch in their "Bible for modern archivists," did not at first find fertile ground in the New World in spite of the efforts of Leland, Van Laer, and a few others; the acceptance of the "new" methodology in the United States was uneven and incomplete for many decades. With the publication of Arthur Leavitt's 1940 English translation and the writings of T.R. Schellenberg, European archival theory found greater acceptance. Almost a century after the *Manual* was published and more than fifty years after Leavitt's English translation, the search for standards and the codification of archival practice continues. But now archivists in the United States have, if not an archival Bible, at least a large and growing body of archival literature on which to base their search.

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NOTES

1. S. Muller, J.A. Feith, and R. Fruin, *Handleiding voor het Ordenen en Beschrijven van Archieven* (Groningen: Erven B. Van der Kamp, 2d ed., 1920). Translation of the second Dutch edition by Arthur H. Leavitt published as *Manual for the Arrangement and Description of Archives* (New York: H.W. Wilson, 1940, 2d ed., 1968).
2. *Archivistiek* is the Dutch translation of the French word *archivistique*. The ICA *Dictionary of Archival Terminology* (1984) uses "Archive(s) Administration" as the English equivalent of the French "Archivistique" and gives two definitions: (1) The theoretical and practical study of policies, procedures and problems relating to archival functions. (2) The direction and management of archives.
3. Muller, Feith, and Fruin, *Handleiding*, 16. Translated by the author.
4. The national archives of the Netherlands is referred to as the General State Archives. There are branches of the General State Archives for each province. These are referred to as the state archives for the province of Gelderland, Utrecht, etc. The position of general state archivist is equivalent to the position of national archivist in the United States.
5. Eric Ketelaar, "Muller, Feith and Fruin," *Miscellanea Carlos Wyffels: Archives et Bibliothèques de Belgique* 57 (1986): 256.
6. *Ibid.*, 257. The translation from the Dutch is Ketelaar's.
7. As quoted by Ketelaar in "Muller, Feith and Fruin," 257.
8. *Ibid.*, 258.
9. Vereniging van Archivarissen in Nederland, *Nederlands Archievenblad* (Groningen: Ervan B. van der Kamp, 1892-).
10. Samuel Muller Fzn., "De inrichting onzer archief-inventarissen," *Nederlands Archievenblad* (1892-1893): 44-46; "Nog eenige regelen voor het ordenen van archieven," *Nederlands Archievenblad* (1894-1895): 22-27; and "Wetenschappelijk en praktisch," *Nederlands Archievenblad* (1896-1897): 46-51.
11. Arnold J.F. van Laer to Arthur H. Leavitt, March 10, 1938, Arnold J.F. Van Laer Papers, Manuscripts and Special Collections, New York State Library, Albany (hereafter cited as Van Laer Papers).
12. Ketelaar, "Muller, Feith and Fruin," 260.
13. Muller, Feith, and Fruin, "Een Woord Vooraf" (Introduction), *Handleiding*, unnumbered. Translation by the author.
14. Ketelaar, "Muller, Feith and Fruin," 261. The translation is Ketelaar's.
15. As translated by Ketelaar in Ketelaar, "Muller, Feith and Fruin," 262.
16. Finding aid for the A.J.F. Van Laer Papers, Manuscripts and Special Collections, New York State Library, Albany.
17. T.R. Schellenberg, *The Management of Archives* (New York: Columbia University Press, 1965) 43; and James Corsaro, "Arnold Johan Ferdinand Van Laer, New York State Archivist: Some Biographical Notes," *Society of American Archivists Archival History Newsletter*, April 1990, unnumbered.
18. "Act of Incorporation," *Annual Report of the American Historical Association for the Year 1910* (Washington, D.C.: Government Printing Office, 1912), 5.
19. Schellenberg, *Management of Archives*, 43.
20. Waldo G. Leland, "American Archival Problems," *Annual Report of the American Historical Association for the Year 1909* (Washington, D.C.: Government Printing Office, 1911), 346.
21. Arnold J.F. Van Laer, "The Work of the International Congress of Archivists and Librarians at Brussels, August 28-31, 1910," *Annual Report of the American Historical Association for the Year 1910* (Washington, D.C.: Government Printing Office, 1912), 282.
22. Van Laer, "Work of the International Congress," 283.
23. *Ibid.*, 285.
24. *Ibid.*, 282, 291.
25. As quoted in Corsaro, "Arnold Johan Ferdinand Van Laer," unnumbered.
26. Schellenberg, *Management of Archives*, 33. The Historical Records Survey was conducted from January 1936 to June 30, 1942.
27. *Ibid.*, 38, 39.
28. T.R. Schellenberg, *Modern Archives: Principles and Techniques* (Chicago: The University of Chicago Press, 1956), 181.
29. Arthur H. Leavitt to Arnold J.F. Van Laer, March 5, 1938, Van Laer Papers.

30. Arnold J.F. Van Laer to Arthur H. Leavitt, March 7, 1938, Van Laer Papers.
31. Ibid.
32. Van Laer to Leavitt, March 10, 1938.
33. Leavitt to Van Laer, April 4, 1938; Leavitt to Van Laer, July 18, 1938.
34. Van Laer to Leavitt, September 30, 1939.
35. Theodore C. Pease, review of *Manual for the Arrangement and Description of Archives Drawn up by direction of the Netherlands Association of Archivists*, as translated by Arthur H. Leavitt, *American Archivist* 3 (1940): 116, 17.
36. Ernst Posner, "Some Aspects of Archival Development Since the French Revolution," *American Archivist* 3 (1940): 168.
37. Schellenberg, *Modern Archives*, 175; and Joan Van Albada, "On the Identity of the American Archival Profession: A European Perspective," *American Archivist* 54 (1991): 401.

IN SEARCH OF ARCHIVES HISTORY: EUGENIO CASANOVA AND THE SUSPECT LINCOLN LETTER

VALERIE KOMOR

ABSTRACT: This paper presents a slice of European archival history which might be of special interest to American archivists. It recounts the circumstances which led to the ouster in 1932 of Italy's foremost archivist, Eugenio Casanova: the publication of a letter believed to have been written by Abraham Lincoln.

In her recent article, "Outward Visions, Inward Glance: Archives History and Professional Identity," Barbara Craig argues that the study of archival history will strengthen the professional identity of archivists. "Archives history," she writes, "actively researched and communicated, will make practical contributions to our future success as a profession."¹ It is a truism, which nevertheless bears reassessment, that to know who we are and where we are going, we must know where we have been (though whether this knowledge always confers "practical" benefit is debatable).

The next step, I suggest, is to enlarge the concept of "archives history" so that it include not only the history of records and record-keeping and the development of archival theory and practice but also the examination of the political, cultural, and social contexts in which archivists have historically worked. If, according to Craig, our profession currently takes "a broad view outward, to [its] relationship with other professionals, with society, and to the future," we often lack the wider view when it comes to the study of our profession's past.² And yet, establishing the closely woven historical relationships between the archival enterprise and the larger cultural sphere will complement our understanding of the body of knowledge we call archival science, just as the history of the book trade or of fifteenth-century Venice complement analytic bibliography. Perhaps the value of approaching archives history as a domain of intellectual history becomes especially evident in the cases of archivists whose careers have been abbreviated or dramatically constrained through the politicization of archival administration under autocratic or totalitarian regimes. The following slice of archival history, drawn from Italian sources of the Fascist period, examines the intricate netting of political ambition and personal feud which finally enveloped one of modern Italy's leading archivists.

Eugenio Casanova (1867-1951) reached the pinnacle of the archival profession in the years just prior to Benito Mussolini's seizure of power in 1922. His career ended prematurely with multiple dismissals in 1932, 1933, and 1935, years in which Mussolini was most active in subjugating his opponents. That the Fascists had a hand in Casanova's fall is not at issue; nor is it surprising. Many suffered reprisals more severe. What intrigues in Casanova's case are the circumstances surrounding his ouster: the publication by Casanova in a reputable historical journal (of which he was Director) of a letter he believed to have been written by Abraham Lincoln—a letter that could be interpreted as serving Fascist interests. Respected Italian scholars, as well as Casanova's detractors, held the letter a forgery. Casanova was fired in 1932 for sustaining the letter's authenticity. Subsequently, he was removed as Superintendent of Rome's Archivio di Stato and as Director of the Archivio del Regno; in 1935, he was forced from the chair of Archival Studies, which had been created for him in 1925 at the University of Rome. What prompted such treatment of Casanova, an internationally recognized figure in 1932? To what extent was Mussolini involved in engineering Casanova's downfall? As Minister of the Interior for all but two years of his rule and therefore, at least nominally, in charge of the nation's archives, did Mussolini have a special interest in ousting Casanova?

What knowledge we have of Casanova's conflict with the Fascists, and of the fruitful career which preceded it, we owe to the scholarship of two Italian archivists, Armando Lodolini (1888-1966), a younger colleague of Casanova, and his son, Elio Lodolini, currently Professor of Archivistica at the University of Rome, La Sapienza.³ The Lodolinis reveal Casanova's career to have been one of uncommon scope, spanning sixty years and encompassing the fields of medieval Tuscan history, the Risorgimento, archival theory and practice, and historical demographics. His manual-cum-treatise, *Archivistica* (Siena, 1928), established the international dimensions of the archival field as no previous manual had and remains in Italy the discipline's classic text.

Casanova began his archival career in Torino, his birthplace, by taking his university degree in jurisprudence, the field traditionally mastered by aspiring Italian archivists. In 1886, he moved to Florence where he undertook formal archival studies at the Scuola di Paleografia e Diplomatica at the Istituto di Studi Superiori, remaining in Florence after his graduation to collaborate in the editing of the *Archivio Storico Italiano*, a periodical devoted to publishing national documentary sources.⁴ In 1907, after several years at the state archives of Siena and Torino, the forty-year-old Casanova assumed the directorship of the Grande Archivio in Naples, the archives of the formerly autonomous Kingdom of the Two Sicilies.

For Casanova, as for many who have sojourned in that city, Naples proved a *punto di riferimento*, a turning point. In nine years at the Grande Archivio, Casanova completed a survey of the archives, reorganized the department of document restoration, and battled numerous technical difficulties associated with the archive's location in a fifteenth-century convent never intended for the permanent storage of parchment. While in Naples, his national reputation increased as did his involvement in European archival circles. In 1910, Casanova was invited by the Brussels Permanent Commission on International Congresses of Archivists and Librarians to plan the second International

Congress on Archives, slated for Milan in the summer of 1915. Italy's entry into World War I in May of that year interrupted these preparations, but other projects continued to claim his attention. In 1914, Casanova had founded the bimonthly review, *Gli Archivi Italiani*, the first national professional journal to promote the concept of *archivistica* as an autonomous science, dependent upon the related disciplines of paleography and diplomatics but equipped with its own rules.⁵ Publication of the journal was transferred from Naples to Rome in 1916 when Casanova was appointed to the most prestigious archival posts in Italy, Superintendent of the Archivio di Stato and Director of the Archivio del Regno. Although *Gli Archivi Italiani* had enjoyed the full backing of the Undersecretary of the Interior from its inception, that support vanished with the government's prohibition in 1919 and 1920 of the first meeting of a newly constituted national archival association.⁶ Thus prevented from realizing one of its aspirations for the profession, *Gli Archivi* suspended publication in 1921. Casanova remained bitter about the episode, later attributing the journal's demise to "the ignorance of those who ought to have supported it, administratively if not politically."⁷ Unfortunately, this was not the last time Casanova would have reason to inveigh against the decisions of government ministers.

Casanova had been in Rome for six years when Benito Mussolini arrived on October 30, 1922 and presented himself to King Victor Emmanuel III, who made him Prime Minister. The Fascist squads, led in their March on Rome by Michele Bianchi, Italo Balbo, Emilio De Bono, and Cesare Maria De Vecchi, had already accomplished the military intimidation of the country and of Luigi Facta's feeble government. Mussolini's political strategy would culminate with the proclamation of his dictatorship in 1925. After 1925, and increasingly throughout the nineteen-thirties, Mussolini sought to control the nation's cultural life.⁸ One of his chief aims was the redirection along Fascist lines of the study of the Risorgimento, the nineteenth-century movement for national autonomy which had resulted in Italy's unification in 1861. Mussolini viewed the social revolutions of the Risorgimento in pseudo-historical terms, as preliminary to the historically inevitable rise of Fascism and the fulfillment of his own political destiny. The Risorgimento, Mussolini declared, "gave in the last century the nation's unity and...will give to it in the twentieth century its power."⁹ To influence the practice of Risorgimento scholarship, he advocated removing Risorgimento studies from what he called the "Sanhedrin of professional old beards" and entrusting them to historians who would bring the Risorgimento "into more direct contact with the Italian people and [who would] see it through Fascist eyes."¹⁰

An important skirmish in the struggle for control of Risorgimento studies took place in the pages of the field's leading historical journal, the *Rassegna Storica del Risorgimento*. The *Rassegna's* editor from 1926 until 1932 was Eugenio Casanova. Representing Mussolini's interests and hoping to advance himself in the historical profession was Cesare Maria De Vecchi (1884-1959), Commissioner Extraordinary of the Archivi del Regno. De Vecchi, a World War I hero and one of the leaders of the March on Rome, had recently returned from a tour (1923-28) as Governor of Somalia. Appointment to the distant post had come as the result of a series of political gaffes, in which De Vecchi had publicly approved Fascist violence in Turin. Restored to favor, De Vecchi now transferred his knack for bombast from the military to the cultural domain. On

assuming his duties as Commissioner, he announced the “need to review the ordinances, the regulations, the staff [of the archives] and to give to archives the Fascist chrism.”¹¹

In the April-September issue of the *Rassegna* for 1931, Casanova authorized the publication of a document entitled, “The Entire Message of Abraham Lincoln to Macedonio Melloni, Translated and Disseminated by Giuseppe Mazzini.”¹² An introductory note reports that in 1853, while a lawyer in Springfield, Abraham Lincoln had been asked by the Italian physicist, Macedonio Melloni (1798-1854), to present his opinions on the political restructuring then occurring in Europe. In the letter which followed, Lincoln replied to Melloni in great detail, exhibiting an intimate knowledge of Italian foreign affairs and expressing his warm support for the formation of a United States of Europe based upon “the absolute political independence of..Italy, a nation indispensable to the stable equilibrium of the civilized world.”¹³ Lincoln went on to specify the process by which such independence should be achieved: through the return to Italy of territories held by Austria since the Congress of Vienna in 1815, namely the Lombardo-Venetian Kingdom (restored through wars in 1859 and 1866), and the Adriatic coast from the city of Fiume south, including part of Dalmatia and all of Albania. “The only Italian unity one can admit is this,” Lincoln declared, adding that the ethnic groups in Dalmatia, which threaten the native *italianità* of the region, “are constituted...of the most barbarous and savage peoples of the earth...which have the need to be well cleansed by nations of superior civilization....”¹⁴

As the prefatory note emphasized, Lincoln embraced the territorial claims for which Italy had gone to war in 1915, claims guaranteed by the secret Treaty of Paris but denied in 1919 by President Woodrow Wilson at Versailles. National bitterness over Wilson’s perceived betrayal of Italian interests fueled the rise of Mussolini, who continued to press for the fulfillment of Italy’s irredentist claims. Underscoring the letter’s continuing relevance, a *Rassegna* contributor wrote in the preface to the published document: “[I]t was an error not to counterpose the great authority of Lincoln to the pro-Yugoslav leanings of Wilson and his disavowal of the just claims of Italy.”¹⁵

Given the letter’s content, then, the Fascists presumably should have supported its publication; their condemnation, however, was swift. C.M. De Vecchi, in an unusual alliance with the respected historians Gioacchino Volpe (1876-1971) and Francesco Salata (b. 1876), led the attack on Casanova, claiming the letter a forgery.¹⁶ Critics charged that the letter’s style was utterly foreign to Giuseppe Mazzini (1805-72), the Italian revolutionist and the letter’s purported translator. Further, they judged the letter’s contents to be “false”; that Melloni had never existed; and that the document had been forged for “indefinable and damaging ends, and brought to light by the *Rassegna*’s director...with carelessness and ignorance, without regard for the dignity of Italy....”¹⁷ At the Congress of the National Society for the History of the Risorgimento in 1932, opposition to Casanova solidified, and he was forced from the Director’s post. His replacement at the *Rassegna* was C.M. De Vecchi. Mussolini’s hand in the appointment seems clear. Writing to De Vecchi on 12 May 1933, the Duce expressed his pleasure that the *Rassegna* “[was] to be entrusted to [De Vecchi’s] care,” explaining that it had been “necessary to remove the history of the Risorgimento from an atmosphere too strictly professional,” and place it under

the guidance of one who displayed an “ardor for war and for the Fascist revolution.”¹⁸

In 1941, the Mazzini scholar, Mario Menghini, declared the Lincoln letter a fake after determining that its hand did not belong to Mazzini.¹⁹ Continuing the debate over the letter’s authenticity, the historian Alberto M. Ghisalberti raised the question in 1954 why anyone in Italy would have thought of asking an obscure American lawyer, two years in the U. S. House of Representatives notwithstanding, for his assessment of events on the continent. From an American standpoint, it is perhaps not unlikely that Lincoln interested himself in the Italian movement for unification; Americans everywhere followed with great interest the campaigns of Giuseppe Garibaldi (1807-82) in the pages of *Harper’s*.²⁰ What does seem unlikely, however, is that Lincoln would have communicated his thoughts in writing—in an inflated rhetorical style—to an Italian scientist as obscure to him as no doubt Lincoln would have been to Melloni. Yet, for obvious reasons, the idea of such a document proved irresistible to the forger, who harnessed the immense popularity of Lincoln the President to the task of buttressing Italian territorial ambitions. Even in 1931, Casanova would not have been alone in his attraction to the letter’s content; yet in retrospect, it appears Casanova failed to detect the letter’s inauthenticity.

Casanova was not the first to publish the infamous letter. On 2 April 1920, the following banner headlines blared from the front page of a Milan daily: “A Message From Lincoln Translated by Giuseppe Mazzini: A Historical Document.” The subhead, occupying three lines of type running the width of the page, proclaimed: “The ancient lagoon of Venice, from Fiume to the mouth of Cattaro, without interruption, through all Dalmatia, should belong to Italy. Not to allow full annexation to Italy, without any exceptions, would cry out for vengeance to the Nemesis of history.” The newspaper in question was *Il Popolo d’Italia*; its editor, from 1914 to 1922, Benito Mussolini. The entire text of the Lincoln letter, touted as “the most honest page of all contemporary history,” appeared beneath the headlines. Juxtaposed was an article reporting on the forced occupation of the Adriatic city of Fiume by the novelist and adventurer Gabriele D’Annunzio (1865-1938), then in its seventh month.

Clearly, the political uses of forgeries are myriad and depend upon the climate in which they surface. In 1920, with D’Annunzio holding Fiume in direct challenge to President Wilson, the question of the Lincoln letter’s authenticity would have been most inconvenient to address. In 1932, its fakery became decisive, providing a needed excuse to expel Casanova, a long-respected professional, from positions of influence and prestige.

Why did De Vecchi wish to remove Casanova, not only from the Directorship of the *Rassegna*, but also from the high administrative positions he then held? What was the nature of Casanova’s transgression, apart from the unknowing publication of a forgery? Was it political? Or was it personal, rooted in some now obscure but once passionate enmity? We know the conflict cannot have been strictly factional intrigue between Fascist and Anti-Fascist loyalists. In the first place, opposition to Casanova included members of both camps. In the second place, Casanova himself was a member of the National Fascist Party, which, however, availed him little. Finally, Casanova’s successor at the Archivio di Stato, Emilio Re, was not a party member.²¹

Perhaps the key to Casanova's downfall lies in his statement of political neutrality, offered in defense of his editorial policy at the *Rassegna*. Lashing out at his accusers in a published rebuttal to their charges, he announced that "the *Rassegna* does not occupy itself with politics, nor with political affairs; it does not, nor will it ever."²² If a declaration of political neutrality within the intellectual sphere were not damaging enough, Casanova's open identification with Lincoln, and particularly with Mazzini, almost certainly marked him out as a traditionalist, uninterested in cooperating with De Vecchi's vaunted "Fascist reclamation of culture."²³

Although Casanova blundered in his capacity as an editor, his ouster resulted in a great loss to the Italian archival profession. One year after Casanova's dismissal from the *Rassegna*, he was removed from the posts of Superintendent of the Archivio di Stato and Archivio del Regno, posts he had occupied jointly for seventeen years. In 1935, when De Vecchi was serving as Minister of Education, Casanova was fired from his post at the University of Rome. Undaunted but embittered, Casanova resumed teaching and writing in the field of sociology from 1940 to 1942, and his editorial work continued with the reissue, after a twelve-year lapse, of the periodical *Gli Archivi Italiani*, under the new title, *Gli Archivi d'Italia*.

In his introduction to the special issue of *American Archivist*, "European Archives in an Era of Change," Jean Favier, Director General of the Archives of France, describes the "weight of the centuries" shouldered by the archivists of Europe.²⁴ It was the weight of the early twentieth century that finally brought Casanova's career to a premature close. Casanova's tragedy lies in the fact that his professional abilities had nothing to do with his ultimate fate; Mussolini's criticism of the tenor of Risorgimento scholarship under Casanova's direction as "too strictly professional" is telling. Casanova was simply a victim of a regime bent on exacting intellectual conformity. In Fascist Italy, albeit to a far lesser degree than in the Germany of Goebbels, the political threads were woven tightly through every artistic and scholarly endeavor. Casanova's crime, expressed in his acceptance of the Lincoln letter, was to step outside of the prescribed historical tradition at an inopportune moment. His fate allows us to appreciate one of the freedoms we, as American archivists, often take for granted: the freedom to be judged solely on our merits as practitioners, rather than on our historical interpretations or political allegiances. We can hope that out of the social, political, and economic upheaval now underway in Central and Eastern Europe, in Russia, and in the other post-Soviet republics, where constitutional states are struggling to emerge, autonomous archival communities will develop, with resources to assist in the establishment of national identities and democratic ideals. Surely this is an outcome Eugenio Casanova, as a dedicated professional and believer in collaborative endeavor, would have warmly supported.

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NOTES

1. Barbara Craig, "Outward Visions, Inward Glance: Archives History and Professional Identity," *Archival Issues: The Journal of the Midwest Archives Conference*, Vol. 17, No. 2. Spring, 1993.
2. *Ibid.*, p. 113.
3. Armando Lodolini, "Un Sessantennio di Archivistica nell'Opera di Eugenio Casanova," *Rassegna degli Archivi di Stato* 17 (1957). _____. "Pensiero e stile di Eugenio Casanova," *Notizie degli Archivi di Stato* 13 (1953, I). Elio Lodolini, "Eugenio Casanova e L'Inizio dell'Insegnamento dell'Archivistica nell'Università di Roma," *Palaeographica, Diplomatica, et Archivistica: Studi in Onore di Giulio Battelli* (Roma: Edizioni di Storia e Letteratura, 1979), 651-61. _____. "La Scuola Archivistica Romana dal 1870 al 1985," *Archivi per la Storia* 2 (1989), 127.
4. Petrucci, "Eugenio Casanova," *Dizionario Biografico degli Italiani* (Rome: Istituto della Enciclopedia Italiana), I, 1978, 148-51.
5. Eugenio Casanova, "Programma," *Gli Archivi Italiani: Rivista Bimestrale di Archivistica e di Discipline Ausiliari* I (1914), 4.
6. Elio Lodolini, "La Scuola Archivistica Romana dal 1870 al 1985," *Archivi per la Storia* 2 (1989), 127.
7. Eugenio Casanova, *Archivistica* (Siena: Lazzeri, 1928), 406.
8. Renzo De Felice, "Gli Storici Italiani nel Periodo Fascista," *Storia Contemporanea* (XIV) No. 4-5, 1983, 741-802. _____. *Mussolini il Duce: Gli Anni del Consenso, 1929-36* (Torino: Einaudi, 1974).
9. Benito Mussolini, *Opera Omnia di Benito Mussolini* (Florence: La Fenice, 1958) XXVI, 27.
10. Benito Mussolini to C.M. De Vecchi, 12 May 1933, 14 July 1933, in *Opera Omnia di Benito Mussolini*, XXV, 261; XXVI, 27.
11. C.M. De Vecchi, quoted in an epigraph to "Il Commissario Straordinario Degli Archivi Del Regno," in *Gli Archivi d'Italia*, I, 93.
12. L'Integrale Messaggio di Abramo Lincoln a Macedonio Melloni, Tradotto e Diffuso da Giuseppe Mazzini," *Rassegna Storica del Risorgimento* 18(1931), 460-67.
13. *Ibid.*, 465.
14. *Ibid.*
15. Giuseppe Leonida Capobianco, in a prefatory note to "L'Integrale Messaggio di Abramo Lincoln" in *Rassegna Storica del Risorgimento* 18(1931), 463.
16. Alberto M. Ghisalberti, "Lincoln, Melloni, Mazzini, E.C.," *Rassegna Storica del Risorgimento* 41 (1954), 21.
17. Eugenio Casanova, "A Proposito della Lettera di Abramo Lincoln a Macedonio Melloni," *Rassegna Storica* 18 (1931), i-iii.
18. Benito Mussolini to C.M. De Vecchi in *Opera Omnia di Benito Mussolini* (Florence: La Fenice, 1958), XXV, 261.
19. Gaetano Salvemini, "Ritrovo," *Il Ponte: Rivista Mensile di Politica e Letteratura* (November 1953), 1603.
20. See H.W. Marraro, *American Opinion on the Unification of Italy, 1846-1961* (New York: Columbia University Press, 1932).
21. Elio Lodolini, "La Scuola Archivistica Romana dal 1870 al 1985" in *Archivi per la Storia* 2 (1989), 136-37. I am indebted to Prof. Elio Lodolini for pointing out that Emilio Re was not a member of the Fascist party.
22. Eugenio Casanova, "A Proposito della Lettera di Abramo Lincoln a Macedonio Melloni," *Rassegna Storica del Risorgimento* 18, No. 4 (1931), vii-viii.
23. Renzo De Felice, "Gli Storici Italiani nel Periodo Fascista," *Storia Contemporanea* (XIV) No. 4-5, 1983, 750, 757-60.
24. Jean Favier, "Introduction," *American Archivist*, "European Archives in an Era of Change," 55:1 (Winter 1992), 8.

BOOK REVIEWS

Without Consent: The Ethics of Disclosing Personal Information in Public Archives. By Heather MacNeil. Metuchen, New Jersey: Scarecrow Press, 1992. 230 pp. Index and Bibliography. Hardcover. Available from Society of American Archivists, \$24.00 members/\$29.50 nonmembers.

The confrontation that exists between the individual's right to privacy and the public's freedom of information has become a topic of concern in the archival profession. Public archivists, in particular, find themselves attempting to create an equitable balance between the competing interests. *Without Consent* provides a comprehensive overview on the administration of access to personal information found in public archives.

Within the seven chapters of the book, MacNeil closely examines the issues associated with accessing personal information located in public archives. Chapter One thoroughly investigates the concept of privacy, morally and legally. A definition of privacy is formulated in the development of legislation. Moral consideration of an individual's right to privacy is fundamental in creation of information access legislation; an individual's freedom of expression should be unequivocally protected.

Chapter Two examines the public's inherent right to access private information in public archives through a comparison of American and Canadian privacy legislation. The underlying principles of privacy legislation are discussed along with the conclusion that a balance between access rights and individual privacy has not been achieved.

Chapter Three reviews the often incompatible relationship between individual privacy and public interest. Each side is granted autonomy through government legislation. When a confrontation takes place, new definitions and limitations are created as a conciliatory effort.

Chapter Four provides a background for the growing interest in obtaining personal information. Current socio-historical research trends seek to document the working class experience in an industrial society. The demographics of race and gender are important to the accurate portrayal of society. Much of this important information can be found in the inaccessible records of public and private social welfare agencies. Ambiguous closed periods or time restrictions on access often exist. Some records are destroyed or simply not transferred to the archives. To facilitate historical research, the archival profession needs to advocate or assist in the development of clear access policies and procedures. Limited access clearance during closed periods is suggested.

The difficulties faced by archivists in administering access to personal or confidential information in public archives is discussed in Chapter Five. Archivists find themselves confronted with creating access policy and procedure that protects privacy and provides adequate freedom of information; as legislation changes, so must access policy.

Chapter Six discusses the professional ethics of personal information disclosure for research purposes and the development of access policy. Advocates for freedom of information, the historians and statisticians, oppose regulation of access, while advocates for individual right to privacy support limitations on access. An ethical dilemma emerges when access policy decisions are made; liberal access may violate privacy and confidentiality, restrictive access may infringe upon the research community. In the end, however, preservation of the individual's right to privacy is imperative.

The final chapter describes the role of the archivist as the administrator of access to personal information and the advocate of privacy. The archivist facilitates and monitors access through formal written policy. Restrictions on access should be explicitly defined, with consideration given to local legislation that governs confidentiality and privacy. The author suggests that an ethical review board be established within the archival institution to screen potential researchers, determine access rules, oversee the research process, and administer penalties to violators of access rules. A written agreement between the researcher and the board would ensure understanding of the researchers' obligations. The key to effective access administration, in any case, is consistency in the use and enforcement of policy.

In addition to consistent policy use and enforcement, effective access administration can be obtained when the archivist is aware of changes in privacy legislation and at the forefront of access and privacy advocacy. The archivist can then become a competent mediator in the confrontation between the individual's right to privacy and the public's right to knowledge.

Without Consent should be considered as an excellent reference tool for the archival institution attempting to establish access policy, the student learning about the field, or the archivist entering the profession. MacNeil provides a fine balance of theory and practice, fact and opinion.

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Day To Day: A Guide to the Records of the Historic Day Mines Group in the University of Idaho Library. Edited by Terry Abraham and Richard C. Davis. Moscow, Idaho: University of Idaho Library, 1992. 44 pp. Illustrated. Paper. Complimentary copies available in limited quantity from the publisher, Rayburn St., Moscow, ID 83843.

The Day Mines group, a 1,600 cubic foot mining records collection donated to the University of Idaho a decade ago, has been processed with a number of grant funds, including those from the NHPRC, the U.S. Department of Education, the university, and a bequest from the donor. This guide provides initial access to the materials and forms a bridge to the more detailed finding aids for the individual collections.

The first section of the guide offers a brief background on the development of mining in the Coeur d'Alene region and on the Day family from their arrival in Idaho in the 1880s to the time when the mining conglomerate was sold in the 1980s. The importance of Day Mines is underlined by two facts: in the 1940s it

represented the "largest body of mineral lands in the region," and by the 1980s it was "America's fifth largest producer of silver."

The guide continues to describe related papers in the University of Idaho Library that contain ancillary information, some being part of the Day accession and others dealing with regional issues. Rules and hours of the Department of Special Collections and Archives in the University Library are also provided.

The third segment of the guide discusses the research potential of the Day Mines Group. This conglomeration of the records of once separate companies, who did not all follow the same record-keeping practices or use the same names for record types, could raise access problems for the researcher. The authors of this guide have successfully dealt with these variances through painstaking effort.

The examples provided of most of the collection's record series follow the various actions of each department through all steps in a particular time period. For example, the functions of smelting and refining companies differed, but they were directly related to the activities of the mines and mills. Ore settlement records, mill recovery records, daily assays records, or ore shipment records were created at different points along the way from the mine to finished product. The guide describes the information contained in each record series from tons milled daily and monthly to the cost of market ore.

The authors use outside sources as reference points for describing record-keeping methods. A published reminiscence of miners who worked for one of the Day mines is compared to employee records, and the men are found on time sheets, payroll advances, and in other records types in the collection.

The informational value of the different record series is pointed out and supplemented by comments on their completeness. Where information is duplicated or located within another collection, it is noted. Unfortunately, records from the earliest period of mining in Idaho are scant. While this guide states that the collections which form the Day Mines Group contain little on the 1890s Coeur d'Alene mine labor troubles, it does not offer an explanation for the gap. From the information provided in this section, researchers and archivists alike will readily grasp the applicability of these collections to a myriad of subject areas, ranging from economic patterns in the West to labor conditions at the turn of the century.

The guide's final section describes the actual records in an abbreviated scope and contents format. The complex Day mining corporation was made up of many smaller companies that were bought, sold or merged over the years. While the records of the individual companies form separate collections, the connections between them are concisely defined.

The history of each company contains information on its founding and charter directors. Takeovers of smaller companies were common, and the manner in which each company was acquired by Day is explained so that their interrelatedness is clear.

As is stated in the guide, not all series are present for each company, nor are the time spans complete. However, given the comparable activities carried on by the various companies, the overall picture of the area's mining industry appears to be quite well documented.

Because it is a guide to a large collection of records, this publication provides a view of the whole, while also serving as a step to the more detailed registers

of the individual collections. For a researcher wishing to ascertain whether or not the collections hold information pertinent to a particular field of study, this work should serve admirably.

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The Management of College and University Archives. By William J. Maher. Metuchen, New Jersey, and London: The Scarecrow Press, Inc., 1992. 430 pp. Bibliography and Index. Hardcover. Available from the Society of American Archivists, \$45.00 members/\$49.50 nonmembers.

Writing textbooks for professions—Bibles of beliefs, policies, and practices—can be like re-living one of the ordeals of ancient Job. Especially tormented are those who write in a field as diverse as academic archives. Colleges and universities range in size and scope from a one-building community college to a research university with a culturally mixed population on multiple campuses. As a consequence, academic archives also vary in resources and in programs. Some are the personal bailiwicks of solitary archivists who arrange and describe, promote the use of the collections, and struggle to live a normal life. Others are departments that include processors, microfilmmers, records managers, and reference staff.

William Maher succeeded in writing a book of fundamental value to archivists of programs small and large, old and new. The organization of the text is a basic reason for its success. Maher began by describing a common mission and the needs within which all academic archivists function. Such matters as administrative location, holdings, personnel, space and facility are common to all. So, too, is the professional knowledge (archival theory, procedures, and techniques) developed by generations of archivists, academic and non-academic.

Next, Maher discusses topics of special interest to all archivists of colleges and universities. A chapter entitled "Special Records Problems" reviews dilemmas that every archivist encounters within academe: dissertations and theses, photographs, audio and visual materials, architectural records, and machine-readable records. Under the heading "Special Challenges and Opportunities in Academic Archives," are such topics as institutional change and the impact upon archival classification systems, managing the documents of student and faculty organizations, and students as staff. Others are students as users, artifacts and memorabilia, and historical consciousness within institutions of higher education.

Finally, Maher directed attention to areas of interest to managers of well-established programs. Here, the author provided guidance in records management, manuscripts programs, outreach, exhibits, and oral history as they take place within a campus environment. From beginning to end, this is a comprehensive book that is lively in style and encyclopedic in content.

Several points merit special attention. Particularly worthy of quotation is Maher's definition of the goal of the archives: "...to aid the institution in its sur-

vival and growth, especially by making sure that the institution's roots in the past are not severed. At the same time, the academic archives contributes to the institution's educational mission by enriching the lives of the campus community. The archives should support teaching and learning and assist scholars and the general public in using documents to understand and explain the past." These words will re-appear as academic archivists write brochures, statements of missions, proposals, and annual reports.

Maher's book serves not only to guide academic archivists to policies and practices but also to other sources of information. Notes in each chapter direct the reader to additional publications. Following the text are several appendices of valuable information. One provides a general bibliography; another is an annotated and selective bibliography of management. Additional appendices contain *Guidelines for College and University Archives* (Chicago: Society of American Archivists, 1979) and also the "Resolution on Theses and Dissertations" adopted by the Society of American Archivists in 1975. Particularly helpful to the beginning archivist is Appendix Five, where model forms stand ready for use in any archives.

In his sweeping overview of college and university archives, Mr. Maher confronted some traditional points of controversy. On the continuing debate over the proper administrative location of archives, Mr. Maher argued that no perfect site exists. The missions of an archives—administrative, teaching, research, service—are too broad and diverse to fit comfortably within bureaucratic hierarchies based on narrow specialization. Any location where the archives can interact directly and from a position of authority with all parts of the institution is ideal. Within the library, the archives works well if the archivist has the freedom and resources to develop the archival program.

No matter where archives are, the position of archivist must have a status equal to the responsibilities. First, according to Maher, the institution's personnel system must classify the archivist as a professional, academic, or faculty position. Within the hierarchy of the library, the archivist "should have a rank higher than a line-reference, subject or branch librarian and have authority comparable to that of the library's director or assistant director."

In a book of so many strengths, weaknesses are rare. However, the section on records management may disappoint knowledgeable readers. Despite twenty pages of text and supportive notes, some works of importance and usefulness in records scheduling are missing. [See for example John Dojka and Sheila Conneen, "Records Management as an Appraisal Tool in College and University Archives," in Nancy E. Peace, ed. *Archival Choices: Managing the Historical Record in an Age of Abundance* (Lexington, Mass.: D.C. Heath and Company, 1984). Also see Donald S. Skupsky, *Records Retention Procedures* (Denver, Colorado: Information Requirements Clearinghouse, 1990), which led to *Records Retention for Public Colleges and Universities in Ohio: A Manual* (Columbus, Ohio: The Inter-University Council of Ohio, 1992)].

Also missing are references to guides to records retention in use by other colleges and universities, such as North Carolina, New York, Connecticut (and now Oregon State University). These can serve as a basis of information for programs of records retention and disposition. After all, the functions of each institution of higher education are similar enough—as are the records they produce—to invite comparisons of retention and disposition.

Every manual, no matter how comprehensive, will fail to keep pace with time. Thus, for example, this book appeared before the Society of American Archivists made available *Student Assistants in Archival Repositories: A Handbook for Managers*. Nor will readers find discussions of the use of electronic information systems as opportunities for description of collections and for reference and outreach. Particularly troublesome for many academic archivists will be campus researchers who use their electronic work stations to scan for information and overlook the resources of the archives, if archival services and resources are confined to the library catalog.

These minor disappointments aside however, William Maher has contributed a work that is authoritative and exhaustive. Every college and university—small or large, public or private—should have this book. Archivists will want their own copies close at hand. As the archival profession continues to develop, Maher's textbook will remain as a milestone in the path of progress and as a continuing point of reference.

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The Archival Imagination: Essays in Honour of Hugh A. Taylor. Edited by Barbara Craig. Ottawa, Ontario: Association of Canadian Archivists, 1992. 263 pp. Paper. \$18.00 members/\$23.00 non-members.

In every profession a few practitioners exist who are influential because of their insightfulness and progressive contributions to their field. Hugh Taylor has long been recognized by his professional colleagues as an archivist of vision, atypical insight, and imagination. During his archival career, first in England for fourteen years and since 1965 in Canada, Taylor has taught and authored a score of seminal articles on the themes of human communications, the history of records, and archival education. His articles, in particular, have challenged and inspired the present generation of archivists to imaginatively peer beyond their current traditions and to reevaluate standard practices.

Barbara Craig, as editor of *The Archival Imagination: Essays in Honour of Hugh A. Taylor*, has brought together eleven articles and her own introduction which pay tribute to Taylor and make, in themselves, a significant contribution to the literature. Published by the Association of Canadian Archivists, *The Archival Imagination* includes nine essays by Canadian authors, one by Michael Roper of Britain, and one by Frank Burke of the United States. For this volume each contributor was invited to write an essay on a topic of their own choosing. Individually the articles relate to Taylor to greater and lesser degrees as they cite his work or build upon his ideas either directly or by inference. Editor Craig describes the essays as "eclectic in subject and style," and "as diverse as professional education and communication theory. Nonetheless," she continues, "the authors, either by the subjects they explore or by the techniques they employ, are in debt to Hugh Taylor." As a unified work, the essays deal with the primary areas of archival science which Taylor has been interested in developing: human communications, archival education, and the contextual history of records.

In her brief introduction, Barbara Craig credits Hugh Taylor with influencing a generation of Canadian archivists through his personal encouragement, teachings, writings, and scintillating imagination. She notes that Taylor's "archival career demonstrates a single-minded devotion to the records of human activity in all their abundance and variety. The archivist's one imperative is, first and foremost, to study records which in their history and form contain the wealth of 'information' Taylor has compared to the genetic wealth of living things." The primacy and the history of the record within its varied contexts is the focus of several articles in this volume. Kent M. Haworth challenges archivists to reclaim and promote the primacy of the record by understanding and articulating the purposes of archives. Barbara Craig and Michael Roper examine the history of records and their keeping. Craig's essay on the introduction of mechanical copying devices into the British Civil Service in the late 19th century is a worthy history and more. She clearly demonstrates the relevance to archivists of understanding the record in its historical context and, like Hugh Taylor, reminds us at a time when many are enamored with high tech, that ultimately "it is people, not machines, which make records." Michael Roper has written a history of the development of the principles of provenance and original order in the British Public Record Office; a pragmatic study that notes the relationships of archival practice to historic period.

Tom Nesmith combines in his essay two topics very important to Hugh Taylor; the context of the record and archival education. Nesmith's essay traces the rise of archival scholarship in Canada and "explores the relationships between societal conditions, changes in the means of recorded communication, and developments in public and private institutions that have affected information gathering and record-keeping." Frank Burke's essay also addresses the issues of archival education and the history of records, but he adds the theme of communications to the mix. Burke predicts a chaotic future for archivists if they complacently retain old archival practices for dealing with modern technological records. He goes so far as to suggest in his comments on the communications revolution in American business offices that traditional records management has already been supplanted. Anne McDermaid contributed a different kind of article on communications. She suggests that archival communication involves both content and contextual information about individual records, and that often the symbolic value of a document outweighs its informational value. Her implication is that archivists involved in appraisal decisions need to adopt a broader understanding of archival values before they determine which records are to be kept.

Appraisal is the subject of the two most imaginative and forward-looking essays in this volume. Terry Cook and Terry Eastwood each examine the theory of appraisal and each challenge both the present and the past methods of documentation. Cook's view is that archivists should be more concerned with what is documented than with what documentation should be kept. Eastwood introduces a "social theory" of appraisal which would objectively and scientifically evaluate the social/institutional value of records throughout their life.

Rounding out the essays are two administrative histories and a bibliographic review of Hugh Taylor's writings. Carman Carroll relates the genesis of the public archives of Nova Scotia as he traces the province's progressive archival legislation and public support for archives from 1857 to the mid-20th century.

Shirley Spragge's essay is a history of the archives of the Anglican Diocese of Ontario which successfully renovated a historic building in Kingston to accommodate the Diocesan Centre. Spragge pronounces it an illustration of how a community can be mobilized to demonstrate the value it places on its documentary heritage. Concluding *The Archival Imagination* is a bibliographic review of Hugh Taylor's writings by James K. Burrows and Mary Ann Pylypchuk. These two authors attempt to find the common themes in Taylor's writings and to trace the development of his ideas during the past three decades.

The title of this work, and Hugh Taylor's example, suggest that the reader might expect articles which are futuristic or which challenge the current archival paradigms. Only the two articles on appraisal by Terry Cook and Terry Eastwood, however, approach Taylor's own imaginative style. All of the articles are well written and thoughtful, but they fail to emulate the interdisciplinary relationships and original insights which have characterized Hugh Taylor's writings. Also, there is no analytical assessment of Taylor's importance in this volume. The reader will catch glimpses of Taylor only as he is quoted or cited in most of the articles. The reviewer was left wishing that the volume had included a new article by Taylor, or perhaps, telling excerpts from several of his past articles.

To say all of this is not intended so much as a criticism of the book as it is to point out the rarity of a Hugh Taylor. By and large, archivists are neither disposed nor accustomed to theoretical, philosophical, or imaginative speculation about the archival profession. The literature of the profession and the typical archivist's work days are most often focused on the herculean and practical tasks of acquisition, processing and description. In contrast, Hugh Taylor has always shouldered the promethean task of moving archival science to new points of departure and self-evaluation.

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A Summary Guide to Local Governmental Records in the Illinois Regional Archives. Edited by Robert E. Bailey, Elaine Shemoney Evans, Barbara Heflin, and Karl R. Moore. Springfield, IL: Illinois State Archives, Office of the Secretary of State, 1992. 239 pp. Paper. Available from the Illinois State Archives, Springfield, IL 62756. \$6.00.

A Summary Guide to Local Governmental Records in the Illinois Regional Archives is the fifth published finding aid which the Illinois State Archives has generated from computer tapes. It is also the second local governmental records publication in a decade issued by the Illinois State Archives. The earlier book, *A Guide to County Records in the Illinois Regional Archives*, published in 1983, contained county level records only, except those from Cook County (Chicago). The new guide includes the records of Cook County, cities, towns, villages, townships, and the pre-statehood period. The book lists 3,312 individual local governmental records series, from 100 of Illinois' 102 counties, housed in the Illinois Regional Archives Depository (IRAD) system. Among the records are

circuit court case files, probate records, election papers, school board minutes, deed books, militia roll records, township meeting proceedings, and city council files.

The IRAD system was established in 1976 with a grant from the National Endowment for the Humanities and became fully funded by the Illinois Secretary of State, who is also the State Archivist, in 1978. IRAD is composed of seven regional depositories on university campuses throughout the state: Northern Illinois University, Western Illinois University, Illinois State University, Sangamon State University, Eastern Illinois University, Southern Illinois University, and Northeastern Illinois University, the latter of which was opened in late 1990 and houses the archival records of Cook County's local governmental agencies. A useful map of Illinois counties and its IRAD regions as well as a directory of depositories and their corresponding addresses are included at the beginning of the book. The IRAD holdings, at the time of publication, amount to 2,859 linear feet of bound volumes, 4,026 cubic feet of boxed files, and 7,958 rolls of microfilm.

The book is divided into two parts: the first section, "County Listing," shows the holdings by county and the second portion, "Title Listing," is arranged by title of record series. The first section, which serves as a directory with the names of counties as headers on each page for ease of reference, is arranged alphabetically by name of county, therein by title of county office, and followed by the names of municipalities and townships within that county. Under each office of origin is an alphabetical list of records series titles and their respective identifying control numbers, beginning and ending dates, and physical volume. The control number, assigned to each record series by State Archives staff, is composed of three different numbers, the first of which indicates the depository where a record series is located. Although not explained in the introduction, the second group of four digits in the control number denotes the accession or shipment of records while the final two digits represent the inventory from that particular accession. Unfortunately, no indication exists whether there are any significant gaps in date spans. The dates are followed by the physical volume: CF for cubic feet, LF for linear feet, and MI for microfilm rolls.

The second portion of the guide consists of a title listing of records series. The title listing again shows the control number, the record's title, the county from which the record came, and its date span. Although this section is arranged alphabetically by title of record series, it has no cross-referencing and the way in which the titles are alphabetized is somewhat awkward. For example, if the researcher is searching for "wills," he or she will not find it under "W" but rather under "P" for "probate wills". Also, some township record series are preceded by the word "township" while others are not. These types of arrangements are also found in the county listing section. Although the editors state that "archivists are much more interested in histories of offices and narrative descriptions of record series than are actual users," perhaps it would have been useful to the user to add brief descriptions of each record series. However, this would have added considerable length to the book. One can at least refer to *A Guide to County Records in the Illinois Regional Archives* for descriptions of county records series.

Despite the preceding criticisms, *A Summary Guide to Local Government Records in the Illinois Regional Archives* provides an excellent source of infor-

mation for researchers, particularly genealogists and academicians, of Illinois history. The inclusion of Cook County's local governmental records into the IRAD repository at Northeastern Illinois University is a welcome addition to the system. This guide should give other state regional archive repository systems incentive to create similar publications of their local government records' holdings. As a former IRAD intern, I appreciate the years of effort in creating this guide. I highly recommend that college and university archives, public libraries, historical societies, and public archives include this guide in their reference collections.

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National Archives and Records Administration

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