

# Archival Issues

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Journal of the

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Midwest Archives Conference

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Volume 26, Number 1, 2001

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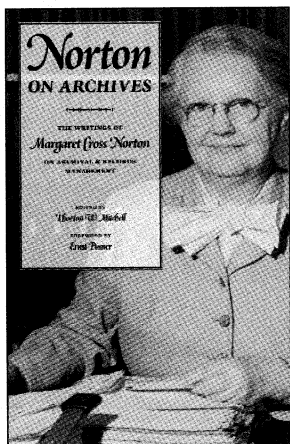
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# AN ARCHIVAL CLASSIC!



## **NORTON ON ARCHIVES: The Writings of Margaret Cross Norton on Archival and Records Management**

edited by Thornton W. Mitchell  
with a foreword by Ernst Posner

This collection of essays by a pioneer in the archival profession still represents a precious source of material and study for archivists and students alike. As early as 1930, Margaret Cross Norton, who was Illinois State Archivist from 1922-1957, paved the way toward recognition of archival administration as an indispensable element of public service entitled to full public support. Her essays have a timelessness and currency that gives them a continuing value and this book stands as an important monument to her work.

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## EDITORIAL POLICY

*Archival Issues*, a semiannual journal published by the Midwest Archives Conference since 1975, is concerned with the issues and problems confronting the contemporary archivist. The Editorial Board welcomes submissions relating to current archival practice and theory, to archival history, and to aspects of related professions of interest to archivists (such as records management and conservation management). We encourage diversity among topics and points of view. We will consider for publication submissions of a wide range of materials, including research articles, case studies, review essays, proceedings of seminars, and opinion pieces.

Manuscripts are blind reviewed by the Editorial Board; its decisions concerning submissions are final. Decisions on manuscripts will generally be made within 10 weeks of submission, and will include a summary of reviewers' comments. The Editorial Board uses the current edition of *The Chicago Manual of Style* as the standard for style, including endnote format.

Please send manuscripts (and inquiries) to Board Chair Mark Greene. Submissions are accepted as hard copy (double spaced, including endnotes; 1-inch margins; 10-point or larger type), or electronically (Microsoft Word, WordPerfect, or .rtf files) via 3 1/2" diskette or as an E-mail attachment.

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*Archival Issues* reviews books, proceedings, Web publications, and other materials of direct relevance or interest to archival practitioners. Publishers should send review copies to Publication Reviews Editor Kevin Proffitt. Please direct suggestions for books, proceedings, Web publications, other materials for review, and offers to review publications to the Publication Reviews Editor.

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Single issues of the journal are available at \$15, plus \$1 shipping and handling.

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## *Awards*

### **Margaret Cross Norton Award**

A panel of three archivists independent of the journal's Editorial Board presents the Margaret Cross Norton Award in odd-numbered years (alternating with the New Author Award). The Norton Award recognizes the author of what is judged to be the best article in the previous two years of *Archival Issues*. The award was established in 1985 to honor Margaret Cross Norton, a legendary pioneer in the American archival profession and the first state archivist of Illinois. The award consists of a certificate and \$250.

Cowinners were selected for volumes 23 and 24. Francis Blouin was recognized for his article, "Archivists, Mediation, and Constructs of Social Memory," 24:2, 101–112. Blouin's thoughtful and intellectually engaging article states that the role of archives in the formation of social memory is an area of study with wider practical reaches than that of a purely academic exercise. Blouin's article suggests that the study of archives and the representations of history within them bring the question of the integrity of archives to the forefront. The idea that archivists may play more than a completely objective role in the formation of the historical record strikes directly at the core of our theories and practices of archival appraisal and accountability. Through opening this discussion, Blouin opens the possibility for archivists in collections of every size and specialization to carefully consider the larger issues implicit in each collection-related decision that we make.

The other winner of the Margaret Cross Norton Award is Philip C. Bantin for his article, "Strategies for Managing Electronic Records: A New Archival Paradigm? An Affirmation of Our Archival Traditions?" 23:1, 17–34. Our colleagues who develop theoretical solutions for profound problems that face us in fulfilling our professional mandates often challenge us to rethink previously held convictions or develop practical solutions. In recent years, nowhere has this been more apparent than the complex issues facing electronic records. For many in our profession, the very subject "electronic records" seems to be a Promethean task introduced by cruel gods to haunt our dreams and impede our progress. Rarely are archivists presented with such a clear synopsis of the theoretical framework, an analysis of the crucial issues, and a series of practical suggestions as in Phil Bantin's article.

**New Author Award**

A panel of three archivists independent of the journal's Editorial Board presents the New Author Award in even-numbered years (alternating with the Margaret Cross Norton Award) for articles appearing in a two-year (four-issue) cycle of the journal. The award was instituted in 1993 to recognize superior writing by previously unpublished archivists, and may be awarded to practicing archivists who have not had article-length writings published in professional journals or to students in an archival education program. Up to two awards may be presented in a single cycle. The award consists of a certificate and \$250.

For volumes 23 and 24, the New Author Award winner was Mark Shelstad for his article, "Switching the Vacuum into Reverse: A Case Study of Retrospective Conversion As Collection Management," 23:2, 135–153. The article discusses in detail the situation at the American Heritage Center at the University of Wyoming as it undertook the retrospective conversion of the collections' finding aids to electronic format. The project, as is typical of such endeavors, became more than retrospective conversion: it became a massive reappraisal, documentation, and deaccessioning project. The article includes extensive tables on the time required to revise a collection as well as a detailed discussion of the methodology used. It is a well-written and well-documented article on potential problems almost any repository might face when doing retrospective conversion and how one institution responded to these challenges.



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# THE *FIRST* NIXON PAPERS CONTROVERSY: RICHARD NIXON'S 1969 PREPRESIDENTIAL PAPERS TAX DEDUCTION

BY MATTHEW G. BROWN

**ABSTRACT:** This article examines President Richard Nixon's gift of a portion of his prepresidential papers to the United States, his attempt to take an illegal tax deduction for this gift, and the role of archivists in bringing the matter to public attention. The chronology of the gift draws on interviews with participants in the affair, and on records held by the National Archives' Nixon Presidential Materials staff. The article explores causes and implications of the affair and concludes that the scandal resulted in part from the acts of certain Nixon administration officials and from the National Archives' placement under the General Services Administration (GSA). The article also examines the negation of the Presidential Records Act by several recent executive orders and the likelihood of future scandals involving presidential records at the National Archives.

Richard Nixon has the dubious distinction of being the only president of the United States to resign his office. His administration's records are similarly distinguished as having required the passage of special legislation to prevent their seizure by the president. The status of these presidential materials has embroiled the National Archives in controversy and litigation ever since. The Watergate affair was not the first scandal caused by the legal status and ownership of Richard Nixon's records. The first Nixon papers controversy centered on whether legal transfer of a selection of Nixon's prepresidential papers to the federal government had been made before a cutoff date set by Congress in tax reform legislation.

This earlier incident, the subject of this article, raised some key archival issues. These include the need for an institution to have physical possession of a deed of gift for collections of private papers; a reminder of the politicization of archival functions before the National Archives gained independence from the General Services Administration (GSA) in 1985; and the importance of the Presidential Records Act in ensuring timely public access within established archival procedures.

Finally, this incident highlights the ongoing battles over access to presidential records and the consequences for archivists and historians.

## Background to the Gift

To understand why Nixon's 1969 gift of prepresidential papers ran into trouble, it is necessary to examine briefly the legal requirements for a presidential gift to the U.S. government, the IRS requirements for a tax deduction for charitable donations, and the process by which the National Archives accepted these gifts. Presidents since George Washington had done as they wished with the papers of their presidencies, which led to priceless materials being burned, sold, or otherwise scattered. Legislation passed in the 1970s took long strides toward opening these materials to the public. The 1974 Presidential Recordings and Materials Preservation Act declared official presidential papers to be public property and the papers of all presidents beginning in 1981 to be the property of the United States. The 1978 Presidential Records Act established a time line for release within an archival framework for opening or restricting unclassified presidential materials.

From 1949 to 1985, the National Archives (then known as the National Archives and Records Service, or NARS) was a subagency of the GSA. The Presidential Libraries Act of 1955 authorized the GSA to accept legal title to presidential materials; the GSA in turn delegated that authority to the National Archives. The GSA was further authorized to accept gifts with restrictions on access to assure presidents that sensitive or personal material would not be disclosed without their permission.<sup>1</sup> The intent of the act, which allowed the GSA to accept title to presidential papers without enabling legislation, was to encourage presidents and other public figures to donate their papers to the federal government.

The process by which deeded papers were transferred to the National Archives had generally been adhered to since the passage of the Presidential Libraries Act. Every year from 1965 to 1968, President Lyndon Johnson followed his predecessors Harry Truman and Dwight Eisenhower in annually deeding portions of his papers to the U.S. government.<sup>2</sup> It became expected, although not legally required, that a president would donate his papers to the National Archives in preparation for eventual placement in a presidential library.

Tax deductions for such gifts enticed prospective donors who otherwise would have sold their papers to collectors. Presidents Truman, Eisenhower, and Johnson had benefited financially from their annual gifts to the National Archives. Johnson described this routinized process to his successor Richard Nixon shortly after Nixon's election in November 1968.<sup>3</sup> Typically, the president asked an appraiser to select a group of papers valued at a certain amount. After the president approved the appraiser's choices, his attorney executed a legal document transferring the selected materials to the U.S. government. Nixon assigned his personal tax attorney to look into the possibilities of a gift for the year 1968.<sup>4</sup> Nixon hired appraiser Ralph Newman, who had also designated President Johnson's gifts, to perform this function. A selection of Nixon's prepresidential papers were physically transferred to the National Archives, where they were inventoried and stored until Newman designated a gift at the end of the calendar year.<sup>5</sup> A deed of gift specifying certain restrictions on access to the papers was drafted, signed by Nixon, and delivered to the GSA on December 30.



The 1968 transfer met the three requirements of a gift: clear intent to give; delivery and relinquishment of dominion over the gift by the donor; and acceptance of the gift by the donee.<sup>6</sup> A schedule attached to the deed described the contents of Nixon's gift and the title was clearly transferred to the National Archives.<sup>7</sup> The schedule listed the contents of 21 containers consisting of 41,300 items. These included papers and artifacts from Nixon's congressional and vice presidential terms, among them speeches, correspondence files, audiotapes documenting the 1960 campaign, and the original manuscript to Nixon's *Six Crises*.<sup>8</sup>

As the end of the year approached, President-Elect Nixon decided to replace the team of tax attorneys who had successfully claimed a tax deduction for the gift of papers for tax year 1968. The law firm of Kalmbach, DeMarco, Knapp and Chillingworth now represented Nixon in all his personal legal matters and Frank DeMarco was assigned responsibility for preparing the president's tax return, including overseeing a similar gift of Nixon's papers for tax year 1969.<sup>9</sup>

### The 1969 Gift

In February 1969, Nixon approved John Ehrlichman's plan to claim the maximum tax deduction for that year.<sup>10</sup> The shipment, constituting one-third of the total of Nixon's prepresidential materials, was moved to the National Archives.<sup>11</sup> The 1969 gift papers, described as being "in various states of disarray," were considered to be in courtesy storage.<sup>12</sup> Materials "in courtesy storage" or "on deposit" still belong to the donor until a formal legal transfer is signed, usually through a deed of gift. Materials are considered to be "deeded to the U.S." only after they have been transferred to the physical and legal control of the government. There were two reasons for courtesy storage: to encourage the president to donate his papers to the government at a later date and to allow the National Archives to unpack, inventory, and arrange them into a workable order in case the president needed access to any of his materials. Although in most cases the archivists' code of ethics calls for discouraging the imposition of restrictions to access, courtesy storage was a privilege routinely extended to presidents considering gifts of their papers to the U.S. government, and was crucial in preparing for the appraiser's designation of a gift.<sup>13</sup> At this point, no one thought that the materials' transfer to the National Archives building constituted a gift.

With the placement of this portion of Nixon's undeeded prepresidential papers in a number of preliminary archival series in April and May 1969, the next step in the gift process was appraisal. To comply with accepted practice, the president's tax lawyers would have then designated a dollar amount allowable for deductions and the appraiser would have designated a selection of papers valued at this amount. Book appraiser Ralph Newman, who had selected Nixon's first gift of papers, was asked to designate the second gift.<sup>14</sup> Newman did not appraise any of the papers in the five months after archival arrangement was completed.

Up to this point, the 1969 gift had followed the pattern set by previous presidential donations. However, the legal foundation for tax deductions of gifts was threatened by the proposed Tax Reform Act of 1969, a major overhaul of the U.S. tax code. Its provisions relating to charitable contributions of papers attempted to close a loophole that

benefited public officials such as Presidents Johnson and Nixon. Critics denounced the old law for rewarding public figures for donating papers that should not have been considered theirs to begin with. Before passage of the act, the author or original owner of papers or letters was entitled to deduct the fair market value of the materials' worth, up to 30 percent of the taxpayer's adjusted gross income.<sup>15</sup> The provisions of the Tax Reform Act eliminated the tax break claimed for gifts of papers, "so that the tax deduction value for income tax purposes of any such document, speech or item of correspondence would be worth only the inconsequential value of the piece of paper it was written on, not the appreciated value that a collector might pay for the manuscript." This led to a dramatic decrease in the donation of personal papers to the U.S. government and certain charitable organizations.<sup>16</sup>

Nixon and his aides were actively involved in the Tax Reform Act debate and mindful of the act's impact on Nixon's planned gifts of papers. On April 21, 1969, Nixon sent his tax reform proposals to Congress, which upheld the existing provisions for tax deductions for charitable contributions of gifts of personal papers. Republican senators in particular had targeted Johnson's tax savings.<sup>17</sup> Edward Morgan, an attorney serving as an aide to John Ehrlichman, later described a "mad scramble" of White House lobbying in June 1969, to preserve the tax code's charitable donation provisions that benefited President Nixon.<sup>18</sup> On July 25, 1969, the House Ways and Means Committee recommended eliminating the tax deduction, but the administration still believed it had a chance to retain it in the final version of the legislation. In October 1969, Morgan and Ehrlichman exchanged memos expressing concern about the versions of the bill that, according to Morgan, could "wipe out" the president's planned tax savings. They lobbied an official at the Treasury Department to retain the tax code provisions on charitable donations.<sup>19</sup> The House and Senate passed different versions of the Tax Reform Act. The compromise version that passed both chambers set July 25, 1969, as the deadline for donations.<sup>20</sup> On December 30, 1969, President Nixon signed it into law.<sup>21</sup>

In order for Nixon's 1969 gift to meet the requirements of the Tax Reform Act, legal transfer would have to be made in writing on or before July 25, 1969. After working with the 1968 deeded papers in April 1969, Newman did not return to the archives until November 3, 1969.<sup>22</sup> On that date, Newman met Richard Jacobs, Deputy to the Assistant Archivist for Presidential Libraries, and Jacobs's assistant Mary Walton Livingston, who showed him the Nixon materials in National Archives courtesy storage. Newman expressed interest in selecting the "General Correspondence" series, which contained letters to Nixon from national figures and foreign leaders, but he considered the letters from ex-presidents and foreign heads of state too valuable to donate to the U.S. all at once. He suggested extracting the letters written by Lyndon B. Johnson, John F. Kennedy, J. Edgar Hoover, Herbert Hoover, Earl Warren, Hubert Humphrey, and Sam Rayburn, and deeding the remaining correspondence as the 1969 gift.<sup>23</sup> Livingston feared that removing these items would detract from the collection's value to scholars and, instead, suggested selecting the entire boxes containing VIP letters rather than just the individual letters. The 17 boxes containing these letters were separated and the remaining 828 boxes were selected for the 1969 gift.

The Tax Reform Act's passage set off panicked communications between the aides working on the president's tax return. Newman called Nixon's tax attorney Frank

DeMarco for further instructions on how to proceed in light of the act's change in tax law regarding charitable donations. Newman said that DeMarco told him there was nothing left for him to do on Nixon's gift for 1969. Newman later told investigators, "I thought he'd blown it," a reference to DeMarco's having missed the deadline for deeding the papers to the United States.<sup>24</sup> In a letter to DeMarco, Newman lamented the act's effect on charitable gifts of papers and expressed hope that archives and libraries would succeed in forcing changes to the law. Newman also suggested that DeMarco consider deeding those non-textual Nixon materials such as books, trophies, and other artifacts, which still qualified for charitable donation tax deductions for tax year 1970.<sup>25</sup>

### **The National Archives Gets Involved**

National Archives staff also followed the debate over the Tax Reform Act with interest. Within days of the act's passage, the archives noticed a dramatic decline in year-end gifts of papers to the government.<sup>26</sup> Livingston and Daniel Reed, Assistant Archivist for Presidential Libraries, drafted a memo for the signature of Archivist of the United States James B. Rhoads, stating that "the flow of gifts to presidential libraries" had slowed considerably since the act's passage. The National Archives expected the "donation by Nixon of another increment of his prepresidential papers as a second installment to those deeded to the Government of the U.S. in December 1968. No such donation was made in December 1969, although we understood all plans had been made for it."<sup>27</sup> A number of public figures decided not to make gifts of papers to the National Archives, among them Lyndon Johnson, who had made a gift in each of the past four years. Nixon's own chief of staff, H. R. Haldeman, who had reportedly agreed to deposit his papers at the National Archives, also declined.<sup>28</sup> Nixon's prepresidential papers were in a state of limbo: they were under the archives' physical control but ownership had not yet been deeded to the government.

On March 27, 1970, less than three weeks before the IRS filing deadline, DeMarco finally took action. DeMarco called Newman to tell him to prepare a list of items suitable for deeding, with a total value of around \$500,000.<sup>29</sup> DeMarco told Newman to get confirmation from the National Archives that it considered the 1969 deed process completed, even though Newman had been saying for months that this was not the case. To Newman's surprise, DeMarco said he was documenting President Nixon's gift of papers to the U.S. government, which had been accomplished when the papers were delivered to the National Archives on March 27, 1969.<sup>30</sup> Newman believed that the act's passage had ruled out a 1969 tax deduction for the president, but he followed DeMarco's orders. His appraisal in December 1969 had valued the contents of 828 boxes of Nixon's correspondence files. After estimating the market value for a box of Nixon's papers, he decided that approximately three hundred more boxes would be required for their total value to equal \$500,000. Newman called Livingston, asking her to call him back with a complete list of around 1,200 boxes to be donated. He said that this information was needed by the White House within the hour. Livingston was uncomfortable with Newman's request.<sup>31</sup> Newman had called her from Chicago, so he could not accurately appraise the value of any papers she selected. Livingston and an assistant quickly chose four new categories of papers. These boxes of papers, added to the 828 boxes of corre-

spondence selected by Newman in December 1969, amounted to 1,176 boxes. Livingston prepared a schedule listing the 828 boxes that Newman had appraised earlier. She then read over the telephone to Newman a list of the additional boxes she had selected. Newman thanked her and asked her to “keep this matter between him and myself because it would be better that way for the White House and for him if I didn’t discuss this with my superiors.”<sup>32</sup> Livingston wrote to her files that, “The letter inside from R. Newman is the only ‘deed of gift’ NL [the National Archives’ Office of Presidential Libraries] will receive according to word received today from Mr. Newman.”<sup>33</sup> Newman also sent Livingston a letter thanking her for her assistance with the papers “designated as a gift by RMN [Richard Nixon] in 1969.”<sup>34</sup> Newman’s letter did not mention his phone conversation with Livingston earlier in the day.

One result of the activity on March 27, 1970, was a list of items DeMarco claimed had been deeded to the government exactly one year earlier, which had actually been selected by Livingston. Another result was the misleading letter to Livingston, which appropriated DeMarco’s wording that a gift had been made to the U.S. government in 1969. The letter implied that the list of papers had been selected and deeded well in advance when, in fact, it had just been read over the phone to Newman.

Newman prepared a letter appraising the value of the 1,176 boxes and forwarded it to DeMarco. These boxes consisted of five categories of papers. Of these, Newman had personally appraised only one, the General Correspondence series. A gift of these papers, actually selected in March 1970, was claimed on Nixon’s 1969 tax return.

Two facts prove that there had been no transfer of legal title in March 1969. As of this date, the papers were stacked on palettes and not accessible for appraisal.<sup>35</sup> Also, the only person granted the right of access to the papers was Newman, who was assigned to appraise them for tax purposes before April 1970.<sup>36</sup>

Newman sent the letter to Livingston in order to support DeMarco’s claim that a legal transfer of these papers to the government had been effected in March 1969. On April 10, 1970, to beat the tax filing deadline, the signatures and notarization were falsified.<sup>37</sup> Desperate to have some documentation that the papers had been deeded in 1969, DeMarco had asked Newman to prepare an appraisal form backdated to March 27, 1969, in order to meet the July 25 cutoff date set by Congress. DeMarco and White House lawyer Edward Morgan broke the law by backdating the deed of gift to March 27, 1969. The deed stated that Morgan had acted as Nixon’s representative in depositing at the National Archives the papers selected by Newman. DeMarco then notarized it as of April 21, 1969, for inclusion with President Nixon’s 1969 tax return and kept it in his safe. Morgan also signed a duplicate original deed, which was filed with the GSA to provide supporting documentation in case anyone questioned the deed’s legitimacy.<sup>38</sup>

The travels of the duplicate original deed eventually brought the crimes to light. It remained in the GSA’s files until mid-September 1971, when the GSA discovered a problem. President Nixon had not signed the deed, which bore the signature of Edward Morgan, and the GSA returned the deed to the White House for resolution.<sup>39</sup> Jacobs was present at the meeting when the deed was returned, but he was not aware of this until later. The GSA lawyers “never said a word” to Jacobs about the reason that the deed was returned.<sup>40</sup> The deeds of gift for the papers of former Presidents Truman, Eisenhower,



and Johnson were all on file with the National Archives, but this was not true of Nixon's 1969 gift of papers. After being returned by the GSA for a signature in September 1971, the duplicate original Nixon deed sat in the White House files until January 1973.<sup>41</sup>

A crucial break in the case occurred when an administration official sent the Nixon deed of gift to John Nesbitt, who served as both the GSA's representative at the White House and as the director of the archives' Nixon project at the White House.<sup>42</sup> Nesbitt forwarded the deed of gift, along with questions, to Daniel Reed, who answered Nesbitt's questions and ordered the correspondence to be filed. The duplicate original attached to Nesbitt's memo was filed in the National Archives Office of Presidential Libraries' copy file, which held reference copies. Livingston and Jacobs were not alerted that the duplicate deed of gift had arrived, because it had been mistakenly filed as a copy of a presidential deed of gift rather than as an original deed. This happened because the duplicate original was a photocopy in every way but one: on the last page was Edward Morgan's original signature. The deed of gift had finally reached the National Archives, but perhaps since it seemed inconceivable to deliver a presidential deed of gift to the National Archives in such an offhand fashion, it was not discovered in the files until six months later.

### The Media Break the Story

In June 1973, *Washington Post* national correspondent Nick Kotz's news stories raised the possibility of misconduct by the president's staff with respect to the deed. His newspaper articles were the catalyst that led to the discovery of the deed at the National Archives. After White House aide Gordon Strachan testified in Watergate hearings that he had been involved in the donation of Nixon's prepresidential papers, a curious editor at the *Post* asked Kotz to look into the matter. Kotz found the GSA uncooperative. Kotz wondered why the National Archives, which still had no knowledge of any deed of gift for 1969, told him that he could see any presidential deed of gift except the one for Richard Nixon's 1969 gift of papers. Kotz called Livingston at home. Although she wouldn't talk to him, according to Kotz, "the terror in her voice" at being asked about the case told him all he needed to hear.<sup>43</sup>

Kotz sensed a cover-up. His luck dealing with the GSA changed when Counsel to the President Leonard Garment, one of Nixon's most trusted advisors, ordered Administrator of General Services Arthur Sampson to allow Kotz access to the gift documents. Viewing the documents, Kotz realized that "the dates simply didn't add up." His first story for the *Post* concluded that the 1969 gift had been handled "in a way that precluded anyone but [Nixon's] closest associates from knowing during 1969 that the President actually had made such a gift . . . [and in a way that] officials at Archives" had no "official knowledge that a gift was being made."<sup>44</sup> After interviewing Morgan, DeMarco, and Newman, Kotz published two more stories on the subject in June 1973.<sup>45</sup>

Livingston was a major force in bringing the story to public attention. She had pressed for action since Newman asked her to select the gift papers in 1970, but without a deed of gift to serve as evidence of fraud, the National Archives had not acted on her recommendation. After her conversations with Newman in March and April of 1970, she went directly to Archivist Rhoads with evidence that Newman could not have appraised and

selected papers for deeding in 1969. First, Newman had wanted papers selected in a hurry and asked Livingston to do it. He had never examined these papers himself. Second, of the five categories of papers listed in the 1969 deed of gift, Livingston had selected four on March 27, 1970, over eight months after the cutoff date for claiming a charitable tax deduction for donations of personal papers. Livingston was convinced that Nixon had claimed a tax deduction that he was not entitled to.

Nick Kotz's stories reporting the White House's contradictory statements and new information on the 1969 deed provided pieces of the puzzle that were necessary to prove Livingston's allegations. While searching for evidence, she and Jacobs discovered the falsified duplicate original deed of gift in the National Archives Office of Presidential Libraries copy file.<sup>46</sup> The discovery of a signed and dated document meant that the National Archives now had evidence of wrongdoing. Livingston and Jacobs immediately wrote a memo to get GSA legal counsel involved.<sup>47</sup> On October 26, 1973, dissatisfied with progress in the case after the discovery of the incriminating deed of gift, Livingston wrote another memo stating her suspicions for the record. Livingston wrote that there was clear evidence of wrongdoing and that the GSA should make all relevant documents available to the IRS and other investigating bodies.<sup>48</sup> Jacobs and Rhoads, armed with Livingston's memo, met with the GSA general counsel who took the evidence to Administrator Sampson.<sup>49</sup> An investigation of the circumstances surrounding the gift was now certain.

The five-member Joint Committee on Internal Revenue Taxation investigated the case. Nixon asked Wilbur Mills, Chairman of the Joint Committee, to assess the legality of two of his transactions with the IRS: the 1969 gift of prepresidential papers and the sale of his property in San Clemente, California.<sup>50</sup> The Joint Committee decided that Nixon owed a total of \$432,787 in back taxes and interest for the tax years 1969–1972.<sup>51</sup> Because of questions arising out of the papers case, Richard Nixon took the unprecedented step of publicly disclosing his financial records in 1973.

The Joint Committee concluded that none of the three legal requirements for a gift—intent, delivery, and acceptance—had been met as of July 25, 1969. First, the intent of the donor to give personal property had not been established in a written instrument such as a signed deed of gift. Second, it was unclear that Nixon had relinquished, delivered, and granted rights to the papers to the U.S. government. The National Archives, not Nixon or his representatives, had ordered delivery to its storage facility.<sup>52</sup> After delivery of the papers in 1969, the GSA did not receive a deed of gift until 1970. This meant that acceptance by the donee, the third requirement for a legal gift, was not met in 1969. The Joint Committee also found that the access restrictions placed by Nixon on his prepresidential papers made a written deed of gift essential. The donee couldn't carry out the donor's intent without knowledge of these restrictions, which were unknown to the National Archives for all of 1969.<sup>53</sup>

In May 1973, the Watergate Special Prosecution Force (WSPF) was created under Watergate Special Prosecutor Archibald Cox. Its mission was to investigate and prosecute all criminal cases delegated by the Attorney General under the rubric of "Watergate." Evidence uncovered in WSPF investigations targeting Nixon administration officials was ruled material to the impeachment proceedings.<sup>54</sup> In late July 1974, the House Judiciary Committee considered 12 proposed articles of impeachment against

President Nixon. An article related to the gift of papers alleging that Nixon had received payments “in excess of the compensation provided by law” under the constitution was voted down by 12 to 26, failing to gain inclusion in the articles of impeachment against Nixon.<sup>55</sup> The committee likely took into consideration that Nixon had made restitution for some of the back taxes and interest that he owed. Compared to the Nixon administration’s other violations of the constitution, the illegal tax deduction may have seemed more like petty crime than the “Treason, Bribery, or other high crimes and misdemeanors” required for impeachment. Three Watergate-related articles of impeachment were eventually approved by the Committee.

WSPF lawyers prosecuted the trials of DeMarco, Newman, and Morgan. In 1974, Edward Morgan pleaded guilty to conspiring to commit fraud for signing the deed of gift with the falsified date and repeatedly lying about it to investigators.<sup>56</sup> Morgan then testified against Newman and DeMarco, who in early 1975 were indicted for conspiring to defraud the IRS and the U.S. government.<sup>57</sup> DeMarco was charged with obstructing the investigations of the Joint Committee and the IRS.<sup>58</sup> The charges against DeMarco were dismissed on a technicality, but the trial judge strongly implied DeMarco’s guilt, agreeing with the government that no deed of gift had been signed in 1969.<sup>59</sup> As with Morgan, the charges against Newman arose out of instances where he had been asked to sign fraudulent documents prepared by DeMarco, Nixon’s personal tax lawyer. Newman was convicted on one count of tax fraud, for preparing a false affidavit that he had personally examined the president’s 1969 gift papers and appraised them at \$576,000. He was also convicted on one count of perjury during the IRS investigation that resulted.<sup>60</sup>

## Summary and Analysis

How did a routine donation of papers turn into a potentially impeachable offense? To summarize, Nixon’s gift of papers for the tax year 1968 followed standard National Archives procedures, but his 1969 donation failed to do the same. For the 1969 gift, Nixon’s prepresidential papers were delivered to National Archives custody by March 1969, but were not legally deeded until after the Tax Reform Act had gone into effect. Under the act, charitable donations of personal papers made after July 25, 1969, were not eligible for income tax deductions. Nixon’s lawyers backdated the deed of gift to the United States, claimed that a gift had been made before the deadline, and took a tax write-off for the president in the amount of \$576,000. The incriminating deed of gift changed hands a number of times and evidence of wrongdoing was finally uncovered in 1973 by two National Archives employees who located the deed by accident and then forced the issue. The legal case against Nixon’s aides hinged on the question of whether a gift of papers had been legally transferred to the U.S. government before tax law changes took effect on July 25, 1969. In fact, the deed of gift was not even created until 1970. This discovery led to investigations by Congress, public interest groups, and the media, culminating in two criminal convictions and the issue being considered for inclusion in the articles of impeachment against Richard Nixon in 1974.

Much of the responsibility for the scandal can be assigned to DeMarco who, unlike his subordinates, was able to avoid a prison sentence. DeMarco’s defense was that a gift had been made upon delivery of the papers in 1969 and that his rush in 1970 to get a gift

to the GSA was unimportant, since it only served to "memorialize" a gift previously made to the U.S.<sup>61</sup> One objection to this is that a tax attorney should have been aware of the legal requirements for a gift. Another objection is that DeMarco would not have initiated the flurry of activity in March 1970 if he thought it was a mere formality. DeMarco was clearly worried about the consequences if he did not immediately provide evidence to support his claim that a gift was made before July 1969.

DeMarco waited too long to give a gift and broke the law in a desperate attempt to cover up his error. Presidential aide Charles Colson substantiated this theory in an interview with WSPF attorneys. Counsel to the President J. Fred Buzhardt had told Colson about DeMarco's ploy to claim the maximum tax advantage for President Nixon. Buzhardt said that the papers were delivered to the archives during the debate over the Tax Reform Act. A number of different cutoff dates for gifts of personal papers were proposed by congressional committees; DeMarco delayed the signing of the deed of gift until he knew which date had been adopted. According to the memorandum, "DeMarco did not want the Congress to set a date which would be prior to the execution of the deed thereby making the gift nondeductible." If the cutoff date enacted by Congress were any time after March 27, 1969, DeMarco planned to produce the deed and claim to have met the deadline. If the deadline were earlier than this date, then DeMarco was free to destroy the deed and reclaim Nixon's papers from courtesy storage at the National Archives. Buzhardt said that DeMarco "outsmarted himself" by trying to keep his options open.<sup>62</sup>

The result was a self-inflicted wound for Nixon. He had signed legislation eliminating a tax deduction that he later claimed on his own tax returns. Despite reporting over \$200,000 a year in income, Nixon himself had paid the same tax as a family with an annual income of \$15,000.<sup>63</sup>

### **Richard Nixon's Role**

A central question of the Nixon papers scandal is, "What did the president know and when did he know it?" in Howard Baker's memorable phrase. There is a wealth of documentary evidence that aides knew that Nixon's signing of the Tax Reform Act invalidated his planned tax deduction. Still, the question of Nixon's culpability in this matter will continue to be a difficult one. DeMarco never said that Nixon had ordered him to commit illegal actions. None of the principals in the case implicated Nixon directly and no mention of the incident has been discovered in the White House taping system, which was begun in early 1971 and ended two and a half years later.<sup>64</sup> Besieged by the Watergate scandal, the White House did not tape any conversations while the gift of papers was being investigated. At a press conference in November 1973, Nixon said that he had followed President Johnson's suggestion to claim a tax deduction for a donation of his papers and had "turned them over to the tax people . . . [who] prepared the returns, and took that as a deduction." Nixon explained that the tax deduction reflected the high value set on the papers and considerably lowered his income tax payments. Nixon said, "Whether those amounts are correct or not, I do not know, because I have not looked at my returns."<sup>65</sup> Based on the facts in evidence, some speculative comments can be made about Nixon's involvement in the affair.



Nixon's public statement that he did not closely follow his tax returns was disingenuous. Nixon kept himself apprised of his general fiscal condition and in certain areas betrayed a detailed understanding of matters affecting his bottom line. In February 1969, he approved Ehrlichman's plan to claim the maximum allowable deduction from gifts of papers and donation of book royalties.<sup>66</sup> In June 1969, Ehrlichman wrote two memos to Morgan asking questions about Nixon's taxes. One memo stated that Nixon wanted "to be sure that his business deductions include all allowable items" and that he planned to take the maximum allowable charitable deduction, presumably for another gift of his papers.<sup>67</sup> DeMarco told investigators that he went over the tax return page by page with the president, who said, "That's fine" after seeing each page.<sup>68</sup>

Nixon definitely knew that he was getting a tax refund and that the gift of papers was largely responsible.<sup>69</sup> During his interview with the WSPF, Colson revealed that in February 1974, Nixon told him that "it would have been more beneficial for him to have sold the papers than to have given them to the U.S. government." Despite being embroiled in Watergate, Nixon was still concerned with realizing a profit from his prepresidential papers.<sup>70</sup> Considering that he signed legislation that he and his representatives knew would deny him a tax deduction, Nixon must share some of the responsibility for the incident.

### *Conclusion*

The gift of papers controversy has been ignored by scholars more concerned with the constitutional crisis of Watergate than with a fraudulent legal document and the complexities of federal tax law. However, there is a larger significance to the Nixon prepresidential papers incident. The papers scandal did not provoke a constitutional crisis, but it did contribute to a new openness into presidents' personal financial affairs. The Nixon prepresidential papers affair contributed to the passage of the Presidential Records Act, a sea change in the public's legal relationship to the records of its leaders. The papers case foretold the difficulties facing the National Archives in regard to presidential papers. It also holds lessons for all those concerned generally with government accountability, in particular with the public ownership of government records.

If the administration's wrongdoing in the papers case had been discovered earlier, might the nation have been spared the crimes of Watergate? To speculate, it is possible that this would have had no impact on future events, but it is also possible that exposure of Nixon administration wrongdoing in 1970 could have discouraged Nixon from initiating the activities of the "plumbers," thus short-circuiting the crimes collectively known as the Watergate scandal.

To focus more narrowly, the case has three important lessons for archivists. First, the story points to the need at the outset for consensus between the donor and the repository as to the conditions of a donation. The Nixon donation was made in such an ambiguous way that the National Archives could not be certain of its status. Before acceptance, an archival institution should require transfer of legal title to collections of private papers in order to settle definitively questions that may arise later. Aside from the legal issue, few institutions can afford to spend time and money to arrange, describe, and preserve collections that they do not own.

Second, the Nixon incident offers an organizational case study of an institution subsumed in a parent agency. NARS never shared the mission of its parent agency. From 1949 to 1985, the GSA imposed an extra layer of bureaucratic controls and “business-oriented agency” management concepts on its five subordinate units.<sup>71</sup> NARS’ priority was the long-term preservation of historical materials, while the GSA’s priorities were governmental efficiency and management of government resources. The GSA rather than NARS held the deed of gift for the Nixon papers, which delayed for several years the archivists’ discovery of wrongdoing. On several occasions, NARS staff had suspicions of fraud, but lacked access to the documents that would have confirmed them. If the deed of gift had originally been trusted to NARS’ files instead of the GSA legal office, archivists would have known immediately that Nixon’s lawyer falsely claimed that a gift of papers had been made in 1969.

The GSA Office of General Counsel withheld information from NARS administrators directly relating to National Archives functions. When it discovered problems with the gift in 1971, GSA did not consult with the National Archives. Livingston knew that there had been no gift of papers in 1969 and seeing the backdated deed of gift would have provided incontrovertible evidence of deception. The careless way in which the GSA circulated a priceless deed illustrated the inherent problems of NARS answering to the GSA. The archives’ discovery of illegally backdated documents was one catalyst for NARS’ independence from the GSA.

It is clear that the GSA’s authority over the National Archives delayed the discovery of fraud. An independent National Archives, dealing directly with those White House aides responsible for the 1969 gift, would have likely detected these problems with the gift and may have averted the papers scandal of 1973. By keeping the deed of gift locked in the vaults of the GSA, the backdating secret was safe until journalist Nick Kotz persuaded senior Nixon aide Leonard Garment to allow him access to the gift documents.

Unlike the National Archives staff members dedicated to the preservation of the record, the General Services Administrator was dedicated to Richard Nixon. Consistent with his misuse of agencies such as the FBI and CIA, Nixon “repeatedly . . . insisted to his aides that he wanted a Commissioner [of Internal Revenue] to faithfully do his bidding” by auditing and harassing Nixon’s enemies.<sup>72</sup> Nixon had similar motives in appointing a General Services Administrator and Sampson did not disappoint him. Sampson, rather than the archivist of the United States, controlled access to Nixon’s presidential records and granted Nixon sole ownership when he resigned the presidency. On several occasions during the controversy over the prepresidential papers, the administrator ruled in Nixon’s favor on matters of great import to NARS without consulting its leaders. The Nixon administration’s politicization of the GSA made it unthinkable for a General Services Administrator to defy the president regarding the disposition of his papers and political considerations inevitably trumped archival considerations.

The GSA continued to interfere with NARS operations. In 1979, without the consent of the archivist of the United States, General Services Administrator Rowland Freeman pressed for the dispersion of permanent historical records of national importance to regional archives. Congress successfully reversed the GSA decision. In 1981, the GSA reduced NARS’ operating budget by one-third. In 1983, while the archivist was attend-

ing an international archives conference, General Services Administrator Gerald Carmen replaced several NARS senior managers with staff loyal to the GSA. The response to such meddling was the development of a coalition to "free" the archives from the GSA. Archivist Robert Warner succeeded in bringing together archivists, historians, genealogists, and other concerned groups and, in 1984, Congress passed legislation granting NARS status as an independent agency. The archivist of the United States took over responsibility for the care of federal records from the General Services Administrator. Another reason for independence was to reverse the trend towards politicization of the archives. To this end, the archivist of the United States is appointed by the president and confirmed by the Senate solely on the basis of professional qualifications, without regard to political affiliation. This standard was followed until 1995, when President Bill Clinton appointed John Carlin, a politician with no archival experience. Clinton's decision marked the first time a nonprofessional had led the National Archives and set a precedent for other chief executives to follow in appointing future archivists of the United States. Carlin has been an ally of the archival and research communities, but there is no guarantee that successor archivists will follow his example.<sup>73</sup>

The IBM PROFS E-mail system used by the Reagan and Bush White Houses generated another controversy for the National Archives in 1989, proving that the same questions about presidential records will continue to be raised in the digital age. The Bush administration planned to destroy the E-mail system backup tapes and concerned citizens filed suit to ensure that these tapes were subject to archival review and the Freedom of Information Act (FOIA). In the words of the Presidential Records Act, "the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President."<sup>74</sup> David Bearman writes of "the passive role played by the U.S. National Archives" and of the archivist's participation "in a direct assault on the integrity of the electronic records of the Bush administration." To be fair, this may have been due more to a lack of experience in managing electronic records than to indifference to the potential destruction of permanent records.<sup>75</sup> However, the court held the archivist of the United States in contempt of court for not taking control of the PROFS electronic records and for not informing Congress of the imminent destruction of the records.<sup>76</sup>

Government records are often a touchstone in governmental disputes and controversies. Access to these records will continue to play a central role in the operation of government and similar scandals are bound to arise in the future. In such a situation, an archivist of the United States, who is appointed by the president, is often called on to preserve and make accessible records that may incriminate that president. It is an open question whether an archivist of the United States from outside the profession can be counted on to blow the whistle in the event of a scandal involving government records. The Nixon papers disputes and the PROFS case are not encouraging signs. The current system seems to have few safeguards against future archives scandals.

For this reason, the archivist should not be a politically appointed position on which overt pressure can be exerted. The appointment of the Secretary of the Smithsonian Institution, who is selected by an advisory committee of professionals, provides an alternative model that might discourage the politicization of the office. The archivist of the United States should be selected in a similar way. As a historical, cultural, and

research institution, NARA is more similar to the Smithsonian than to an agency such as the GSA. Appointment of the archivist on the basis of professional qualifications, similar to the Smithsonian model, would produce more watchful archivists, more loyal to the custody of records than to the individual who created the records.<sup>77</sup>

The Nixon papers case holds a third lesson for archivists. The Nixon presidential papers scandal of 1974 was a second instance of Nixon struggling with the National Archives over control of his administration's materials. The incident forced Congress to pass the 1974 Presidential Recordings and Materials Preservation Act (PRMPA), seizing the records in order to prevent President Nixon from destroying records relevant to the Watergate investigations. The 1978 Presidential Records Act was also enacted in response to the Nixon presidential papers scandal. Unfortunately, the passage of the Presidential Records Act has by no means resolved questions of ownership and public access to historical records of presidents. The combined effect of two executive orders, one by Ronald Reagan and one by George W. Bush, have practically nullified Congress's intent in passing the Presidential Records Act. Executive Order 12667, signed by Reagan days before leaving office in 1989, granted him and future presidents an unlimited number of 30-day extensions to respond to requests. In effect, the executive order grants a sitting president the right to block any release of his presidential records indefinitely. The only way to overturn a president's invocation of executive privilege is a final, non-appealable court order mandating release of the materials.

On three occasions in 2001, the Bush administration blocked the scheduled release under the Presidential Records Act of 68,000 pages of Reagan administration domestic policy records, which officials at the National Archives and the Reagan library had approved. The Presidential Records Act requires the public release of most presidential records 12 years after that president leaves office. In November 2001, President George W. Bush signed Executive Order 13233, which confirmed Executive Order 12667 and added a new set of regulations asserting even broader authority for presidents to control the release of unclassified documents.<sup>78</sup> The Bush administration offered as justification the Supreme Court ruling in a Watergate case, *Nixon v. Administrator of General Services*, which actually ruled against Nixon. Under that ruling, a president may assert executive privilege, but the archivist may overrule those assertions and release the materials. Before the release of records, Bush's executive order would require the consent of both the sitting president and the president whose administration created the records. The Bush administration justified the executive order primarily for reasons of national security, but also out of deference to former presidents whose records are scheduled for release.<sup>79</sup> Critics saw the executive order's assertion of veto power over any release of any president's records as disasters for historical scholarship and the public right to request the unclassified records of the U.S. government. The Presidential Records Act and Freedom of Information Act already contained exemptions for sensitive records such as those containing national security and trade secrets. The Bush executive order reversed the Presidential Records Act's burden of proof, shifting it from the administration to the requestor, who must seek release through the courts, an expensive and time-consuming process.

Executive Order 13233 would roll back many of the gains made by NARA and the public since the scandal over the Nixon deed of gift. It would make the archivist once

again subservient to general claims of “executive privilege” made by a president or former president. A president is granted the right to delay release of papers as long as he wants merely by claiming that he needed more time to respond. According to one critic, the “order tries to rewrite the Presidential Records Act by requiring individuals to show a ‘demonstrated, specific need’ through an FOIA request rather than rely on the process provided in the PRA [Presidential Records Act] that mandates systematic release of records through an established archival procedure.”<sup>80</sup>

In November 2001, Congress heard testimony that the executive order could lead to a return to the pre-Presidential Records Act days when the public had no legal right to access the records of presidents.<sup>81</sup> The executive order would grant a president or former president the power to prevent release of his materials. This power is not equivalent to the outright ownership enjoyed by all presidents before President Nixon. Yet the purpose of the Presidential Records Act, to open these materials to public scrutiny, would be thwarted by Executive Order 13233. As of this writing (December 2001), the executive order has met with strong criticism from the historical and archival communities and a lawsuit has been filed to prevent its implementation.

While presidential records are legally considered to be in the public domain, President Bush’s executive order shows how easily the clock can be turned back on the public’s right to know. The Presidential Records Act requires release to the public in a timely fashion, but the executive order effectively overrules this requirement. Similarly, the precedent of appointing a nonprofessional to lead the National Archives does not encourage confidence in the agency’s future insulation from political pressures. As in 1969, these issues will continue to pose serious challenges to the record keeping of presidential administrations. The Nixon prepresidential papers controversy was caused in part by an overreaching and dishonest president and his staff, but the legal and political conditions that contributed to that scandal are still present in the current system.

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# CULTIVATING OUR GARDEN: ARCHIVES, COMMUNITY, AND DOCUMENTATION

BY ROBERT HORTON

**ABSTRACT:** Archivists have long shown an interest in documenting communities and in working with underdocumented communities. Planning such efforts should call into play a wide variety of intellectual and philosophical issues: identity, memory, epistemology, and even truth. A recent collaboration of state historic records advisory boards (SHRABs) in North Dakota and Minnesota examined these issues in a study of agriculture and rural life in the Red River Valley. After working with a wide variety of constituencies, the SHRABs began to analyze how to translate what they learned into the everyday routine of archival practices, with particular references to communities, costs, and benefits.

## *Introduction*

Among archivists, there has long been a marked interest in the question of documenting communities and, especially lately, in working with underdocumented communities. These efforts should call into play a wide variety of intellectual and philosophical issues—identity, memory, epistemology, even truth—that then have to be translated into an everyday routine of practices, with references to costs and benefits, in order for an archival program to act upon them.

Recently, the two state historic records advisory boards of North Dakota and Minnesota completed a project that sought a better understanding of how to document agriculture and rural life. In the process, the project staff wrestled with the larger intellectual issues in a match that pretty much ended in a draw: those concepts cannot be summarily dealt with and neatly transformed into a guideline of best practices for this or that set of records.

But that is not an admission of defeat. As the staff worked through those considerations in 18 months of discussion and analysis, new options came to the fore, which will become part of a strategic planning process that begins for Minnesota in 2002. While that means we have not yet acted on what we have learned, an account of and commentary on the process we followed may have value for other archives and archivists engaged in similar undertakings.<sup>1</sup> This is a narrative about where we started, what we did, whom we met, and how we worked that provides some insight into the idea of a docu-

mentation strategy as a goal and as a process and offers some analysis of what it presupposes and entails. As such, this piece was originally designed to complement the other products of the project—a detailed report on the process and three additional reflective essays, by a historian, a farmer, and another archivist—and it has been only slightly modified for republication here.<sup>2</sup>

## Background

In 2000, the Minnesota and North Dakota SHRABs began work on a collaborative project, “Agriculture and Rural Life: Documenting Change,” with support from the National Historical Publications and Records Commission (NHPRC). Geographically, the focus was on the Red River Valley, the boundary between the two states. Conceptually, its focus and goals were summarized in the original application to the NHPRC:

- a) Define important components of change in rural society in the late twentieth century.
- b) Identify extant records (inside and outside of repositories) that document those changes.
- c) Consider additional nontraditional sources.
- d) Outline a practical means of creating documentation if necessary.
- e) Prioritize sources against spatial and financial limitations of collecting organizations.
- f) Propose methods of accessibility.
- g) Develop a set of “best practices” for approaching documentation of rural life, in cooperation with state, regional and local repositories.<sup>3</sup>

There was a variety of motives behind this, but two were stressed in the proposal and are especially worth noting. First, there was a concern that repositories in the two states collected a vast quantity of records that were not being used. While much scholarly research was done on rural society, rather little of it depended on the material we were accumulating. The second concern focused on the question of expertise. Both SHRABs felt strong that making decisions about documentation could best proceed with the close involvement of the people on the ground.

The former concern was a frank admission that something was amiss. If a traditional set of patrons was not using the critical mass of archived records in any significant way, then a new orientation and a new allocation of resources were in order. The latter concern was, in the eyes of most members of the boards and most who have reviewed the project since, the most exciting element of the project. Asking, as the consensus put it, “real people” about their lives would be the critically innovative component of a new approach to documenting agriculture and rural life.

In other respects, the work plan closely mirrored other examples of documentation strategy projects. As, for example, detailed in works by Helen Samuels, Bruce Bruemmer, and Richard Cox, a documentation strategy defined a focus; involved a cooperative effort; looked at a broad array of features (e.g., institutional functions) rather than records themselves; considered means to bridge documentation gaps; crossed disciplines; identified priorities; and developed an appraisal tool to guide decisions about collecting.<sup>4</sup>

In sum, then, the project began with the assumptions that something had to be done, that just rounding up the usual suspects would be insufficient, and that the established process for documentation planning was a good model. To understand the project’s

evolution and to assess its results, we have to look at those assumptions and answer three questions about them:

What did we learn about the components of change?

What did we learn from talking to "real people"?

What did we learn about the process of developing a documentation strategy?

Answering these will outline what is involved in the move from an uncritical acceptance of certain larger intellectual issues to a consideration of how they affect our everyday work as archivists. In the process, we will call into question virtually every word in the title of the project; in the end, "agriculture," "rural life," "document," and "change" will all turn out to be more opaque and more complex than originally supposed.

### **What did we learn about the components of change?**

We were interested in defining the components of change because we wanted to determine priorities for documentation. The fact that the Red River Valley was undergoing all sorts of changes was indisputable; the nature of those changes and the records that best documented them were the subject of our analysis. We learned that change could be defined on two levels, the macro and the micro, and that increased or better documentation would not necessarily inspire more research at either level.

There is an enormous amount of work appearing on agriculture and rural life, written by all sorts of people, in all sorts of genres and disciplines. So much published material is available that, in 1995, the *New York Times* began a review of four recent books on agricultural life with this observation: "At times, there seem to be nearly as many people writing about farming as there are actual farmers. And with the rate that agribusiness is gobbling up small holdings, the equation might actually be approaching parity."<sup>5</sup> Despite the note of irony, this rings true.

Clearly, if archivists are collecting the wrong sorts of records or not enough of the right ones, these mistakes have had a negligible effect on the production of studies of agriculture and rural life. The disjunction is partially explained by the idea of motivation. As David Danbom noted, research into rural America picked up when the concept of social history became widely accepted. "Beginning in the midsixties, there was such an outpouring of work ... that it was possible by 1981 for Robert Swierengen to write of the 'new rural history.' Since then, this outpouring has become a flood."<sup>6</sup>

This has implications for the development of a documentation strategy. When planning how to expand the user base and collect "better" records, it is not a case of "build the archives and they will come." The availability of adequate documentation may enable research but does not inspire it. What made the "new rural history" possible was a change in the way the historical profession determined what was scholarly and what was not. When new topics became legitimate areas of study, then historians looked around to see which records would fit the bill. This was not a situation where the archivists were the catalysts.

Because historians are aware of the effects of shifting academic fashions, we found them reluctant to make any final recommendations about documentation when we began looking for advice on how to adapt our appraisal criteria. When asked about change, the historians looked inward; they emphasized that their profession would evolve—and

evolve in ways they could not predict. As a result, their testimony was inconclusive. The summary of the academic interest group meeting held in July 2000 notes, "The group was uncomfortable with guessing what historians may use in the future, and was caught inside the box when discussing the present."<sup>7</sup> In consequence, most suggestions from academics were practical rather than conceptual; instead of documentation priorities, there were concrete recommendations for helping local repositories, primarily in order to make more material available and to open more avenues for research in the future.

There may have been another reason for the historians' reluctance to settle on a firm documentation agenda. In the professional literature, there is a strong, explicit consensus that "change" is not new to the area nor, indeed, to agriculture and rural life almost anywhere in America. To the contrary, the outline and the details of change have been apparent and consistent for most of the century. The cultural, economic, demographic, and economic factors all point in the same direction: towards the cities and suburbs and away from the farm.

To quote David Danbom once more, "The twenties foretold the course of agriculture over the rest of the century." And, in more detail, "For most of this century the Great Plains, like most of the rest of the West, has been a ward of the United States, maintaining its standard of living only because more money flows in through federal transfer payments than flows out in the form of taxes."<sup>8</sup> Or, to quote a recent article in the *New York Times*, "Many historians have long argued that white settlement, particularly of the northern Plains, was largely government-induced from the start, through subsidies to railroads and homesteaders."<sup>9</sup> As these quotations imply, there is a very strong case that the history of the Red River Valley and perhaps most of rural America is written in Washington, D.C. At the very least, the study of any region has to be located within the larger economic and political context that frames it.

Perhaps the situation seems more dramatic now since, as the pace of change accelerates, local and rural institutions appear increasingly less viable. Their disappearance, paradoxically, makes their contingent nature all the more apparent. Our sense of that contingency is reinforced because the nature of change has been remarkably consistent over time and geography. The agricultural economy of the United States was and is part of a global economy. In the Red River Valley, this has been true since European settlement.<sup>10</sup> The area has never enjoyed any autonomy from the effects of government policy or market conditions. As a result, the broad nature of the change it has undergone in the past several decades is in many ways similar to that which every agricultural area in this country has undergone in that period.

What that implies, of course, is that nothing about the area is unique at a macro level. There is, to borrow from academic jargon, one meta narrative for agriculture and rural life that is essentially the same across the United States. From that perspective, most of rural America looks the same. Gross statistical data from the U.S. Census or other government agencies, articles from the *New York Times* or the *Wall Street Journal*, or reports on federal agricultural policy or developments in NAFTA or GATT might provide all the significant documentation someone needs to understand the why and the how of changes in agriculture and rural life.

This sheds some light on the conclusions Mark Greene drew from a sampling of academic publications on twentieth-century rural society, done in preparation for the

project proposal. As noted in the application to the National Historical Publications and Records Commission, "The most frequently cited sources are government reports and statistics, followed by scholarly monographs and journal articles, followed by newspaper articles (one author ranks the *New York Times* and the *Wall Street Journal* as the best sources for information on agriculture, along with the *Des Moines Register*, while most authors rely on papers of the locality being studied)."<sup>11</sup> The historians seem to have it right: nothing we learned suggests that better sources exist for studies of change in agriculture and rural life at the macro level.

The other side of the equation, though, is what occurs on the micro level. While the overall narrative of change might be depressingly similar across the region, the individual responses to that narrative, the stories of people reacting to those changes, are all unique. Adequate documentation would be a function of some dialectic between the macro and micro levels, between the actions and reactions of social forces and individuals. This, of course, is true of practically any historical event. As analogy, consider what Omer Bartov noted recently: "It is only through the telling of numerous personal tales that the reality of the Holocaust can somehow be grasped and the generalizations inherent to collective histories and sweeping theses be complicated and enriched."<sup>12</sup> For a complete history, we need both the personal tales and the collective histories.

But to what degree is difficult to say. Certainly nothing in the project gave us the insight necessary to determine how many or whose individual triumphs or tragedies are sufficient to tell the story of the Red River Valley. Nor did we discover any compelling evidence that one form or another of documentation would best meet this need. In some ways, the fuller appreciation of individual diversity, we realized, resists the reduction that is inevitably part of a documentation strategy. If we emphasize the individual response to change, then we value difference at the most granular level. We start to deconstruct the collective history when we note even the smallest details; there is less and less in common when we look this closely. At that point, we come close to saying that everyone has a story and every story is worth telling, with the possible corollary that every story is worth saving, too. But that spiral into the particular makes managing archives impossible. All sorts of practical limitations serve to keep us somewhere closer to the macro level and further from the micro level of documentation.

For example, the major project currently supported by the Minnesota Historical Society is the creation of a museum in Minneapolis telling the story of the flour industry. The approach here is analogous to that described in William Cronon's *Nature's Metropolis: Chicago and the Great West*, where one city's economic development to a fascinating extent influenced the fate and even the appearance of the geographical area dependent upon it.<sup>13</sup> As the society noted in a proposal for support of its Mill City Museum project, "More than 100 years ago, forces converged here to make Minneapolis the flour-milling capital of the world. Whoever you are, wherever you're from, what happened here continues to shape your world."<sup>14</sup> While the plans for the museum are still taking shape, it seems clear that its goal will be to select and interpret an illustrative set of individual stories, within an exhibit and as a synecdoche, where a part speaks for the whole.

## What did we learn from talking to “real people?”

I placed quotation marks around the term “real people” because the term was the subject of some contention during the project, often sparked by my own, pronounced distrust of the dichotomy it implies. The term’s advocates spoke eloquently of the need to get the opinions of the people on the ground about their own lives and the issues affecting them, so that any decisions about documenting those lives could reasonably be made. This feeling was shared by most of the two SHRABs’ board members and it was an approach notably praised by commentators on the project. It would, in fact, be hard not to praise it. A grassroots approach has an undeniable appeal, raising connotations of Jefferson, democracy, and town meetings.

I was nonetheless wary, for a variety of reasons. For the project, gathering information was only a starting point. The critical components of developing a documentation strategy came afterwards. A finished product was dependent on taking one more step, analyzing the information we gathered, and then, even more important, taking the final step and making decisions about professional practice on the basis of the analysis. To accomplish all of those tasks would involve the ongoing input, review, and cooperation of a number of groups, institutions, and informants, but the final determinations and decisions would reflect the understanding and resources of the archivists. To begin that complex process by privileging one group of informants as “real” seemed problematic. Their input was valuable, but it still had to be evaluated. Otherwise, we ran the risk of taking the first slip down the slope to an uncritical acceptance of the stories people told about themselves.

This was a danger. As Kathryn Marie Dudley has compellingly noted, much of what Americans think about agriculture and rural life has been informed by a variety of mythologies: “There is a serious disconnection between what we know and what we want to believe about farming as a way of life.”<sup>15</sup> In a recent issue of *Daedalus* examining Minnesota, Joseph and Anthony Amato spoke even more starkly about the process of inventing a heritage, with particular reference to a point close to home: “The notion of a Minnesota culture immediately strikes observers as counterfeit. Minnesota, never a natural or cultural unit, was born and nurtured by continuous artifice.”<sup>16</sup>

These critiques raise important questions about perspective. As many a citizen has told me in my travels through Minnesota, things look different from St. Paul. Whether that distance measures objectivity or ignorance is a legitimate and probably inevitable subject for debate. Any answer is a shot at a moving target. But privileging one perspective runs the danger of making decisions impossible to reach. Even the most practical of farmers can become postmodernists when disputing the ability of an urban bureaucrat to understand their realities. But the farmers’ perspectives may not be and certainly are not automatically better; they are simply different. That difference may be informative, but still fall short of being persuasive.<sup>17</sup>

With those caveats in mind, we can ask, “What did we learn from the people on the ground?” On one level, we made connections: we liked the people we met. As all the project staff would agree, everyone was extraordinarily open and gracious. To a captivating degree, our contacts were articulate, knowledgeable, and enthusiastic. To an extent, this just reflects the selection process, as anyone who was not interested in the

topic or unwilling to discuss it could simply ignore the invitation to a meeting. We met only people who wanted to help out, a situation that mirrors the experience of others in the field. As noted in a description of a University of Michigan ethnographer's work in North Dakota, "Anthropologists say they work hard to get divergent views. But they naturally spend the most time with the friendliest people." As the article goes on to point out, this presents a problem for analysis. "Ethnographies offer rich detail and texture, but require randomized, controlled surveys to back up their anecdotal points."<sup>18</sup>

Anecdotes we had. Surveys we did not. They were well beyond the scope of the project. As a result, the information we gathered has to be treated warily, as our sampling was not scientific.<sup>19</sup> We met a limited number of people and spoke to them for limited periods. In addition, we met only people who stayed behind, an interesting consequence of having a specific geographic focus, but something of a constraint when dealing with the concept of change, particularly with its most notable feature here: emigration on a scale which, in some places, verged on depopulation. Our contacts were in many ways making a stand. Their stories could be usefully balanced by hearing from some of those who left the area and moved to a city or suburb.<sup>20</sup>

This is not to say that the people we met presented unbalanced accounts. Indeed, Ken Ware, the extension agent at the Ada Interest Group Meeting, September 2000, spoke persuasively about the larger context for agriculture, especially the critical impact of national policy: the emphasis on cheap food makes small farming uneconomical and the trade barriers against Caribbean sugar prop up the sugar beet agribusiness. This certainly echoes the concept of a global economy and the implication that the history of the Red River Valley is often written somewhere else.

Just as persuasively, at the Social Services Interest Group Meeting, September 2000, Doug Seiler addressed the complications of record keeping in a bureaucratic age. A North Dakota social worker, he noted that he worked with 259 agencies in this region. Conceivably, a variety of these agencies could interact with individuals and families in any number of permutations, as they are variously oriented towards geography, political subdivision, age groups, health concerns, traumas/emergencies, occupational groups, incomes, specific social or cultural factors, ethnic origin, and so on. As a result, any single individual's transit through the region or through life could involve an array of contacts and transactions crossing a whole variety of communities and boundaries. A kaleidoscope might be better suited to capturing that experience than an archive.

The mention of a kaleidoscope raises an important issue: how we looked at things, how we framed the project. We did need to set some boundaries. One aspect was conceptual: we confined our interests to change in agriculture and rural life. Another was geographic: each state in the collaboration had selected a different area of concentration. North Dakota picked three counties, a political concept. Minnesota picked a watershed district, a topographic concept, and one that crossed more clearly artificial boundaries. What we heard from our informants about boundaries was something slightly different and much more fluid. The actual point of comparison most often raised in meetings was the concept of community. Despite its popularity, we did not get a hard and fast definition of it.

For the majority of people, "community" meant the place where they lived, but that was a net thrown over many diverse entities and concepts. Becoming a mere bedroom

community, for example, was an invidious end to some residents of small towns, so even the basic term had to be qualified. In addition, internally, every community, even the smallest, draws distinctions between young and old, insider and outsider, rich and poor, good farmer and bad, and so on. In one meeting, for example, Brian Gion, Steele County North Dakota Extension Agent, blamed "poor marketing skills on many farm liquidations. Gion believes that to survive in today's agricultural business climate, you have to be a full-time expert marketer. Without that, great crops aren't going to save you."<sup>21</sup> No doubt one of those less-than-expert marketers has something additional to say about that. As Kathryn Dudley wrote, which I read as a lament, "There are always other stories to be told."<sup>22</sup>

But there is a different way of thinking about community. As we learned, a community has distinguishable physical aspects or institutions, which are most important because they have symbolic value, i.e., the significance of having a local school, hardware store, grocery store, or bank was that it connoted independence, an autonomous viability as a distinct entity. This symbolic value creates and reinforces a sense of identity, but that essentially works in a binary sense: a place has a school or it does not, it is a community or it is not. In some ways, this is similar to the arguments about the value of a major league sports team. The Twin Cities have some shaky franchises that most often make a pitch for public support and a new stadium on the grounds that, without professional sports, Minneapolis and St. Paul would be like "a colder Omaha." In other words, they would lose their identity as big league towns.

Identity is different from history. Keeping the Twins in Minnesota preserves an image, but keeping the records of the Minnesota Twins would not sufficiently document the state. Similarly, a school or a bank really is not the same as the community; having the records of a school or of a bank does not equate to documenting the community. Since it was principally at the symbolic level that our informants were talking about community, the conversations did not lead to very productive discussions about record keeping in the sense of a regional documentation strategy. Instead, we can follow the thread of that conversation to another emblem of identity: the local historical society.

The project identified roughly 20 institutions actively collecting records in the region, not counting public libraries, repositories at the state and national level with records of interest, or any organizations that maintained their own archives. That makes for a lot of records but, more significantly, a lot of repositories and potential repositories per capita. The phenomenon is not peculiar to the Red River Valley. There are over three hundred local and county historical societies in Minnesota. Why so many? The answer is complex. On one level, a historical society is increasingly an obligatory component of the basic cultural apparatus of contemporary society. This can be inferred from the description of the development plans for Cooperstown, North Dakota, "Boasting an art gallery, museum, golf course, and full service community center, the community is looking to provide similar services to those found in Fargo."<sup>23</sup>

On another level, the local historical society evinces a sincere concern for the past but, given the level of resources and commitment available for support, this concern could take the form of heritage rather than history. As David Lowenthal suggests, the two are very different: "Heritage ... is not a testable or even a reasonably plausible account of some past, but a *declaration of faith* [italics in the original] in that past ...



heritage is not history, even when it mimics history. It uses historical traces and tells historical tales, but these tales and traces are stitched into fables that are open neither to critical analysis nor to comparative scrutiny."<sup>24</sup> The possibility is acute because the prospect of change, particularly change construed as loss, is a powerful motivating factor: "Legacies at risk are cherished for their very fragility. The heritage of rural life is exalted because it is everywhere at risk, if not already lost."<sup>25</sup>

In all, verifying the variety of repositories working in the Red River Valley and the variety of their motivations was an important consequence of talking to "real people." But, as with the appreciation of individual experiences, diversity complicates the development of a documentation strategy. In practice, for a geographic region, that demands movement towards selection of a set of priorities that reflect a consensus and can inspire collaboration across institutions.

### **What did we learn about the process of developing a documentation strategy?**

There is a number of approaches to a documentation strategy in the archival literature, but Richard Cox has a concise recommendation on how to develop one:

What is desired to be known, according to present knowledge and conceptions of future research (about as best as can be determined), about a particular topic or geographic area is ascertained and the existing documentation evaluated to determine not only what should be saved but what gaps there are and how they can be supplemented. The focus is on the importance of an ongoing activity or in identifying the important features of a geographical region rather than their informational byproducts.<sup>26</sup>

This more or less makes up the agenda for the project, but all the steps proved impossible to accomplish in the time and with the resources available. Gathering information consumed much of our energies. In addition, gathering information was a more comfortable task than some of the others on the agenda. Cox's use of the passive voice in the quotation above hints at the disagreeable nature of some of the tasks that fully make up the development of a documentation strategy. Decisions are not just made: *someone* makes them. That is a critical but often extraordinarily difficult act because archivists recognize that we cannot save even everything that is worth saving. Saying "no," then, is ultimately one major consequence of a documentation plan. Someone says "no": "no" to those records, "no" to those issues, "no" to those institutions, people, and places. Not many people are comfortable with the prospect of just saying "no." At the end of a process that emphasized diversity and the appreciation of difference, it is especially hard to make such decisions. For two SHRABs, dealing with a complex region, a volatile mix of issues, and an array of constituencies, saying "no" means taking an intellectual approach to an emotional issue that will undoubtedly have political ramifications.

We realize that developing even a modicum of support for such a documentation program and strategy would demand an ongoing process and mechanism for negotiation and collaboration. In that sense, we have validated the experience of a number of documentation strategy projects.<sup>27</sup> A one-time infusion of resources for an analysis can

carry work forward only to a certain point. The application of program funds and a corresponding reorientation of program activities would be necessary to implement a strategy on a comprehensive basis. Helen Samuels emphasized the collaborative aspects of this: "Documentation strategies are multi-institutional activities, as they are intended to coordinate and plan the natural dispersion of the integrated documentation of modern society." She added an important point: "Documentation strategies rely on strong institutional archives."<sup>28</sup> Given the enormously varied levels of resources and expertise among the institutions covered in this project, it is probable that one of the state historical societies would have to make a serious commitment to foster that collaboration across the region.

The deterrent to making that commitment is that such cooperation would be very difficult to coordinate, even if some agreement for action were achieved. Think about maintaining that consensus over even a relatively short term. Consider the number of organizations involved and the often very broad nature of their missions. Factor in the scarcity of resources and the difficulties of coordinating a shift in priorities just in one institution, let alone across a variety of them. Add, just as spice, the realization that information technology has arrived in the Red River Valley, too, with the result that the nature of record keeping and the expectations of patrons are radically changing: we confirmed that records, in all forms and formats, were available in—to use the cliché—"staggering abundance." All in all, as the project manager noted in a draft of his final report, "The opportunities for future work seem limitless."<sup>29</sup>

That prospect is not altogether inspiring. We have discovered some very daunting obstacles to making a documentation strategy work here. One implication is that implementing a strategy might be appropriate and feasible in situations where the entity in question is bounded by some definite frame (as in a high-technology company or a university), but is problematic when the entity is a geographic convenience encompassing a number of disparate record-creating entities, ranging from a typical small farm to the local bank to the data warehouse of the regional office of the Department of Human Services. In addition, with a more strictly defined entity such as a university or a corporation, there is a relatively less complicated administrative problem: still a large number of records creators, but essentially only one organization responsible for records collection. As a result, a university or corporate archive is in a far better position to make decisions about resources and priorities that can be implemented on a consistent basis as part of a routine program.<sup>30</sup>

Ultimately, the concern for practical considerations is going to lead to some recognition that the distinction between the macro and micro levels of analysis and between the macro and micro documentation of a region will perhaps tacitly dictate an allocation of responsibilities. That may be cold comfort to those looking for a concerted program and for active collaboration. But limits on resources make that prospect appear less promising and more like the horizon routinely faced by most archives. There is just too much to do. In the face of that, when everyone's reach exceeds his grasp, institutions will use their missions to justify their choices. On the local level, county historical societies will not close up shop simply because, from the perspective of Washington or New York, they are all part of "flyover country." At the state and regional levels, though, some consolidation of interests appears inevitable and some corresponding emphasis

on representative rather than comprehensive documentation will follow. As a practical matter, then, local documentation is likely to be primarily a local responsibility; accordingly, the question becomes how to sustain viable archival programs at the local level.

SHRABs in various states have taken different approaches to this situation. A number of regrant programs have successfully provided funding and services to local societies. In the spring of 2000, the NHPRC, working with the Council of State Historic Records Coordinators (COSHRC), sponsored a conference on archival education that directly addressed the issue of helping local repositories and their staff to learn basic skills and technologies.<sup>31</sup> Efforts along these lines would directly answer the needs expressed in the archival focus group meeting held July 24–25, 2000. An ongoing framework for collaboration seemed to be the ideal: “Throughout discussions, the idea of a regional archival alliance kept resurfacing.”<sup>32</sup> Whether a regional documentation strategy is the chicken or the egg in relation to such an alliance is an interesting question to ponder. In that context, analysis such as that done in this project might be in and of itself the most useful step, since it provided an essential educational opportunity; managed as an ongoing process, institutions can compare notes, discover mutually beneficial projects, and find ways to work within the framework of a very high-level conceptual understanding. That rising tide of awareness might lift all boats. But it might not, since the tide of records is rising irrespective of the quality of the boats and the expertise of the sailors within.

### Conclusions

At the end of *Candide*, Voltaire’s characters reflect upon the catastrophes they experienced as a result of all that thinking and planning. The eponymous hero repeats the book’s most famous line, “Il faut cultiver notre jardin.” But from one of his companions in misfortune comes a useful gloss: “Travaillons sans raisonner, dit Martin; c’est le seul moyen de rendre la vie supportable.”<sup>33</sup> It is tempting advice and alert readers may detect an echo of it in common archival practice: we may not be able to articulate a documentation strategy, but we are going to develop an archives.

We miss the value of Voltaire’s perception of human endeavor if we take that quotation at face value. The irony of his work is that we really have to think about what we do, regardless of the perils, and the irony of this project is that even what Voltaire considers the most unreflective and undemanding of activities—rural life—proved to be more than conventional thinking could encompass. So the next step is to examine the alternatives.

In that context, Benedict Anderson makes a point that has been just touched upon above: “In fact, all communities larger than primordial villages of face-to-face contact (and perhaps even these) are imagined. Communities are to be distinguished, not by their falsity/genuineness, but by the style in which they are imagined.”<sup>34</sup> Conceivably, what we have begun to document in this project are the styles in which communities are imagined. To a notable degree, our style is elegiac. We lament: history is being lost, a way of life is disappearing, communities are vanishing, our region and our culture are fundamentally changing.<sup>35</sup> That style presumes a whole set of values and perceptions that might be more important to document than the changes themselves. Right now, we are worrying about the definitions of “region,” “community,” and “rural” in the hope of

fixing a set of structural features or criteria to guide our work; to echo Anderson, we are trying to find out what is false and what is real. At ground level, for the residents of the Red River Valley, that distinction is in many ways immaterial. To quote Joseph and Anthony Amato, "The presumption of actually being a place and having a culture allows residents ... a way to take measure of who they are and what they value in a world often beyond their understanding and control."<sup>36</sup> The real challenge for archivists could well be to document those presumptions, their enactment, their representation, and their evolution.

There are two hints at how that might be done. Alessandro Portelli has written recently on studying oral history as memory and then realizing memory's value as evidence by accepting and analyzing the subjectivity that inevitably colors what people remember. He notes, "Oral sources tell us not just what people did, but what they wanted to do, what they believed they were doing and what they now think they did."<sup>37</sup> The focus groups we organized are a step in that direction. Amplified and elaborated in a comparative framework that contrasts people's stories with other sources, they could provide a wealth of documentation on how the residents of the Red River Valley are structuring their view of their world.

With a specific focus on traditional forms of records, Elisabeth Kaplan has recently explored the relation of archives, historical societies, and identity. She has particularly and compellingly urged archivists to become consciously aware of their role, since they "appraise, collect, and preserve the props with which notions of identity are built. In turn, notions of identity are confirmed and justified as historical documents validate their authority."<sup>38</sup> The documentation of the Red River Valley would be fascinating to examine in that light. Within the area's complex transit in the mind of European culture from frontier to settlement towards frontier again almost within the space of living memory, we have the opportunity to study the role of archives and records as representations of some of the more significant aspects of American identity. Kathryn Dudley wrote, "Family farms have become our national icon of autonomy."<sup>39</sup> The documentation process is an important component of how that icon was created and how it is preserved. It well deserves our attention.

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## NOTES

1. And this account, of course, is my own perspective on the topic and not the official view of the Minnesota Historical Society. The help of, among others, Jim Fogerty, Michael Fox, the late Lila Goff, and Gerald Newborg was essential to my understanding of the project and its goals. I am also grateful to Todd Daniels-Howell, Mark Greene, and the reviewers of *Archival Issues* for their help in improving this essay. I owe a special debt to Beth Kaplan for her comments and, well, just about everything.
2. The final products of the project are available on-line at <<http://www.mnhs.org/shrab>>.
3. Minnesota State Historical Records Advisory Board, *Documenting Agriculture and Rural Life. Proposal to the NHPRC* (May 1999).
4. Helen W. Samuels, *Varsity Letters: Documenting Modern Colleges and Universities* (Chicago and Metuchen, NJ: SAA and Scarecrow Press, Inc., 1992); Bruce Bruemmer and Sheldon Hochheiser, *The High-Technology Company: A Historical Research and Archival Guide* (Minneapolis: Charles Babbage Institute, 1989); and Richard J. Cox, *Documenting Localities: A Practical Model for American Archivists and Manuscript Curators* (Lanham, MD, and London: SAA and Scarecrow Press, Inc., 1996).
5. Maxine Kumin, "The Ground Beneath Our Feet," *New York Times*, August 6, 1995. <<http://www.nytimes.com>>. February 8, 2001.
6. David Danbom, *Born in the Country: A History of Rural America* (Baltimore, MD: Johns Hopkins University Press, 1995): xi.
7. Ben Leonard, "Academic Focus Group: Meeting Summary, July 17–18, 2000."
8. Danbom, 197, 149.
9. Timothy Egan, "Indians and Bison Returning to Plains Others Abandoned," *New York Times*, May 27, 2001, sec. A1, sec. A18.
10. See, for example, Hiram Drache, *The Day of the Bonanza: A History of Bonanza Farming in the Red River Valley of the North* (Fargo: North Dakota, Institute for Regional Studies, 1964).
11. *Documenting Agriculture and Rural Life. Proposal to the NHPRC*, 1.
12. Omer Bartov, "An Infinity of Suffering," *Times Literary Supplement*, December 15, 2000, 5.
13. William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York: W. W. Norton & Company, Inc., 1991).
14. Minnesota Historical Society, "Mill City Museum: A Proposal to the National Endowment for the Humanities," February 2001, 3. For more on the society's plans for the museum, visit <<http://www.mnhs.org/events/saf/safdesign.html>>.
15. Kathryn Marie Dudley, *Debt and Dispossession: Farm Loss in America's Heartland* (Chicago: University of Chicago Press, 2000): 6.
16. Joseph A. Amato and Anthony Amato, "Minnesota, Real and Imagined: A View from the Country-side," *Daedalus* 129:3 (summer 2000): 55.
17. And they may not even be all that different: Dudley argues persuasively that rural America does not constitute some isolated culture separate from "America." Dudley, 17, 174. This is echoed in Danbom, 193.
18. Stephanie Simon, "The Study of Us," *St. Paul Pioneer-Press*, October 29, 1999, 6A.
19. A recent article about the decline of small dairy farms in Wisconsin points out some of the problems of the anecdotal approach by highlighting the debate among Wisconsin farmers about defining a farm in terms of size. A spokesman for the state's Farm Bureau said, "We've got people who have this locked-in perception of a farm and they don't want that changed." David Barboza, "America's Cheese State Fights to Stay That Way," *New York Times*, June 28, 2001, B1, B8.
20. As a possible counterpoint, consider an Iowa State project that indicates "former farmers have largely succeeded in building satisfying new lives and sound financial foundations." Dirk Johnson, "Leaving the Farm for the Other Real World," *New York Times*, November 7, 1999, The Nation section, 3. One former farmer, now living in a city, said, "The kids would never want to go back now ... The telephone never stops ringing."
21. Leonard, 2.
22. Dudley, 41.
23. Leonard, 2.
24. David Lowenthal, *Possessed by the Past: the Heritage Crusade and the Spoils of History* (New York: The Free Press, 1996): 121.
25. Lowenthal, 6–7.

26. Cox, 79.
27. Compare this report to the conclusions Richard Cox draws about the effort to develop a documentation strategy for western New York state. Cox, 99–102.
28. Samuels, 14–15.
29. Ben Leonard, *From Independence to Interdependence: Rural Perspectives on Change*, Final Report, April 26, 2001, 28.
30. This is, of course, all relative. No archive reliably has the resources and support to make this sort of thing work perfectly. But, in terms of documentation strategy, see the works of Helen Samuels and Bruce Bruemmer, cited above, as cases in point.
31. For details on the National Forum for Archival Continuing Education, see the COSHRC Web site: <<http://www.coshrc.org/nface/index.html>>.
32. Leonard, *Archival Focus Group: Meeting Summary*, July 24–25, 2000, 1.
33. Jean François Marie Arouet de Voltaire, *Candide ou l'optimisme*. In the Everyman's Library edition, the translation reads, "We must take care of our garden," and "'Let's get down to work and stop all this philosophizing,' said Martin. 'It's the only way to make life bearable.'" *Candide and Other Stories*, trans. Roger Pearson (New York: Everyman's Library, 1992).
34. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso Press, 1983): 15.
35. This took some interesting forms. For instance, in the Ada focus group meeting, there was an extraordinary outpouring of regret about the phenomenon of the disappearing local bank, largely expressed in terms of dismay over the impersonal nature of technology, e.g., the tradition of sitting down with a neighbor contrasted with the advent of voice mail. As my own childhood recollections of the community bank my family used are colored by the memory of the complex strategies my mother used to get a check cashed outside of the bank's 9–3, five days a week, work hours, the advent of ATMs, debit and credit cards, Internet banking, and so on all seemed incredible boons.
36. Amato, 74.
37. Alexander Stille, "Prospecting for Truth in the Ore of Memory," *New York Times*, March 10, 2001, A15, A17.
38. Elisabeth Kaplan, "We Are What We Collect, We Collect What We Are: Archives and the Construction of Identity," *American Archivist* 63 (2000): 126.
39. Dudley, 7.

# MARGARET C. NORTON RECONSIDERED

BY RANDALL C. JIMERSON

**ABSTRACT:** Margaret C. Norton (1891–1984) served as the first state archivist of Illinois (1922–1957). As a founding member of the Society of American Archivists (SAA), she served as its first vice president, as a council member, as president, and as editor of *American Archivist*. The common perception has been that Norton aligned her views with Hilary Jenkinson and European theorists in opposing the American historical manuscripts tradition and the dominant role of historians. A closer examination of her career and her unpublished writings, however, challenges this interpretation. An appreciation for Margaret Norton as a pragmatic archivist dedicated to the needs of public officials enables us to see her as a bold and consistent advocate for the significance of records in administration of state government. Norton adopted European archival principles such as provenance and the moral defense of archives, but she adapted them to the requirements of modern American records. She pleaded for recognition of archives as legal records, but she also recognized their secondary importance for historical research. Rather than pulling the profession apart into separate camps of historian-archivists and archivist-administrators or of practitioners and theorists, Norton's legacy should remind archivists of their twin responsibilities for archives: to maintain both their legal and administrative integrity and their usefulness for historical research.

Margaret C. Norton never shied away from controversy, but only a woman of strong convictions could have challenged the prevailing orthodoxy of the emerging archival profession in 1929. Her paper, "The Archives Department as an Administrative Unit in Government," which she presented to the American Historical Association's Conference of Archivists, called for nothing less than a reconsideration of the intimate relationship between archives and history. Despite modest progress in archival legislation in Alabama, Mississippi, and a few other states, she pointed out, "in reality only about a dozen states in the whole country [are] providing sustained and systematic care to their official records." Norton charged that the popular misconception of archives as nothing more than historical documents blocked progress for the profession, and that "the greatest handicap . . . to getting adequate support for archives work is the belief that archives work is just another function of the state historical society." From these premises, Norton concluded that, "The archivist should be a public official whose first interest is business efficiency, and only secondarily should be interested in history." Archivists should make their records accessible, Norton declared, primarily for the "practical ends of administration."<sup>1</sup>

The historians at the December 1929 Conference of Archivists received Norton's message, as she later recalled, "in stony silence." Only historian Milo M. Quaife of the Burton Historical Collection, who served as editor of the *Mississippi Valley Historical Review*, privately congratulated her. "Margaret, 'you done noble,'" Quaife told her. "You are way ahead of them and they don't know what you are talking about."<sup>2</sup> Norton continued to press her point. Six months after her AHA presentation, she gave essentially the same paper at the National Association of State Libraries meeting in Los Angeles, where it "was enthusiastically received."<sup>3</sup> Librarians "weren't so hidebound in the belief that archives existed simply for the benefit of historical researchers," Norton later speculated, and they welcomed her arguments.<sup>4</sup> Norton sought to redefine the nascent archival profession in the United States. "To most persons, including some archivists, the term archives still connotes merely musty, dirty files of loose papers and decayed leather folios of little apparent use, but vaguely believed to be of value because historians keep saying they are valuable," Norton declared. "The real function of an archivist, however, is that of custodian of legal records of the state, the destruction of which might seriously inconvenience the administration of state business."<sup>5</sup>

Even though Norton's views on the administrative importance of archives seemed to historians like heresy in 1929—still several years before the founding of the National Archives—they soon became, as Ernst Posner stated in 1964, "a generally accepted tenet of archivists in the United States." Norton's ideas "struck a new and significant note," according to Posner. "Although giving due credit to the work of the Public Archives Commission, Miss Norton felt that the emphasis it had given to the historians' stake in archival preservation was one-sided and that the time had come to stress 'proper care of archives as an administrative problem of state government instead of as a mere adjunct to the historical library field.'"<sup>6</sup> In an obituary tribute to Norton, Maynard Brichford, archivist of the University of Illinois, declared these presentations "landmarks in the archival campaign for professional recognition."<sup>7</sup> Norton had clearly articulated a new vision of archival identity, one that would link the profession more closely to centers of political influence and power and less to the scholarly world of the academic historian. It is a struggle for identity with which archivists still grapple. This article explores the origins and development of Norton's thinking on archival matters in order to examine, from a new vantage point, current professional debates over archival theory, the role of archivists in modern society, and the relationship between manuscripts and archives.

## Reputation

Through her influential writings, Margaret Norton continues to play a role in current archival professional debates. More than any other archivist of her generation, Norton exemplified the shift in professional focus from historical manuscripts to public archives. Philosophically linked with English archivist Sir Hilary Jenkinson, Norton has been at the center of many recent North American debates.

The Canadian debate over history and archives began in 1983 with George Bolotenko's castigation of Margaret Norton's "ringing tocsin" that archivists should, in his words, "beware the enemy, beware the historian-archivist working with documents." Bolotenko



characterized Norton, in her efforts to separate archivists from their traditional historical orientation, as “shrill,” “strident,” “vociferous,” and using “a language bordering on the venomous.” According to Bolotenko, Norton sought to replace the archivist-historian with “the archivist as administrator or bureaucrat.”<sup>8</sup> What was at stake, in his view, was the identity of the archival profession. In the debate that ensued during the next several years in the pages of *Archivaria*, archivists struggled to define the roles and identity of the archival profession. Bolotenko’s critics charged that his views would doom archivists to being relics of the past in the technological revolution that required new approaches and perspectives. The danger was that archivists would become obsolete, doomed to irrelevance as antiquarians in modern society.<sup>9</sup> In supporting Bolotenko, however, Patrick Dunae stated that the “real villains” are “Miss Norton and her disciples.” Dunae warned of the danger of technologically oriented administrators replacing historical scholars in the archival profession’s leadership. “Nortonians, now allied with a new generation of public administrators and technocrats, have more than anyone else endeavored to push archivy off its humanistic, historical, scholarly base,” he charged.<sup>10</sup> Thus, even after her death Margaret Norton’s views on the archival profession still stirred passionate debates about the nature of archives and the future of the profession.

As an American proponent of Sir Hilary Jenkinson’s views, Norton figured prominently in more recent debates over archival theory and methodology. Luciana Duranti cited Norton as the American proponent of Jenkinson’s “moral defense of archives,” in her critique of T. R. Schellenberg’s views on appraisal. In contrast to Jenkinson, Duranti stated, “Schellenberg’s definition of archives was theoretically flawed, not because he built into it the elements of value and use for research purposes, but because he arrived at it on purely pragmatic grounds.” Duranti faulted American archivists for such pragmatism and challenged them to develop “a methodology driven by archival theory rather than vice versa.”<sup>11</sup> In a rejoinder to Duranti, Frank Boles and Mark Greene defended American pragmatism and the inductive process for establishing archival principles based on experience and utility.<sup>12</sup> Although not formally charged as a Jenkinsonian theorist, Margaret Norton was closely associated with the English-European camp in opposition to Schellenberg. The common perception has been that Norton aligned her views with Jenkinson and European theorists in opposing the American historical manuscripts tradition and the dominant role of historians. A closer examination of her career and her unpublished writings, however, challenges this interpretation.

Although recognized as one of the most influential archival theorists and practitioners of her generation, Norton was at heart a pragmatist. She adopted European principles but adapted them to modern American circumstances. Almost single-handedly she nudged the American archival profession away from the domination of scholars and into an independent identity that included service to records as both historical documents and, more importantly in her view, as legal records vital within the domain of government administrators. She became one of America’s greatest archival theorists, though she would have shunned the title. For her approach to archival problems was fundamentally pragmatic, based on experience and experiment rather than on abstract theory. Even her central professional vision, that archives are in their truest es-

sence legal records of business transactions, derived from her personal experience on an essentially pragmatic basis.

## Career

Margaret Cross Norton (1891–1984) served as the first state archivist of Illinois, from 1922 to 1957. Her career was remarkable, particularly for a woman in fields still dominated by male leadership. In her 35 years at the Illinois State Archives she developed an archival program that became a model for many other states; supervised planning and construction for an archives building that was only the third facility in the United States planned specifically for archival needs; and established the Illinois Archives as an integral part of state government. Generous with her time and advice, she worked closely with a broad group of historians, librarians, and scholars to define the emerging archival profession. As a founding member of the Society of American Archivists (SAA), she served as its first vice president (1936–1937), as a council member (1937–1942), as president (1943–1945), and as the second editor of *American Archivist* (1946–1949). In most of these positions she was the first woman to serve in such capacities.<sup>13</sup>

Norton's professional work, however, was not confined to the field of archives. She also held important leadership positions within the American Historical Association (AHA), the American Library Association (ALA), the Illinois State Historical Society, the Illinois Library Association, the Historical Records Survey, and the National Association of State Libraries. She served as secretary-treasurer of the National Association of State Libraries for five years and as a longstanding member of the ALA Archives and Libraries Committee. She chaired the AHA Public Archives Committee for several years and was a member of its Committee of Ten, which recommended the formation of SAA, the first professional organization for archivists. Norton thus served, informally, as one of the links between the archives profession and both the library and history professions.<sup>14</sup>

Many archivists have become acquainted with Norton through her prolific writings, edited by Thornton Mitchell in 1975 under the title, *Norton on Archives*. As Richard Berner observed, Norton was "an influential writer on every aspect of archival administration."<sup>15</sup> But her influence on the profession during the 1930s and 1940s went well beyond her writings on archives and records management. Under her leadership the Illinois State Archives became a model consulted by archivists in many other states regarding archival legislation, new buildings, and organization of new archival agencies.<sup>16</sup> Archivists from other countries also wrote to or visited Norton seeking advice and guidance, which she freely provided. Reading her monthly reports to the State Library provides a true sense of her whirlwind schedule of consultations, professional activities, and scholarship, all of which came in addition to the daily responsibilities of managing an active state archives program.

The breadth and depth of Norton's professional activities and interests are remarkable. She attended professional conferences several times a year, often driving hundreds of miles out of her way to visit other archives and libraries, and her monthly reports detail specific practices, techniques, and new technologies being developed and tested in these institutions. She read voraciously in the archival literature of her time,

including translations of foreign reports and articles whenever they were available. As she recalled long after her retirement, "While I was archivist I kept a file of everything I could lay my hands upon which would illustrate the history of American archival thinking." When she first decided to become an archivist, one of her mentors, Professor Lucy Salmon of the Vassar College History Department had advised, "Read everything you can find on the subject, and if the opportunity comes you will be ready."<sup>17</sup> Norton took this advice to heart and continued to study the professional literature throughout her career. When Clarence Walton, who was teaching a course on archives at Harvard in 1939, sent her a copy of his lecture notes, she commented, "His point of view is so different from mine that I found them quite disappointing. They do not indicate much knowledge of modern archival literature or theory."<sup>18</sup> For Norton such knowledge formed the essential foundation for archival practice.

Norton began her career as archivist after earning degrees in both history and library science, a combination that reflected the twin sources of the profession. After obtaining her bachelor's and master's degrees in history from the University of Chicago, she earned the BLS from the New York Library School in Albany in 1915. During her first professional position as cataloger at Vassar College, she later recalled, "I was a complete misfit and decided library work was not for me, unless I could get into the historical library field."<sup>19</sup> As a cataloger she found "the work monotonous with little opportunity for originality."<sup>20</sup> The turning point in her career came when she attended her first American Historical Association meeting in Washington, D.C., in 1915, and heard an "illustrated lecture" by Waldo G. Leland of the Carnegie Institution of Washington's Department of Historical Research. Leland spoke eloquently on European archives, the dismal condition of American federal archives, and the need for a national archives building. On the drive back to Poughkeepsie with Professor Lucy Salmon, Norton exclaimed, "Now that is what I want to do—I want to be an archivist!"<sup>21</sup> She would later call Leland "my archival godfather," stating that he had "first directed my attention to the possibilities of an archival career."<sup>22</sup>

With this goal in mind, she continued to study history at Chicago, although she never completed a Ph.D. degree. She also gained experience, briefly, as a manuscripts assistant at the Indiana State Library and as a cataloger at the Missouri State Historical Society in Columbia. In January 1922, Norton interviewed for what she thought would be an archival staff position at the Illinois State Library, but instead was hired as the first archivist of the Illinois State Archives. Overwhelmed by her new responsibilities, she asked for three months to prepare.<sup>23</sup>

During this three-month period Norton traveled extensively, visiting most of the existing archives programs in the Mid-Atlantic states and New England. "I picked up an idea here and another there, but I think I got more about what not to do as what to do," she later recalled. In Albany, for example, she found that "like all archives of the period they were treated as static objects, meant for historical research—no modern records." In Massachusetts a fire started in the State House during her visit, but during her tour of the archives she witnessed an alarming indifference to the dangers posed to irreplaceable records. "To my horror, the archivist seemed not the least perturbed and instituted no procedure for evacuating the records in case the fire broke through," she recalled. Furthermore, the head of the Vital Statistics Department "told me scornfully that no-

body used the archives but 'old fellows with tobacco on their beards . . . who were hunting up ancestors.'" At the Virginia State Library, she discovered, "the archives . . . were organized as merely historical manuscripts." This tour of archival horrors reached Connecticut, where "I was shown the archives clerks sorting the colonial laws by subjects! I had read the horror stories from the French National Archives which had also been arranged by subject and were then being resorted by provenance."<sup>24</sup>

In the nation's capital she visited Director Dr. J. Franklin Jameson, Waldo Leland's supervisor at the Carnegie Institution's Department of Historical Research. Jameson had been the first managing editor of the *American Historical Review* and a founder of the Public Archives Commission, and was currently leading the campaign to establish a national archives. Jameson impressed her greatly. "I think he was the one person in the country who understood the relation between archives and government," she recalled years later. "He said he did not think he could give me much practical help, but that he did want to show me some 'horrible examples.'" Jameson asked one of his staff members to spend four days escorting the aspiring young archivist to visit scenes of archival neglect in the nation's capital, including the deplorable condition of U.S. census records, some of which "were destroyed by fire here a few months later."<sup>25</sup> Thus, even before assuming her first archives position, Norton had clearly imbibed the European principle of provenance, as well as a concern for modern records and preservation needs.

Although inspired by the American archival pioneers Leland and Jameson, Norton stated that the greatest influence on her thinking was English archivist Sir Hilary Jenkinson. She stated that: "Hilary Jenkinson's *Manual of Archives* was my Bible."<sup>26</sup> The first edition was published the same year she started her new position as state archivist of Illinois. "I purchased a copy immediately," Norton later recalled. "With its emphasis on the reasons for and explanation of provenance, it coagulated the impression I already had, that archives are fundamentally business records."<sup>27</sup> This would be the major theme of her professional career and of her own influential writings: that archives serve an essential role as legal records necessary for public administration.

### **Archivist-Administrator**

The archival profession that Norton entered in 1922 had been shaped largely by historians who saw archives as essential sources for scientific history.<sup>28</sup> Private antiquarians and collectors had shaped the historical manuscripts tradition, as Richard C. Berner termed it, focusing on archival records as sources for historical scholarship. By the early twentieth century, however, a competing public archives tradition had developed in the United States, based largely on the introduction of French and Prussian concepts such as provenance and original order. This latter tradition, which Norton soon embraced, focused on archives as official records that supported government functions and gave only secondary consideration to private research interests. As Luke Gilliland-Swetland has argued, these two traditions led to competing views of the archivist's role, as custodian or as interpreter of records. The conflict between these two paradigms dramatically shaped the subsequent development of American archival theory and practice.<sup>29</sup> Since Margaret Norton became an influential advocate for the public archives position, the source of her archival ideas deserves further exploration.

Margaret Norton was among the first American archivists to challenge historians' domination of the field. As she later wrote, "I was the first American archivist to insist that the archivist's first duty was to aid his fellow officials to give more efficient service on their records, rather than to devote all one's energies to the research scholar."<sup>30</sup> This shift of focus would lead to a reorientation of the archivist's role, from an academic to an administrative perspective. In commenting on papers given at the 1946 SAA annual meeting, for example, Norton concluded, "I would say that it is high time we archivists stopped trying to make other officials fall in with our own program, and to find out what they want and need from us."<sup>31</sup> Norton thus argued for an examination of archives users, which archivists would later call "user studies," but for her the primary clientele of archivists would be government officials rather than academic historians or private researchers.

Norton argued that archives were vital to government administration and that the archivist must become engaged in the daily work of governmental management. In 1938, for example, she harshly criticized the report of the SAA Committee on Archival Training:

One might conclude from the report that the ideal archivist is a scholar sitting in a remote ivory tower safeguarding records of interest only to the historian. In reality the archivist is at the very heart of his government and the archival establishment is a vital cog in its governmental machinery. Archives are legal records the loss of which might cause serious loss to citizens or the government.<sup>32</sup>

Although insisting that archives must be distinguished from historical manuscripts, which originate from private sources, Norton recognized that archives also have historical importance. In her 1931 annual report for the State Archives, she explained that "archives, as papers having historical value, are historical manuscripts, but many historical manuscripts are not archives."<sup>33</sup> Thus, the State Archives served primarily a legal and administrative purpose, but it maintained records that also had a historical significance.

Despite her position as a division head of the State Library Norton gained practical experience by immersing herself in all aspects of archival work. A state archivist, Norton wrote, must understand "mechanical details" and be able to perform a broad range of functions, because he "frequently is the whole establishment so far as professional work is concerned. He must train his subordinates in the mechanical details even if he does not perform all the work himself." The state archivist's functions "are largely administrative rather than scholarly." Although he "also needs the technique of scholarship," she declared that "Overemphasis upon pure scholarship and contempt for administration is unfortunate for the archivist because his whole career is tied up with other officials who have either an inferiority complex towards or a contempt for, (or both) the academic outlook on life."<sup>34</sup>

Thus, Norton called for a separation between the historian-scholar and the archivist-administrator partly because this would lead to greater financial support for archives. The distinction may have been necessary on theoretical grounds, but practical reasons

also existed for reducing archivists' academic outlook. In a 1940 paper on "Training of Archivists" she elaborated on this theme:

Too many archivists in the past have looked upon an appointment as state archivist as an appointment to a lifelong subsidy for private historical research. . . . Archives work is administrative work. The archivist must reconcile himself to the fact that it is most important to the government that he serves that he be able to document an important lawsuit for the State or some citizen; and that the unexploited source materials in his collection must probably be laid before some other scholar who will have the time to write the book that haunts him. . . . Archivists today must subordinate their scholarly inclinations to administrative work.<sup>35</sup>

It was this dedication to the administrative purposes of archives that compelled Norton throughout her career to seek cooperation with government officials, to recognize the legitimate concerns of such officials for their own records, and to urge the archival profession to recognize the necessity for such cooperation. Archival records were not created for the benefit of scholars, but to meet the needs of current administration and future legal requirements.

Archives could meet these requirements, Norton insisted, only if their integrity and authenticity were preserved. The archivist, therefore, must understand the legal requirements for evidence and authenticity. Besides Jenkinson's manual on archives, the second major influence on Norton's thinking was John Henry Wigmore's *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, commonly cited as "Wigmore on Evidence." In particular, Wigmore's discussion of "Authentication of Documents" emphasized that, as Norton summarized, "the custodian must handle the records in a manner that will not impair their value as evidence should they ever have to be produced in court."<sup>36</sup> Thus, protecting the integrity of archives was essential in maintaining their authenticity and legal value.

For Norton, the crucial element in defining a separate identity for the archival profession was drawing a clear distinction between the archivist's responsibility for protecting the legal and administrative nature of records and the concern of both historians and librarians for information retrieval and research. "The needs of the historian in front of the desk and the archivist behind the desk are different," she declared. "It is amazing how long it took both historians and archivists to realize that distinction."<sup>37</sup> Although some archivists concluded from this distinction that their interests should be more closely aligned with librarians, Norton likewise dismissed that view. After teaching the second archival course ever given in a library school at Columbia University in 1940, she wrote that, "while both librarians and archivists are engaged in preparing our materials for 'information retrieval,' the philosophy and techniques of the two professions are quite different."<sup>38</sup>

In Norton's opinion these differences presented a fundamental problem in basing archival education on either history or library science. In looking back on her career in the profession, she wrote, "The question as to who should train the American archivist became the subject of acrimonious dispute between the history and library professions and all because both historians and librarians approached the subject from the stand-

point of the man in front of the desk, both interested in the use of archives rather than the methods to be used by the man behind the desk in order to service the records."<sup>39</sup> Therefore, Norton concluded, the archival profession needed to establish a separate identity, one focused on the legal aspects of records and their usefulness for administration.

## Experimenter

In her published writings, Norton clearly enunciated her views on the need to recognize the legal and administrative significance of records. Her archival theory was based on fundamental principles, following in large part the concepts expressed by Jenkinson, and she remained steadfast in urging her colleagues to recognize the distinction between historical manuscripts and archives. Through her unpublished writings, however, we see more clearly that she based her theory on pragmatic grounds and personal experience. In fact, one of the most compelling aspects of her approach to archival issues, particularly during the 1930s and 1940s, is her insistence on experimentation as the basis for developing archival theory. Rather than construct abstract theory based on some sort of cosmic view of the universe, she insisted that archivists not constrict their thinking and practice until sufficient experience, through trial and error, could disclose the best means of managing archives. Her emphasis on the administrative aspects of archives likewise derived from an essentially pragmatic basis.

Norton never lost sight of the need to balance theory with the practical realities of the political situation. "The point is that we are dealing with facts as well as with theories," she wrote to law professor Francis Philbrick, who had pointed out a discrepancy between what Norton said about keeping county records in the counties and the possibility of collecting such records in the state archives. "In theory, the records should remain in the county. In practice, it is better for the State Archives to take what they can get," Norton argued. "What I am driving at primarily is propaganda to make people see that county archives relate to them and to their business interests: Whether or not they are interested in history."<sup>40</sup> While never losing sight of archival theory and fundamental principles, Norton recognized that at times one must adjust to political realities and the necessity of working effectively with public officials.

Throughout her early career, Norton urged archivists not to "put the universe into a straight jacket" by insisting on premature standardization of practice. In 1940, Norton complained that Ernst Posner wanted "uniformity of procedure" in archival training courses. "That's the Prussian in him," she declared. "I don't believe we are ready yet for uniformity—we need to do a lot of experimenting before we crystallize."<sup>41</sup> Two years later she declared that efforts to seek uniformity would "stultify progress in archives," and that, "I think we should all be experimenting and exchanging the results of our experiments until enough experimentation has been made so that on the basis of wider experience than any of us at present have, we could begin to pick out the better points of all our experiments and then to combine them into a permanent scheme."<sup>42</sup>

Norton recognized that experiments sometimes could fail, but one could learn valuable lessons from such mistakes. Under her leadership the Illinois Archives in 1936 prepared detailed cataloging rules and distributed them to other archivists. Only two years later she decided that this "hastily prepared little booklet" was an experiment that

must be abandoned. She told an SAA round table on classification and cataloging, which she chaired, that this cataloging manual "is absolutely obsolete, and I hope all of you who possess copies will promptly throw them in the waste basket. Please do not follow that, because it is all wrong."<sup>43</sup> Thus, she was willing to admit that her ideas had changed and to encourage others to experiment and report on the results.

In reminiscing about professional conferences during these early years, Norton recalled the excitement of "bull sessions" lasting until "2 or 3 o'clock in the morning."<sup>44</sup> "I, as a neophyte archivist, found them extremely helpful and inspiring," she declared. "We would discuss together what we had been doing, then go home and mull over these ideas, experiment with them, then go to the next conference eager to exchange more ideas. The American archivist had not yet developed a mature philosophy of archives. Had a manual . . . [on archival techniques] been published, American archival economy might have been saddled with impractical procedures hard to eradicate when experience disproved their efficacy later."<sup>45</sup>

Thus, theory would follow from practical experimentation rather than the other way around. For Norton the true test of archival methods was how well they worked and whether they served the needs of a practicing archivist facing numerous daily challenges in managing voluminous modern records. As her close friend Helen Chatfield, archivist of the U.S. treasury department, wrote to Norton in 1945:

These custodians have, in most instances, acquired whatever knowledge they have of record administration and discipline through their own experience, and there is not yet a body of systematized knowledge of the field. . . . In fact, it is safe to say that the development of this field of endeavor as a profession is merely in its infancy—with only slight glimmerings of a philosophy, and some rudimentary beginnings of a discipline becoming discernible."<sup>46</sup>

This sense of flux led many archivists of Norton's generation to a belief that trial and error would be necessary for a time to determine the best methods for the newly emerging profession.

Far from being an "ivory tower" theorist, Norton threw herself into the daily regimen of archival practice. In her monthly report for October 1946, she declared, "Archivists have got to get their hands dirty, but the young ones don't want to do so."<sup>47</sup> Often lacking trained staff assistants, Norton found that she routinely had to get her own hands dirty. With a clear sense of pride she stated, "Ernst Posner commented after an inspection trip many years later that I seemed to have done most of the work myself in the early days."<sup>48</sup> Posner later recalled that "by processing records and getting her hands dirty" Norton had acquired "an amount of practical experience unmatched at that time in most other state archival agencies."<sup>49</sup> In 1939, she had to take over processing the governor's correspondence from an inefficient staff member. As she reported: "Although this work was somewhat time consuming and part of it perhaps too mechanical for executive time, it gave me a somewhat different outlook on the laminating process."<sup>50</sup> A few months later she reported, "Most of my time this month has been given over to the petty interruptions of an executive, and to discussions with state officials regarding the transfer of records. My major piece of work was to index the 1939 session laws to bring



down to date my index to State departments.”<sup>51</sup> When some of her staff members left in 1946, Norton reported that she spent half her time on reference service, and had to run “attic to cellar” all day.<sup>52</sup> Despite occasional complaints about routine or technical work, Norton throughout her career remained close to the daily activities of records transfers, reference requests, processing and indexing records, and other archival procedures.<sup>53</sup> Her experience thus provided insights into archival principles. Theory emerged from experimentation.

This concern for practical approaches to archives, rather than scholarly treatises on historical uses of records, led to one of the major confrontations of her career. As president of SAA in 1944, Norton privately complained to SAA Secretary Lester Cappon that the *American Archivist*, under editorial leadership of Theodore Calvin Pease, published too many scholarly articles, and that “the archivist of a small struggling archival agency . . . finds little practical help” in the journal. “However, I have yet to visit an archival institution in person where I did not come away with some really practical suggestion for a better means of doing some piece of work.” She complained that, “we archivists are all trying to impress each other with our scholarship. If this society is to be a vital organism, we must decide what kind of a society it is to be and what its functions shall be.” She told Cappon that she planned to address this issue in a president’s message: “Possibly I shall stir up a hornet’s nest. Personally, I rather hope that I do. I think the society is strong enough now for us to be able to take off our coats, roll up our sleeves and do a little slugging. I am afraid we are going to settle down into a very stodgy institution unless we are very careful.”<sup>54</sup>

Working behind the scenes, Norton gained enough support for changing the orientation of the journal that Pease stepped down as editor of the *American Archivist*. Having completed her term as president of SAA, Norton reluctantly agreed to accept the position of editor in 1946. As she wrote to the new SAA president, Solon J. Buck, “It never seems to be my fate . . . to be the clinging vine for which I believe nature intended me, or to be able to dodge responsibilities.”<sup>55</sup> As editor, Norton quickly set about to make the *American Archivist* a “lively professional journal” with a new technical section on practical issues. Her goal was to have “one scholarly article to three of the popular type for each issue.”<sup>56</sup> Under her leadership the professional journal emphasized practical techniques over scholarship. This represents a further shift from the historical manuscripts tradition, with its emphasis on historical interpretation and scholarship, to the public archives approach to archival administration.

## Pragmatist

Margaret Norton’s emphasis on the administrative and legal values of records likewise derived from pragmatic concerns. In Hilary Jenkinson’s writings she found theoretical justification for these views, but they emerged from her own experience rather than from an abstract conceptualization of archives. In examining her correspondence and reports, as well as a 1973 interview in which she reflected on her career, four practical reasons for her emphasis on archives as legal and administrative records can be discerned.

First was the need to develop an identity for the Illinois State Archives separate from other state agencies. This led Norton to emphasize the legal and administrative significance of the archives rather than its historical value. As she explained to Grace Lee Nute, curator of manuscripts for the Minnesota Historical Society:

The chief difficulty I have found in getting funds for an archives establishment here in Illinois is that we have, as you know, a strong Historical Library. Therefore, we have to stress the fact that this is not an historical institution. Otherwise, the question immediately comes up as to why we need another building for historical purposes. Consequently, in all our publicity we stressed the importance of the building from the business angle.<sup>57</sup>

As Norton recalled in a 1973 interview when she was beginning her career in Illinois, the "soundest advice" she received came from Mrs. Jessie Palmer Weber, head of the State Historical Library, who suggested that she emphasize the benefits of the archives for state officials:

She said, "When your appropriation comes up before the Legislature you are going to be asked, 'Illinois already has one historical agency; what's the use of another?'" She pointed out that my big job was to sell the State officials the idea that an archives department could be useful to them.<sup>58</sup>

Thus, one of Norton's reasons for emphasizing the business aspects of archives was the practical necessity of creating a distinctive identity and purpose for the archives, separate from the state's historical library.

A second practical reason for emphasizing the administrative and legal value of archives was that Norton believed that state officials would not provide funding for the archives unless they could see the benefit to the state. This could be achieved more clearly, she reasoned, by emphasizing the legal necessity of creating and maintaining accurate records, rather than the more abstract concept of preserving state history. In writing to Charles Gates of the University of Washington Department of History in 1938, Norton agreed with Gates's opinion that archival training should be based more on political science than on history:

Unless state officials are personally interested in history, they are apt to be rather condescending to the care of archives as historical records. Our experience in emphasizing here the fact that records must be preserved because of their legal value certainly proves that that is the tack to take in order to get appropriations.<sup>59</sup>

This recognition that state funding required justifications based on practical grounds surely reinforced Norton's focus on the legal and business aspects of archives. One must be careful, however, to avoid the easy assumption that pragmatism alone influenced her thinking on these issues. It is much more likely that these practical arguments provided further justification for her archival theory rather than that her theories derived wholly from practical considerations.

Theory and pragmatism melded together in Norton's efforts to secure broader support and recognition for the value of archives in modern society. Thus, the third reason for her emphasis on archives as legal and business records rather than as historical documents was her concern for public recognition of archives. In a 1939 letter to Francis Philbrick, a University of Pennsylvania Law School professor who served with her on the AHA subcommittee on archives, Norton wrote of her interest in gaining support of the Illinois Bar Association not only for the Illinois Archives, but for all archival establishments:

I feel quite strongly that archivists in the past have gone at the preservation of archives from the wrong angle. They have over stressed the value as historical documents, and under stressed the value as legal documents. In the seventeen years I have been here, I have seen a marked change in attitude towards the necessity for accurate documentation. This I think will become increasingly manifest. Archives after all were originally preserved primarily because of their legal value. I feel that we should do everything in our power to enlist the support of the members of the Bar as the persons most vitally interested in the preservation of archives. It is important to everyone that the records upon which he may wish to base his claim of citizenship, his parentage, his rights to old age pensions and his real estate—but to name a few items—should be preserved, so that when the need for them arises the records may be found in a usable condition. After all comparatively few people care very much for history, except perhaps from an antiquarian point of view. Everyone does or should care for archives as legal records.<sup>60</sup>

This might be construed as special pleading, to persuade the Bar Association to support archives on the grounds of the legal value of records. But Norton did not adjust her arguments to fit the interests of her audience. She remained consistent.

Norton's concern for securing broader public recognition and acceptance of archives also can be seen in her 1940 report, "Program for Preservation of Local Archives," which she circulated to members of the AHA committee on archives. In this remarkable statement she articulated a concern for archival outreach and publicity, based on the legal value of local records for each citizen:

Ninety-five percent of all that we have written on behalf of the preservation of local archives has stressed the value of records as historical source material. . . . We must broaden the base of appeal if we are to preserve the local records for the historian of the future. . . .

Why are such records preserved at all? Fundamentally they are saved because the court says the deed to your property is invalid until it is recorded; your marriage is invalid and your children illegitimate if that marriage is not licensed and recorded by the county clerk; your rights as a citizen may be imperiled if you cannot produce acceptable birth records; your estate may not be distributed among your heirs except on court orders duly authenticated by its records. Present day candidates

for social security benefits who were born in Illinois cannot produce official birth records because the birth records of that state go back only to 1878. . . .

Are archivists not missing an important source of support by a failure to capitalize on the value of local records to every American citizen? If we follow through along this line we shall shift the emphasis from the preservation of noncurrent and historical records to the preservation of those records which touch the present day lives of citizens, making the preservation of the historical records secondary in importance but not relenting in efforts to protect them too.<sup>61</sup>

Clearly, the legal implications of archives could be used as a strong argument for funding and support of archives at all governmental levels. But it was the citizen's direct and personal interest in the legal protections afforded by records that provided the basis for these arguments, rather than an abstract appeal to government accountability or documentation of society.

The fourth pragmatic reason for Norton's emphasis on archives as legal records derived from her early personal experience. In seeking the source of Margaret Norton's emphasis on the legal aspects of archives, it is tempting to point to Hilary Jenkinson or other European archivists. Certainly Jenkinson influenced her thinking, but more by way of providing justification and credibility to ideas that Norton herself claimed to have developed on her own. She freely admitted that "in my day I have done plenty of brain-picking," but she bridled when an interviewer repeatedly asked her to explain the source of her archival theories. As she wrote to historian William Birdsall in 1973, "Your constant quizzing about who 'influenced my thinking' on this and that subject reveals, I fear me, Male Chauvinism." Norton had spent her career being the first woman to hold numerous professional positions—from president of SAA to editor of *American Archivist*—and she remained adamant about the independence of her thinking and about her role as a pioneering woman in what had been a male-dominated profession. Her theories of archives derived, not from Jenkinson or other archivists, but from her own personal experience, as she told Birdsall:

[T]he major influence on my archival philosophy was absorbed unconsciously, but most emphatically, from my family background. At the time of their marriage, my mother was Deputy County Treasurer and my father Deputy County Clerk. . . . Occasionally my mother would park me in my father's office while she attended her club. To keep me out from under foot, I was encouraged to play in the vault. . . . In those days the public, chiefly of course, attorneys, had free access to the vault. In other words, I saw how and why records were being created, and how they were used. And I was subject to that atmosphere not only in the office but at home, for unlike most men, my father talked shop at home. He often issued marriage licenses there. . . . We had a copy of the latest Illinois Revised Statutes over which father pored by the hour. Is it strange,

therefore, that to me archives have always been primarily records of official business?<sup>62</sup>

This personal experience with governmental records, from a very young age, gave Margaret Norton an appreciation for the value and importance of archives that transcended an intellectual understanding. The archival theories of Jenkinson, Leland, and other influential archival writers of her era reinforced assumptions and predilections that she claimed to have assimilated from her parents. She thus gained at an early age a powerful appreciation for the daily significance of archival records and for the legal basis they provided for the rights of ordinary people.

### American Adaptations

By emphasizing her childhood experiences as the basis for her independent orientation toward archives, Norton also helped to establish an indigenous basis for the development of American archives. She did adopt European principles, more fully than most of her contemporaries, but she continually sought to define a peculiarly American approach to archives. A crucial distinction, Norton believed, was the lack of ancient records in the United States in contrast with Europe. Illinois and many other states had few truly historical records, she wrote, but "one hundred years hence, possibly in fifty years, the materials now in our archives, will partake of the nature of true archives."<sup>63</sup> The techniques for managing modern records must differ from those for ancient records. "European archivists have been dealing with quite a different type of material from that which American archivists have to deal with," Norton stated at the 1938 annual meeting of SAA. "The European archivists hardly know anything has happened since 1800. Most of the archives most of us are handling date certainly past 1865, and largely past 1900."<sup>64</sup>

Archives in a democracy likewise differed from those in a highly centralized or monarchical country. Shortly after Ernst Posner immigrated to the United States from Europe, Norton wondered whether his knowledge of European archival theory could be transplanted easily. "Whether any foreigner, especially one accustomed to ideology of highly centralized states fully grasps the significance of the democratic implication with respect to American Archives, I do not know," Norton wrote to Charles Williamson, dean of the Columbia University School of Library Service, who was considering hiring Posner to teach archives courses:

In talking with foreign archivists, whom I have met, they have a way of saying, "of course, we get those records—that is the law." This I think is a result of the European monarchical idea that archives are the personal property of the sovereign, who may make any disposition of them by law which the central government sees fit; as opposed to the democratic idea that all records are public records and belong to the community which created them, not to the central government.<sup>65</sup>

Thus, the political and juridical systems of Europe and America would require different approaches to archival administration. Norton accepted fundamental principles such as provenance, but did not believe that all European ideas could be adopted without modification.

Another critical distinction between European and American archives was the problem of voluminous records. "The Muller, Feith and Fruin Manual on Arrangement and Description of Archives, which has just appeared in translation, has proved disappointing to many because it is highly technical and does not describe methods," Norton wrote in 1940. "Americans are asking whether the principles for the classification of the rather simple archives described in the Manual still hold."<sup>66</sup> In reviewing the Dutch manual for the *Mississippi Valley Historical Review*, Norton elaborated, stating "the records described seem so simple as to have little analogy with our own bulky and complex filing systems." Although the soundness of the principles enumerated in the manual "have been proved correct by forty years of European and American tests," Norton concluded, "The next need is for a companion volume to demonstrate practical procedures for applying the principles to the complicated American record keeping systems of today."<sup>67</sup> Even when proposing to use Jenkinson's manual as the basis for her summer course at Columbia, Norton recognized that its emphasis on English archives would require some adaptations. "However, I like his approach to the various subjects which he takes up," she told Solon J. Buck, director of publications at the National Archives, "and I think when these are Americanized the outline will prove workable."<sup>68</sup>

In rejecting the American Library Association proposal for a manual on "the care and cataloging of archives," Norton also stated similar concerns to SAA Secretary Philip C. Brooks of the National Archives staff. "I find that most of the available literature in English is based upon English conditions and I have to stop and translate what is said into American conditions," she complained. "What we need is writings based upon practical experience—not some librarian's rehashing of what has already been said many times."<sup>69</sup> Thus, Norton not only called for a new and specifically American approach to archives, she also stated that European archivists did not pay sufficient attention to methodology and practical solutions to archival problems, and that American librarians did not properly understand archival methods. Once again, Norton the pragmatist overshadowed Norton the theorist.

In summarizing these issues in 1973, Norton elaborated on the distinctions necessary between European and American archival approaches:

It was only natural to suppose that American archivists would copy the techniques of the European archival agencies which had been in existence so long. The few Americans who were familiar with European archival institutions were historians who had used them in research. So we find such men as [Samuel Flagg] Bemis enthusiastically urging American archivists to study paleography and medieval foreign languages. They failed to realize that the contents of European archives were entirely different from those of America. European archivists [were] concerned with old records—none dated later than 1800; whereas few states, except those of the 13 colonies, had any records at all earlier than 1800.

The Europeans knew nothing concerning the problems of dealing with the ever growing complexity of the records of rapidly growing governmental agencies.<sup>70</sup>

Far from being a Europeanist Margaret Norton remained a quintessentially American archivist in her practical approach to solving the distinctive problems of modern records. Her approach focused primarily on governmental archives rather than on private manuscripts, however, and in this respect she did emphasize the European custodial role rather than the American manuscripts interpretive role for archives and archivists.<sup>71</sup>

### Restoring Balance

In attempting to replace the archival profession's emphasis on service to historical scholars with a focus on administrative and legal needs, Norton may have taken a position as devil's advocate. Maynard Brichford claimed that she "sought to restore a balance that is lost when only scholarly research needs are considered." Brichford went on to state, "The view that administrative use should take precedence can be as misleading as the view that archives serve only scholarly researchers."<sup>72</sup> However, as Luke Gilliland-Swetland concluded, "the entire tenor of Norton's writings and activities" demonstrates a perspective different from "her contemporaries in the historical camp."<sup>73</sup> Were Norton's opinions deliberately confrontational or exaggerated?

Limited evidence from Norton's unpublished writings suggests that she did occasionally feel constrained by her official position in stating her public opinions, and that she at times overemphasized her arguments to provoke discussion. Two comments made to historian William Birdsall in 1973 suggest the self-censorship required to maintain good relations with her supervisors. "As a member of the staff of the Illinois State Library I owed a loyalty to my institution which in substance was to pretend that all was perfect in an imperfect situation—which it wasn't," she told Birdsall.<sup>74</sup> This comment suggests that she could not criticize library management of the archives, including the impositions she faced in using library staff for archival work and in having to allow her own staff to prepare library exhibits and provide library reference service. But she also stated that some of her on-the-job decisions were based on political expedience rather than on archival principles. "You must realize that I had to conform to an official line which did not always correspond to what I might recommend to others," she confided to Birdsall.<sup>75</sup> This statement raises doubts concerning Norton's candor in discussing the archival situation in Illinois in her public writings, most of which were published in the "house organ," *Illinois Libraries*. Even in her professional correspondence with fellow archivists, historians, and librarians, Norton seldom criticized the problems she faced within the Illinois State Library.

It is doubtful, however, whether such constraints affected Norton's views on archival theory. More likely, this self-censorship related principally to putting the best face possible on the daily annoyances and power plays within the library. In one candid comment, however, Norton did admit that her views might sometimes be exaggerated for effect. At the 1940 American Libraries Association annual meeting Norton and Roscoe Hill, chief of the classification division of the National Archives, debated the proper

basis for classification of archives. In her monthly report to the Illinois State Library, Norton conceded, "Both of us probably overemphasized our points of difference deliberately, because we feel that the whole subject should be kept open to discussion until American archivists have had more experience with the subject."<sup>76</sup> It would be a mistake to read too much into this statement. But it does seem likely that part of Norton's unflagging insistence on the legal aspects of archives was at times a deliberate counterpoint to the prevailing view that archives should be regarded principally as historical sources. This lends credence to Brichford's belief that she was attempting to restore a more balanced view of archives than the prevailing notion that they served an essentially historical or scholarly purpose.

If Norton emphasized the legal aspects of archives for pragmatic purposes, it is worth examining the extent to which such arguments succeeded. Although Norton seldom expressed complete satisfaction with her achievements and repeatedly felt that her efforts were constrained by the State Library administration or by a lack of staff, on the whole her efforts must be recognized as successful. "Norton brought the Illinois State Archives to the forefront of public archives," Richard Berner concluded. Norton not only exerted considerable personal influence on the development of the archival profession in the 1930s and 1940s, but she had "established a model public archives."<sup>77</sup> One measure of her achievement was the successful campaign for a new state archives building. From the beginning of her tenure as State Archivist Norton had lobbied for facilities adequate for archival purposes; the building dedicated in 1938 was only the third public archives building constructed in the United States for such purpose. "The Illinois State Archives, which under Margaret C. Norton had become an important center of archival work, moved into its new building in 1938, and its activities contributed significantly to a reorientation of archivists," Ernst Posner wrote in 1964. "The archives and records management program of the state of Illinois is known as one of the outstanding programs in the United States," Posner concluded. "The archives program of Illinois owes some of its characteristics and much of its national and international reputation to the leadership of Margaret C. Norton, who developed it to a high level of perfection."<sup>78</sup> This did not mean that she always received the appropriations or new staff that she requested. But the success of an archival institution can also be measured in its influence as a model for others, and in this respect, at least, Norton's success is beyond doubt.

## Legacy

An examination of Margaret Cross Norton's personal correspondence and reports clearly indicates that the archival theory for which she is so well known did not originate in ivory tower musings on the meaning of life or the origins of records. Rather her "archival philosophy," as she called it, derived from daily experience, from experimentation, and from the realities of a life lived in service to the public. An appreciation for Margaret Norton as a pragmatic archivist dedicated to the needs of public officials enables us to see her as a bold and consistent advocate for the significance of records in administration of state government. Norton adopted European archival principles such as provenance and the moral defense of archives, but she adapted them to the require-



ments of modern American records. She pleaded for recognition of archives as legal records, but she also recognized their secondary importance for historical research.

Margaret Norton's perspective on archives as legal records must be acknowledged as an essential part of archival identity. However, she also understood that some archival records were historical documents and that the historical significance of archives must be preserved. Norton's legacy needs to be reconsidered in light of her private writings and the practical reasons behind her archival philosophy. Although influenced by Jenkinson, she did not remain a strict Jenkinsonian in her views. She believed that archives are more than just historical sources, but she did not deny the historical importance of archives. Margaret Norton presented a more complex and nuanced theory of archives than either her advocates or her detractors have recognized. She deserves to be remembered for promoting European principles, but also for developing distinctively American adaptations. She espoused adherence to theory and principles, but she practiced experimentation and innovation. Above all she represents the ultimate triumph of American pragmatism and the emergence of a distinctive identity for archivists, free from the control of both historians and librarians. With a background in both of these disciplines, Norton proclaimed a separate identity as an archivist.

Although her influence moved archivists away from their reliance on historians and the traditions of the historian-archivist, Norton's views should not lead archivists to abandon their dual heritage. The profession must recognize both the legal and administrative identity of archives and their historical significance. Rather than pulling the profession apart into separate camps of historian-archivists and archivist-administrators or of practitioners and theorists, Norton's legacy should remind archivists of their twin responsibilities. The continuing challenge for archivists is to balance these dual aspects of archives: to maintain both their legal and administrative integrity and their usefulness for historical research.

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26. Norton to Birdsall, May 24, 1973, in MCNWP, 3/1206.
27. Norton to Birdsall, June 18, 1973, in MCNWP, 3/1239.
28. John Higham, *History: Professional Scholarship in America* (Baltimore: Johns Hopkins University Press, 1965): 92–116; Mattie U. Russell, "The Influence of Historians on the Archival Profession in the United States," *American Archivist* 46 (summer 1983): 280.
29. Berner, chapters 1–2; Luke J. Gilliland-Swetland, "The Provenance of a Profession: The Permanence of the Public Archives and Historical Manuscripts Traditions in American Archival History," *Ameri-*

- can Archivist* 54 (spring 1991): 165–166. See also William F. Birdsall, “The American Archivist’s Search for Professional Identity, 1909–1936,” (Ph.D. diss., University of Wisconsin–Madison, 1973).
30. Norton to Birdsall, June 18, 1973, in MCNWP, 3/1234. Norton, in fact, was not the “first” archivist to adopt this position, which had already been advocated by historians such as Waldo Gifford Leland and by a few archivists, including Arnold J. Van Lear, but she quickly became the most articulate spokesperson for this perspective.
  31. Norton, Archives Monthly Report, October 1946, in MCNWP, 1/1348.
  32. Norton, “Archival Training,” December 10, 1938, in MCNWP, 4/398.
  33. Norton in *The Archives Division of the Illinois State Library* (1931) in MCNWP, 1/068.
  34. Norton in *The Archives Division of the Illinois State Library* (1931) in MCNWP, 4/398–399.
  35. Norton, “Training of Archivists,” in MCNWP, 5/377–378.
  36. *Norton on Archives*, 27. “I find that even today few archivists have ever heard of this book,” Norton complained in 1973. “Familiarity with the principles laid down there are very helpful to the archivist.” Norton to Birdsall, June 18, 1973, in MCNWP, 3/1240.
  37. Norton to Birdsall, June 18, 1973, and October 26, 1973, in MCNWP, 3/1242 and 3/1263.
  38. Norton to Birdsall, May 31, 1973, in MCNWP, 3/1215. Solon J. Buck, director of publications at the National Archives, had taught the first course at Columbia in 1939. Berner, 105.
  39. Norton to Birdsall, October 26, 1973, in MCNWP, 3/1265.
  40. Norton to Francis L. Philbrick, February 2, 1940, in MCNWP, 5/346.
  41. Norton, Archives Monthly Report, November 1940, in MCNWP, 1/433.
  42. Norton to J. B. Speer, February 5, 1942, MCNWP, 5/1368.
  43. Transcript of proceedings, SAA round table on classification and cataloging, October 25, 1938, in MCNWP, 4/151–152.
  44. Norton to Birdsall, June 18, 1973, in MCNWP, 3/1242.
  45. Norton to Birdsall, October 26, 1973, in MCNWP, 3/1263–1264.
  46. Helen L. Chaffield to Norton, March 11, 1945, in MCNWP, 6/373–374.
  47. Norton, Archives Monthly Report, October 1946, in MCNWP, 1/1347.
  48. Norton to Birdsall, May 31, 1973, in MCNWP, 3/1212.
  49. Ernst Posner, “A Tribute to Margaret C. Norton,” in *Norton on Archives*, viii.
  50. Norton, Archives Monthly Report, June 1939, in MCNWP, 1/224.
  51. Norton, Archives Division Report, November 1939, in MCNWP, 1/292.
  52. Norton, Archives Monthly Report, March 1946, in MCNWP, 1/1258; August 1946, in MCNWP, 1/1309.
  53. Mary Givens Bryan of the Georgia Department of Archives and History noted that Norton’s focus on details may have led her to neglect “the bigger aspects, which kept her from being a top administrator.” Quoted in Lancaster, “Margaret Cross Norton,” chapter 4.
  54. Norton to Lester J. Cappon, January 15, 1944, in MCNWP, 6/214–215.
  55. Norton to Solon J. Buck, February 1, 1946, in MCNWP, 6/400.
  56. Norton to Carl L. Lokke, May 4, 1946, in MCNWP, 6/608.
  57. Norton to Grace Lee Nute, November 22, 1940, in MCNWP, 5/158.
  58. Norton to Birdsall, May 24, 1973, in MCNWP, 3/1205.
  59. Norton to Charles Gates, February 25, 1938, in MCNWP, 4/869.
  60. Norton to Francis S. Philbrick, November 13, 1939, in MCNWP, 4/1341.
  61. Norton, “Program for Preservation of Local Archives,” January 1940, in MCNWP, 5/311–312.
  62. Norton to Birdsall, June 18, 1973, in MCNWP, 3/1234–1235.
  63. Norton quoted in Lancaster, chapter 4.
  64. Transcript of SAA round table on classification and cataloging, October 25, 1938, in MCNWP, 4/151.
  65. Norton to Charles C. Williamson, November 13, 1939, in MCNWP, 4/364.
  66. Norton, Archives Monthly Report, May 1940, in MCNWP, 1/366.
  67. Norton, typescript review of *Manual for the Arrangement and Description of Archives*, May 1940, in MCNWP, 5/070.
  68. Norton to Solon J. Buck, January 13, 1940, in MCNWP, 4/337.
  69. Norton to Philip C. Brooks, February 23, 1940, Society of American Archivists records, file 200/03/01, University of Wisconsin–Milwaukee.
  70. Norton to Birdsall, October 26, 1973, in MCNWP, 3/1265.
  71. Gilliland-Swetland, 165–66.

72. Maynard Brichford, "Academic Archives: *Überlieferungsbildung*," *American Archivist* 43 (fall 1980): 457.
73. Gilliland-Swetland, 165.
74. Norton to Birdsall, June 18, 1973, in MCNWP, 3/1243.
75. Norton to Birdsall, June 6, 1973, in MCNWP, 3/1222.
76. Norton, Archives Monthly Report, May, 1940, in MCNWP, 1/366.
77. Berner, 16, 31.
78. Posner, 30, 98, 101.

# BETWEEN AUTHORS AND USERS: ARCHIVISTS IN THE COPYRIGHT VISE

BY WILLIAM J. MAHER

**ABSTRACT:** The historical, social, economic, and political context of American copyright law is considered as a backdrop for archivists' role as both mediators and advocates on copyright. Effective administration of archives and service to donors and users require an understanding of the basics, including scope of copyright coverage, nature of exclusive rights, fair use, library and archival provisions, transfers of ownership, and expiration of term of copyright, with especial attention to the distinction between published and unpublished material.

In recent years, the general public has become much more aware of copyright issues, albeit often with erroneous perceptions. Nowhere is this reflected better than on the Internet, such as in comments made in an August 12, 1999, "alt." newsgroup discussion that followed a photographer's comment about a bill erroneously thought to be in Congress that "would allow photographers to copyright as many images as they wished."

The problem is that once you put these images on the internet, the images belong TO THE INTERNET. . . . Congress can pass whatever law they want. They are completely IRRELEVANT. Once those images have been downloaded off of your server, they are HISTORY. . . . I could take any image off the internet now and print perfect copies. As many copies as I want. Copyrights are history. What do you think all that blank videotape and audiotape they sell in the stores are for? STEALING copyrighted work.<sup>1</sup>

Despite the fact that there was no legislation to this effect pending at the time and the fact that the writer misunderstood how copyright is established, the quotation illustrates the pervasiveness of misconceptions about copyright and the extent to which the very idea of copyright has been called into question in the current information age.

From time immemorial, archivists have been extraordinarily affected by broad societal changes emerging from technical developments in the mechanisms for recording and transmitting information. In fact, if it were not for such technological innovations as clay tablets, paper, moveable type, steel-point pens, carbon paper, typewriters, and electronic computers, archivists would have no work. Too often, it seems that the effects of information technology on archival work are considered only in the context of

how to utilize technology to access archival material or in terms of the problems that novel information formats create for longevity and access.

However, since at least the fifteenth century, changes in the machinery for recording and transmitting information have spawned legal and economic imperatives to control the quantity of new information suddenly enabled by the technology. These imperatives take the form of legislation and regulation of what has come to be called “intellectual property.” Such laws and regulations are created largely on behalf of commercial interests in protecting the authors’ and producers’ financial stake in the production of multiple copies of works intended for a mass audience. The result is that intellectual property laws inevitably dictate limits on what can be done to make archival material accessible for users.

Since the 1976 act, which first extended federal copyright to unpublished material in the United States, the formulation of rights bundled together under the heading of “copyright” has had a pervasive effect on how archival work can be done. Forty years ago, it may have been possible for archivists largely to ignore issues of copyright since unpublished materials were not subject to U.S. federal copyright law and the machinery for copying them was very cumbersome and expensive.<sup>2</sup> However, several developments over the course of the twentieth century—the broader interest of the public in copying and disseminating information, the highly capable machinery for copying and transmitting information, and the expanded coverage of copyright law—have made it absolutely essential that even the most junior of twenty-first-century archivists be familiar with copyright issues. Further, the drastic changes that are caused by commercially driven legislation in an era when the information and entertainment sectors are so important to the economy mean that professional archivists collectively need to be very active on the public policy front to ensure that archives’ and users’ needs are not overwhelmed inadvertently by legislative changes designed for commercial intellectual property.

Recent changes to the U.S. copyright law, especially those in 1998, are both the culmination of trends and a demonstration of the need for archivists to be ready to study all proposed future legislative changes and, when appropriate, to take public positions. This article will provide a historical/philosophical perspective on copyright for archivists and a brief guide to the archivally relevant aspects of the U.S. copyright law.<sup>3</sup>

Long before the American Revolution, several developments in England related to the introduction of printing, the Protestant Reformation, English Civil War, and the landmark Statute of Anne (1710), laid the foundation for what became American copyright law.<sup>4</sup> The Founding Fathers dealt with issues of access to information and copyright in the Constitution and Bill of Rights. Believing in the importance of encouraging intellectual and industrial development, but also fiercely distrusting monopolies, they provided in Article I, Section 8 that Congress shall have the power “To promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” As part of the same legal tradition, which was also concerned about the free exchange of ideas, the First Amendment provided a further check on these limited monopoly rights in its freedom of the press clause.<sup>5</sup> The implementation of these principles has fallen to Congressional legislation—beginning with the first copyright act of 1790, subsequent major

rewritings in 1831, 1909, and 1976, and many other revisions such as those in 1998—and major court decisions from 1834 to the present.<sup>6</sup>

The legislative and judicial history of copyright in the United States, not to mention its relation to international treaties and laws of other countries, is complex, but not without significant effect on daily archival practice. We should begin by considering some general principles that should be manifest in archivists' administration of copyright.

One underlying premise of archival work is that our purpose is to make accessible the information and evidence of the past for the benefit of as broad a community of users as possible.<sup>7</sup> Although the SAA "Code of Ethics" does not specifically address copyright, it makes clear that archivists have professional responsibilities to both creators and users of documentary material.<sup>8</sup> A reasonable extrapolation of this principle is that, for archivists to merit the confidence of society, we must respect the limited monopoly rights that the original authors/creators have in the documentary material we hold as we assist researchers in using historical records. Archivists should not work to profit from commercial exploitation of the intellectual property created by others that is now in their custody. Likewise, we need to make sure that our users are aware of their own obligations to respect intellectual property rights in the materials we hold.

To meet these competing interests, archivists must often serve as go-betweens. We need to inform users of the limits that exist on what they can do with the material they draw from our repositories. To support the needs of users, we also need to approach collection donors to secure ownership of intellectual property rights so that we may make material available readily and freely to future generations of researchers. We need to be steadfast in maintaining our middle position as brokers, not truly owners or profiteers of material, and we need to publicize forthrightly the fact that our role is to be brokers.

At the same time, however, as purveyors of the raw material for the transmission of knowledge and culture, we have a responsibility to support the use and accessibility of cultural works. Archivists, along with librarians, are in a unique position among those who work with intellectual property. We neither create nor truly consume (for some ultimate utility) the information we hold. In this position, we sometimes need to serve as independent advocates for the users. To do so, archivists must understand the nature of copyright and its impact on use so that when a researcher wants to utilize the information we hold in order to expand knowledge or benefit society, he or she will be able to do so without the encumbrance of the rusty chains of old rights holders. From this basic professional mission comes a mandate for us to advocate on behalf of the fundamental importance of a free information society.

These are the general principles that should drive our administration of copyright and shape our public policy advocacy on copyright issues in Congress and the courts. However, to determine exactly what needs to be done in daily archival administration, indeed, even to understand what the copyright issues are that affect archivists, one must look closely at the legislation and relevant court decisions. In the United States, copyright is legislated at the federal level, where the various copyright acts have been codified in Title 17 of the U.S. Code.<sup>9</sup> In looking at Title 17 or at any of the various acts passed by Congress on copyright, one quickly sees a confirmation of that old adage that

making law is very much like making sausage—lots of disassociated parts pushed together and forced into a single, rather impolite shape. For confirmation, one need only look at the rather unlikely inclusion of protection for boat hull design as Title V of the 1998 Digital Millennium Copyright Act (DMCA) or the inclusion of provisions for small restaurants and bars to play music in the 1998 Sonny Bono Copyright Term Extension Act.<sup>10</sup>

Over the course of their careers, many archivists will find it necessary to read large sections of Title 17, although a good summary of the current provisions can be found in Michael Shapiro and Brent Miller, *A Museum Guide to Copyright and Trademark*.<sup>11</sup> The following is intended as a brief guide to highlight those provisions of Title 17 of most direct relevance to archival work.

### **Subject Matter of Copyright**

We need to understand what types of material in our archives are and are not subject to copyright limitations. These issues are addressed by Sections 102 through 105 of Title 17. Copyright exists “in original works of authorship fixed in any tangible medium of expression . . . from which they can be perceived, reproduced, or otherwise communicated . . . .” Note that since the 1976 copyright act, the works need not be published, nor after 1977 does copyright need to be registered. Before the 1976 act, unpublished material was covered by common law rights that existed in perpetuity. In this regard, the 1976 establishment of a statutory nature of copyright privileges and limitations was a major step forward for archivists.

The scope of what constitutes works of authorship is quite broad: 1) literary works; 2) musical works and accompanying words; 3) dramatic works, including music; 4) pantomimes and choreographic works; 5) pictorial, graphic, and sculptural works; 6) motion pictures and other audiovisual works; 7) sound recordings; and 8) architectural works. However, copyright protection applies only to original works of authorship, and it explicitly does not extend to “any idea, procedure, process, system, method of operation, concept, principle, or discovery.” Nor does copyright protection extend to any work of the U.S. government. By separate state action, many state government works are also not subject to copyright restrictions.

### **What Are the Rights Enforced by Copyright?**

Essentially, the idea behind copyright is that the creator of a work holds the exclusive right to limit the copying, presentation, and adaptation of a work. Section 106 details these creator’s rights as follows:

1. to reproduce the work;
2. to prepare derivative works;
3. to distribute copies of the work by sale, rental, lease, or lending;



4. to perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
5. to display the copyrighted work publicly, in the case of literary, musical, dramatic, choreographic, pantomimes, pictorial, graphic, and sculptural works; and
6. to perform the copyrighted work publicly by means of a digital audio transmission, in the case of sound recordings.

In addition, the Visual Artists Rights Act of 1990 added Section 106A to provide special rights for creators of visual art.<sup>12</sup> This one shadow of the continental European so-called "moral rights" protects the creator's right to claim authorship of the work, prevent the use of his or her name as the author of works he or she did not create, prevents any intentional distortion, mutilation, or other modification of that work, and prevents any destruction of a work of recognized stature; but these apply to visual works only and only for the lifetime of the creator.

The exclusive rights in Section 106 are quite broad and controlling, such that little practical use could be made of authors' works if these rights were not balanced by several limitations contained in Sections 107 through 120. These limitations are the center of concern for archivists and librarians because they both allow us to provide information to users and restrict us in exactly how we go about that work.

## Fair Use

Although they are not addressed specifically to archivists and librarians, the fair use exclusions in Section 107 are likely to be the sections of the law that the archivist has to explain most to users. Essentially, Section 107 states a series of instances where infringement of the exclusive rights granted in Section 106 is permissible. Added by the 1976 copyright act, the fair use section appears relatively simple and is certainly brief enough to become part of every archivist's daily phrase book:

Notwithstanding the provisions of Sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

The key aspects to understanding the fair use provisions are the purpose and character of the use, which must be of an educational and noncommercial type; the nature of the material, with creative works enjoying more protection than factual ones; the amount used, which may not be such that it replaces the original; and the effect on the market, such that the use does not supplant the market for the work. The basis for each of the factors is the concept that for a use to be fair, it cannot adversely affect the compensation that may be due to an author, and that the use should be transformative, leading to the creation of new works. In considering the four factors to determine if an infringement constitutes fair use, it is absolutely essential to note that the courts have held that it is the *combination* of the factors, rather than the presence or absence of any single factor, that makes a use fair or unfair.<sup>13</sup>

Following a number of related court cases in the wake of the 1976 copyright act, archivists and manuscript librarians became very anxious about making copies for users.<sup>14</sup> Indeed, the implications of cases, including one in 1987 in which a biographer of J. D. Salinger was prevented from including paraphrases from Salinger's unpublished writings, gave reason for concern that fair use could not be applied to unpublished material.<sup>15</sup> A more thorough reading of subsequent court cases and legislative action suggests that worries that fair use could not apply to unpublished material were greatly exaggerated. The most important basis for setting aside the early worries about the implications of *Salinger v. Random House* is the language of the 1992 Fair Use of Copyrighted Works Act, which specifically rejected the Second Court of Appeals' rules and declared that the unpublished nature of material could not be used as a per se basis to find against fair use. In passing this law, Congress accepted the Supreme Court's 1985 ruling in *Harper & Row v. Nation* as a proper balance between encouragement of broad public dissemination and safeguarding the right of first publication, and it also criticized the *Salinger* court as having read *Harper* too narrowly.<sup>16</sup> The relevance of the 1992 Fair Use of Unpublished Copyright Works Act is reinforced further by a later court opinion in the case involving a scholar's extensive use of unpublished manuscripts of author Marjorie Kinnan Rawlings in which the court applied the new law to uphold the fair use rights of the scholar.<sup>17</sup>

The interconnectedness of the four factors is probably the point that archivists have to emphasize most to users whose first reaction often is to look for a simple device or silver bullet to relieve them of pursuing permissions. However, archivists and users alike must remember that it is not the archivist who determines what constitutes fair use or what constitutes an infringement. Rather, a copyright holder first must claim infringement and, after considerable legal fees have been paid by both sides, it is the courts that makes the determination on the fairness of use.<sup>18</sup> These concerns aside, the doctrine of fair use and its formulation into the 1976 law are exceedingly important to the fundamental objectives of archives and archivists.

## Special Provisions for Archives and Libraries

Given the history of litigation leading to the 1976 law, it is not surprising that Section 108 incorporated provisions to deal with library copying, copying for library users, interlibrary loan, and preservation copying. The 1998 DMCA incorporated further revisions to the Library and Archives provisions that reflect both technological adaptations and clarification of issues in previous legislation, although difficulties remain for archival material not addressed adequately by Section 108.

It is important for archivists to understand the differences among the several subsections within Section 108 and the extent to which some are more appropriate for libraries and published material than for archives and unpublished material. Overall, the purpose of Section 108 is to articulate further limits on the exclusive rights granted to copyright holders in Section 106. To qualify for these exemptions, the archives or library must be open to the public or they must be available not only to researchers affiliated with the library or archives or with the institution of which they are a part, but also to other persons doing research in a specialized field. Furthermore, to qualify for the Section 108 exemptions, the copying cannot be done for any commercial gain, and all copying allowed by Section 108 must carry a notice that the work may be protected by copyright.<sup>19</sup>

With these qualifiers, Section 108 allows libraries and archives to make copies under several different circumstances. First, they can make no more than one copy of a work and distribute such copy. In the case of preservation copying, the 1998 revisions to the copyright act provided for slightly different conditions for archives as opposed to libraries. In the case of unpublished materials, Section 108 (b) allows an archives or library to make three copies of an unpublished work. Furthermore, unlike the 1976 act, which may have limited these copies to facsimiles, the 1998 act allowed the use of digital technology to make copies of unpublished materials for the purpose of preservation. Given the pressures of the digital arena, it is important to note that the section places a clear limit on the dissemination of digital copies: they "may not [be] made available to the public in that format outside the premises of the library or archives."

In the case of published materials, Section 108 (c) places greater restrictions on preservation copying. Although allowing three preservation copies and the use of digital instead of solely facsimile technology, preservation copying of published materials is allowed only if: 1) the original is damaged, deteriorating, lost, stolen, or obsolete and an unused replacement cannot be obtained at a fair price; and 2) any digital copy is not made available to the public in that format outside the premises of the library or archives. The 1998 act defined "obsolete" as "the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace."

Sections 108 (a), (d), and (e) contain further general limits on the allowances they make for library and archival copying. The copying qualifies for the exemption if "the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and the library or archives displays prominently, at the place where orders are accepted, and includes on its

order form, a warning of copyright. . . .” Similarly, in the case of self-service photocopiers, a copyright notice must be posted (§108 f).

The Copyright Term Extension Act of 1998 added Section 108 (h) to allow digital or facsimile copying of published works in the last 20 years of their term, subject to some rather complicated qualifiers to this permission [§108 (h), 2, A–C]. However, since this permission applies only in the case of published works, it has limited relevance to archival concerns.

Note that the copying that archives and libraries can do on behalf of users, e.g., for interlibrary loan or reference, applies only to conventional textual materials and not to audiovisual, photographic, or musical works. The relevant portion is Section 108 (i), which makes clear that allowance for library and archival copying is not meant to apply to a “musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news . . . .” Thus, the allowance for archives to make reference copies for remote users, which is the backbone of correspondence-based reference service, applies for conventional manuscripts but not for much of the photographic, motion picture/videotape, and musical recordings that are increasingly popular parts of modern archives.

### **Ownership and Transfers of Ownership**

Over the life cycle of collections, archivists need to be attentive to who owns the copyright in materials they hold. As with much else in copyright law, the only reliable answer to the question of who owns the rights in an item is, “It depends.” At its simplest, copyright belongs initially to the author or authors of the work. However, ownership becomes more complicated with joint works, where the coauthors are co-owners. Especially complicated can be the ownership of works made for hire, where the employer or other person for whom the work was prepared is considered the author and owns all of the rights unless there has been a separate written agreement to the contrary. Not every work authored by an employee is a work for hire; rather, this provision applies only to a work prepared by an employee within the scope of his or her employment or a work specially commissioned for use as a contribution to a collective work if the parties expressly agree in writing that the work shall be considered a work made for hire.

As managers of documentary material created by others, and often created by persons from outside the archivist’s parent institution, archivists are generally well aware that ownership of copyright is distinct from ownership of physical documents themselves (see Section 202). Thus, merely because a historical society, for instance, has been given a collection of old negatives and photographs does not mean that it can publish such material or grant copyright permission for others to publish any of the images. Instead, permission must be sought from the original creator or the employer if the photos qualify as works for hire.

Because the term of copyrights can endure for a very long time after the death of the author, many archives have found that serving users can be facilitated if the repository obtains a transfer of copyright ownership from collection donors through an explicit statement in a formal deed of gift. In order for the transfer of ownership to occur, it must conform to the provisions of Section 201, which essentially requires that the transfer be

made formally by “any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.” Section 204 provides that such transfers be in writing. Although obtaining such a conveyance in a deed of gift is a great help to future researchers, it often is of only limited effect. First, if the donor is not the author but only a next of kin, the donor may not be aware of some assignments of copyright that the author has already made, perhaps as a condition of employment or a condition of publication, such as for articles and books. Second, the transfer can apply only to those parts of the collection written by the author, such as outgoing correspondence, but not that authored by others, such as incoming correspondence.<sup>20</sup>

### **Duration of Copyright**

More than any other player in the mix of rights incorporated in federal copyright legislation, archivists and librarians have an especial responsibility to be concerned about the length of time that copyright protection endures. Chapter 3 of the copyright act outlines the duration of copyright. Since the first U.S. copyright act in 1790, the length of copyright has been steadily expanded from 14 years with one renewal possible, to the present: life of the author plus 70 years. In the case of works for hire, such as work-related material created by employees, the term is now 95 years from first publication or 120 years from creation. Insofar as archives frequently contain materials published before 1978, one should be aware that different rules apply to such materials that could already be in the public domain.<sup>21</sup> For materials created but unpublished or unregistered before January 1, 1978, the term is also life of the author plus 70 years, but in no case does the term expire before December 31, 2002. Despite the very negative effect of the 1998 extension, a more damaging 1995 proposal (H.R. 989) would have delayed the expiration of such very old copyrights to 2012. So archivists, as advocates for their users, should remain very attentive in the period leading up to 2003, to guard against any new efforts to prevent the oldest copyrighted material from entering the public domain.<sup>22</sup>

As agents for multiple future generations of research users of information locked in copyrights, archivists and librarians need to be advocates for copyright terms consistent with the U.S. constitutional provision (Article I, Section 8) that they be “to promote the Progress of Science and useful Arts” and “of limited term.” By definition, archivists in particular are responsible for works with permanent research value and that remain under copyright protection long after their commercial value has disappeared. This may also be long after there is any means to contact successive rights holders for permission to utilize an item in new works. Further, unlike published library material, archives contain vast quantities of material that have never had the benefit of public availability through issuance in multiple copies, but that still are locked in copyright restrictions.

The issue of copyright term illustrates the tension between commercial and consumer concerns versus cultural and educational values. One can appreciate why large commercial copyright holders, especially such entertainment complexes as Disney, would want to extend the term of copyright ever longer to allow more time to secure profits from old material. Nevertheless, the constitutional purpose of copyright and the funda-

mental notion of balance implicit in the Anglo-American notion of copyright since at least 1710 argue for adherence to the Constitution's clear mandate for limited terms.<sup>23</sup>

### The Challenges Ahead

Because copyright determines how widely information in all forms can be disseminated and because it has sweeping effects on what may be done with the evidence and information over which we preside, it should be a central professional concern to archivists. Thorough knowledge of the multiple issues such as original ownership, exclusive rights, fair use rights of users, and transfers of copyright should be a basic element in the education of a professional archivist. Furthermore, practicing archivists need to be attentive to public policy changes in the international and U.S. forums that affect their work and the users we serve.

The archivist's role is increasingly difficult because of the changing nature of our post-industrial society. As the economy has moved away from dependence on farmed, mined, and manufactured goods, it has promoted commerce in ideas and information. For sociological and political reasons, an especial importance has been assumed by the fixation of ideas and information into media that constitute diversions and entertainment. The success in creating a large market for entertainment information has not only defined the post-industrial era, but it has created political pressures to limit what at base does not want to be fenced in: the flow of information.<sup>24</sup> Although the cultural and educational information that is of primary concern to archivists and librarians has not been the target of such legislative efforts, the legislation designed to protect the intellectual property so central to the entertainment and information industries has not differentiated the commercial from the cultural and educational consequences of regulating the rights of creators and users of intellectual property.

Given the difficulty that archivists and users have faced in trying to locate rights holders as they seek to publish the results of their research, we would all be better served by allowing copyrights in unpublished material to expire at an early date. Although archivists lost the 1998 battle on term extension, we made critical points that defined a high road for our interests. In late 2001, when the Digital Future Coalition filed an *amicus curiae* brief asking the U.S. Supreme Court to hear an appeal in the case of *Eldred v. Ashcroft*, which seeks to have the 1998 term extension declared unconstitutional, the Society of American Archivists (SAA) played an important role in crafting the brief.<sup>25</sup> As more and more aspects of copyright in a digital age have become the center of public attention, legislation, and litigation, archivists need to understand how their interests in copyright relate to those of other users of intellectual property. We must look forward to continued advocacy efforts so that the next time commercial interests want to add even more to the 70-year term or restrict "fair use" rights, we can at least work to exclude unpublished materials from being denied further to the public domain.

The prospects seem dim for any fundamental change in the conditions that gave rise to the 1997-1998 legislative actions. Information technology continues on an accelerated, centuries-long track for broader transmission and expedited copying, and the global economy is moving to greater dependence on information content. Furthermore,

regardless of what conditions we may believe are supported by U.S. constitutional provisions of copyright, in the global economy, international treaties, such as the Berne Convention, the World Intellectual Property Organization (WIPO), or even agreements within a body such as the European Union seem to overshadow national laws. Thus, U.S. copyright law is subject to rewriting according to those international agreements made by large players, often heavily represented by global content providers interested in designing intellectual property laws to protect their investments rather than to encourage broad dissemination or the promotion of science and the useful arts. Thus, although profitability—and the political stakes—become higher as we move further into the post-information entertainment age, our ability to have a distinctive American archival voice heard becomes more difficult.

Despite these challenges, the archival profession recently has become more active and effective in contributing to the debate over copyright. The SAA's involvement in the 1998 term extension legislation, the subsequent *amicus* brief in *Eldred*, and perhaps similar action in the parallel case of *Golan v. Ashcroft* are signs of how the profession must become more actively engaged in public policy as the center of archival interests—information and evidence—become the core of an international information economy.<sup>26</sup> To fulfill our core responsibilities to our parent institutions, to the historical records in our custody, and to our users communities, we will need to blend these roles with the need for advocacy—as professionals, lovers of learning, and citizens of the United States.

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## NOTES

1. Emphasis in original. Readers familiar with Sections 102 and 302 of the Copyright Law will immediately recognize the poster's error: the copyright in a photograph subsists from the time it is created and fixed in a tangible medium of expression. Further, a search of the Library of Congress's Thomas Web site does not reveal any references to such legislation pending in 1999 about the "number of items which a photographer could copyright."
2. In the United States prior to the 1976 revision of the copyright act, unpublished materials had no federal protection, rather, they were covered as a form of common law property governed by state laws varying from jurisdiction to jurisdiction.
3. Note that the author is not a lawyer and is not presenting this text as legal advice. Rather, it is an outline of the legislation to explain issues that may be of concern in daily archival work. Readers who require a formal legal opinion should consult their institution's legal counsel office.
4. Lyman Ray Patterson, *Copyright in Historical Perspective* (Nashville, Tennessee: Vanderbilt University Press, 1968): 20–150. In the 65 years following the Statute of Anne, a series of English cases clarified the meaning of the law for authors, publishers, and readers. Most important was *Donaldson*

- v. *Beckett* of 1774, when the House of Lords found that copyright was based on the Statute of Anne, not on common law, and they affirmed that an author's rights and those rights assigned to a publisher were not perpetual but limited to a fixed time. Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, Massachusetts: Harvard University Press, 1993): 93–112.
5. The clause reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." See also Neil Weinstock Netanel, "Locating Copyright Within the First Amendment Skein," 54 *Stanford Law Review* (2001): 1–86.
  6. For a good discussion of the consumer and public policy issues involved in recent Congressional action and court cases see Charles C. Mann, "Who Will Own Your Next Good Idea?" *Atlantic Monthly* (September 1998): 57–82.
  7. James M. O'Toole, *Understanding Archives and Manuscripts* (Chicago: Society of American Archivists, 1990): 58. Mark Greene, "'The Surest Proof': A Utilitarian Approach to Appraisal," *Archivaria* 45 (spring 1998): 127–169 and especially 150–151.
  8. <[www.archivists.org/governance/handbook/app\\_ethics.html#code](http://www.archivists.org/governance/handbook/app_ethics.html#code)>. Examined January 17, 2002.
  9. United States Copyright Office (2000). *Circular 92: Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code*, <[www.loc.gov/copyright/title17/](http://www.loc.gov/copyright/title17/)>. Examined January 18, 2002.
  10. Provisions on boat hull design became Chapter 13 of the copyright law. Provisions regarding playing of music in small bars and restaurants became §513 (and amendments to §110 inter al.) via Chapter II of the Sonny Bono Copyright Term Extension Act. There is an interesting parallel in the inclusion of boat hull designs in the DMCA with one of the earliest laws dealing with the granting of exclusive rights: Florence's 1421 grant to Filippo Brunelleschi of a patent for a specific boat hull design. [Ross King, *Brunelleschi's Dome* (New York: Penguin Books, 2000): 112–17.]
  11. Michael S. Shapiro and Brett I. Miller. *A Museum Guide to Copyright and Trademark*. (Washington, D.C.: American Association of Museums, 1999).
  12. According to §101, a work of visual art includes: "1) a painting, drawing, print or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer . . . or 2) a still photographic image produced for exhibition purposes only . . ." *Nimmer on Copyright* (New York: Matthew Bender and Leix Publishing, 2000) notes that this definition disqualifies ". . . the vast majority of products resulting when someone snaps a camera's shutter." (8D.06[A]1).
  13. The Supreme Court has said, "Nor may the four statutory factors be treated in isolation, one from another. All are to be explored, and the results weighed together, in light of the purpose of copyright." *Campbell v. Acuff-Rose Music*, 510 U.S. (1994) at 578.
  14. A good early introduction to the cases is Kenneth D. Crews, "Unpublished Manuscripts and the Right of Fair Use: Copyright Law and the Strategic Management of Information Resources." *Rare Books & Manuscripts Librarianship* (1991): 61–70.
  15. The Second Court of Appeals argued that the Supreme Court ruling in *Harper & Row v. Nation* (a 1985 case involving *The Nation's* preemptive publication of surreptitiously obtained excerpts from a Gerald Ford memoir) prevented the application of the fair use defense in the case of unpublished materials.
  16. The 1992 act's legislative history provides emphatic support for this interpretation: *Congressional Record* vol. 137, no. 136 (September 27, 1991) S 13923–25 and vol. 138, no. 118 (August 11, 1992) H 7991–92. See also *United States Code Congressional and Administrative News* 102nd Congress, Second Session, P.L. 102–492, vol.5, 2553–2562. Furthermore, in the 1991 case of *Wright v. Warner Books* (unpublished materials could be used in a biography based on fair use factors one, three, and four), the 2nd Court of Appeals backed away from its earlier categorical statements in *Salinger*. Although the court saw unpublished material as less open to quotation under "fair use" provisions, it stated "Neither *Salinger*, *Harper & Row*, nor any other case, however, erected a *per se* rule regarding unpublished works. The fair use test remains a totality inquiry, tailored to the particular facts of each case." *Wright v. Warner Books, Inc.* 953 F.2d (1991).
  17. *Sundeman v. Seajay Society Inc.* 142 F. 3d 194 (4th Cir. 1998) at 29–30.
  18. Several Internet sources provide useful guidance in assessing whether a particular use might be considered a "fair use": Georgia Harper, "Crash Course in Copyright," <[www.utsystem.edu/OGC/IntellectualProperty/cprindx.htm#top](http://www.utsystem.edu/OGC/IntellectualProperty/cprindx.htm#top)>, and "Fair Use of Copyrighted Materials," <[www.utsystem.edu/](http://www.utsystem.edu/)



- OGC/IntellectualProperty/copypol2.htm>. Especially helpful is Kenneth D. Crews' *Copyright Management Center* site (<<http://www.iupui.edu/~copyinfo/aboutcmc.html>>), including the "Fair Use Check List" (<<http://www.iupui.edu/~copyinfo/fucheckintro.html>>). Examined January 18, 2002.
19. For guidance on the form of notices, see information at Kenneth D. Crews' *Copyright Management Center* Web site: <<http://www.iupui.edu/~copyinfo/copying.html>>. Examined January 18, 2002.
  20. Sample language for a Deed of Gift might be: "To facilitate the research use of the collection, the Donors hereby give and assign to the Donee those rights of copyright that the Donors have in the collection." One might also ask the donors to transfer their rights of trademark, publicity, and privacy, if any, in the materials.
  21. A convenient guide for archivists and librarians is the table prepared by Peter Hirtle, "When Works Pass into Public Domain in the United States," *Archival Outlook* (January-February 1999), also available at <<http://cidc.library.cornell.edu/copyright/>>. Examined January 18, 2002.
  22. In the time remaining before January 2003, there are issues that should concern archivists about actions that could reduce the scope of material to enter the public domain at that time: Kenneth D. Crews, "Do your manuscripts have a Y2K+3 problem?" *Library Journal* (125:11) June 15, 2000: 38-40.
  23. On Disney's involvement in the 1998 Copyright Term Extension Act, see "Disney Lobbying for Copyright Extension No Mickey Mouse Effort," *Chicago Tribune* (17 October 1998): 22 or Bill McAllister, "Special Interests: Mouse Droppings," *Washington Post* (15 October 1998): A 21. See also, Michael H. Davis, "Extending Copyright and the Constitution," 52 *Florida Law Review* (2000): 989-1037. For a scholarly study of the constitutional issues see Paul J. Heald and Suzanna Sherry, "Implied Limits on the Legislative Power: The Intellectual Property Clause as an Absolute Constraint on Congress," *University of Illinois Law Review* (2000): 1119-1197.
  24. Although the combatants in suits over the legality of Internet information-sharing protocols such as Napster are ready to take off their gloves at the first mention of the phrase "information wants to be free," it is undeniable that the notion has captured the attitude of many users since it was first articulated by Stewart Brand in *The Media Lab: Inventing the Future at MIT* (New York: Viking, 1987): 202-207.
  25. See <[http://www.archivists.org/news/copyright\\_amicus.html](http://www.archivists.org/news/copyright_amicus.html)> and <<http://eon.law.harvard.edu/openlaw/eldredvreno/>>. Examined January 18, 2002.
  26. *Golan v. Ashcroft* No. 01-B-1854 (D. Colo. filed Sept. 19, 2001) (conductor and others questioning constitutionality of retrospective and prospective extension of copyright term by the 1998 Copyright Term Extension Act and restoration of copyright works by the 1994 Uruguay Round Agreements Act).



# PUBLICATION REVIEWS

*Documenting Society*. CD-ROM. Version 1.1. By Ann Pederson, Mark Brogan, and Alin Huma. Perth, Western Australia: School of Computing, Information and Mathematical Sciences, Edith Cowan University, 2000. \$500.00. 802 pp. Instructional guide with Internet links, videos, interactive illustrations, charts and tables, photographs, glossary, up-to-date bibliography, full texts of key readings, and workbook.

*Documenting Society*, a CD-ROM presentation by Ann Pederson, Mark Brogan, and Alin Huma, all from Edith Cowan University, presents for both the novice and seasoned professional in the field a two-pronged view of the world of records and archives. The first is a philosophical overview of the history and necessity of records management and the establishment and maintenance of archives. The second is a practical set of guidelines for assessing physical, institutional, and policy needs for creating, storing, and accessing records, among other issues. However, this is no dry textbook-like introduction to the combined fields of archives and records management. This is a multifaceted presentation with video, linked Web sites, and additional articles of high relevance, together with a workbook component (with both broad and detailed questions, as well as a challenging level for those who want or need a challenge) so students can test themselves along the way. All this in a tidy little package. This is a "must read" for the newcomer to the field, provided the cost (\$500) is not prohibitive.

Pederson and company have compiled some of the more timeless and relevant articles of recent years by noted professionals such as Richard Cox to augment their own perusal of archives and records management history and its application from ancient times to the present. The overarching theme to the text, related articles, and media contained on the CD-ROM seems, from the American perspective, to be a much-needed call for the merging of the archives and records management professions in a venue in which it might have some long-term effect—on students. A noble undertaking. In introducing archives and records management students to the idea that the two fields are intertwined—perhaps dependent on one another—advocates of the combined approach may garner some support for this idea in the future. This is one of the presentation's greatest assets, philosophically speaking.

From a practical standpoint, there are clear definitions of all terms used, charts to compare users, access, and other needs of records to help students evaluate the multiplicity of issues that will be presented to them in the professional world. The authors define the things whose meanings we all think we already know, such as "record" and "recordness," i.e., the quality that makes a record authentic. And this reminds us, as professionals, why we are who we are and what our mission is or ought to be. In that way, *Documenting Society* has the capacity to create new professionals who are dedicated, impartial stewards of records.

All this aside, there are some flaws in this CD-ROM presentation. While this is a format with much to offer in terms of compacting a great deal of information into a portable size, in providing access to extraneous information, and in providing a multimedia experience, there are "glitches" in need of ironing out. Even when viewing this

CD-ROM on an average workplace computer with a relatively recent operating system and all the bells and whistles to enable adequate viewing of such a presentation, there were difficulties. The videos, which were excellent in content, were difficult to view: they were all of two by two inches and any attempts to enlarge the viewing area resulted in grainy, unviewable images. Though annoying, this is acceptable, provided the user considers the aural content to be of more interest. Less acceptable was the poor text quality. Perhaps there were problems in converting the text data to this format; perhaps it was an editing problem. Either way, there were sections of text that were completely undecipherable, at least until our IT folks came around to do a routine update, which no user should assume is necessary to read the CD text. Nonetheless, some articles remained disturbingly poorly edited. In James O'Toole's article in module 1.02, the repeated typographical error was "sign)ficant." That, along with other numerous misspellings, too many or too few spaces, and the like created quite a distraction.

Does any of this detract from the quality of the content of *Documenting Society*? No, but it brings to bear the question of presentation. Such errors create the sense that perhaps the presentation was put together too hastily or insufficiently tested. Though this is probably not the case, whatever the reason the technology here leaves much to be desired. Though trivial, it is doubtful that Richard Cox would care to see that he is an Associate Professor at the University of "pittsbulrgh" and that he is one of the Directors of the Project on the Functional Requirements for Evidence in Electronic "RecOrd~<eePing" (module 1.05 reading). At least this is how my computer translated it.

However, with some minor revisions in the technological capacity and delivery of the presentation and a more thorough editing of the text, this would be an excellent package for presentation to students new to the field. There are enough different activities to engage the mind and they are presented at multiple levels to capture the attention of students with different capacities for learning. Additionally, the authors remind us, as archivists, who our public is: it is not simply the researchers who walk into the archives or records center looking for material from 50 years ago. Our public constitutes the creators of the records. This text encourages professionals and students alike to remember that we need to see a bigger picture. As the authors write, "Individual participants [in the record making/keeping cycle], trapped in their own vantage points, seldom consider or appreciate the multifaceted richness of archival records" (module 1.05). If preserved correctly, the records we collect tell miraculous stories about our civilizations.

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*AMIA Compendium of Moving Image Cataloging Practice*. Ed. Abigail Leab Martin, comp. Jane D. Johnson, Linda Tadic, Linda Elkins, Christine Lee, and Amy Wood. Beverly Hills, California: Association of Moving Image Archivists; Chicago: SAA, 2001. \$40.00. 272 pp. Appendices. Soft cover.

The sense that "many moving image archivists seemed to be working alone, with few opportunities to discuss or debate the issues and problems unique to the cataloging of moving image materials and lacking any sort of cataloging standards" (pp. 1–2), motivated the compilation of this joint publication of AMIA and SAA. Stemming from surveys initially conducted in light of the revision of *Archival Moving Image Materials: A Cataloging Manual*,<sup>1</sup> the *Compendium* aims to document practice and to complement, rather than compete with, the revised *AMIM*.

The largest part of the text is devoted to comprehensive analysis of the results from a 78-question survey. It was an obvious challenge to design a survey that provides detailed, useful information while still being relatively easy to comprehend and complete, but the responses indicate that the survey writers were very successful. Nearly all aspects of the cataloging process were examined and the respondents were clearly able to provide substantive answers that illuminate the variety of approaches used in their institutions.

The survey and its analysis cover broad areas of cataloging practice where specific decisions about record creation would be made, including chapters on sources of information, record structure, title, "versions," credits information, production and distribution information, physical description, notes, and name and subject access.

Apart from the content of the survey, the most significant factor in the results was the selection of institutions to participate in the survey. The introduction indicates that nearly half the moving image archives originally asked to participate in the survey did so; the resulting sample represents an amazingly diverse cross section of institutions. It is not immediately clear, however, what criteria were originally used to select participants; this would have been interesting.

The responses of the 27 institutions illustrate an admirable breadth of size, type of institution, subject coverage, formats, etc. In addition, the most fundamental distinctions among institutions, in terms of cataloging, are whether they create records in the MARC format or in some other format, and if those records reside locally or are shared. Institutions completing the survey exhibit all these possible scenarios in their records, making it very difficult to create relevant summaries of best practice. This reality is unfortunate, since part of the appeal of the *Compendium* would be to publicize decisions made by representative archives in order to help others in making similar decisions.

The editor and compilers do an admirable job of analyzing the responses, including citing tantalizing quotations that reveal the frustrations and challenges inherent in policy setting for cataloging. These responses are illuminating and it is unfortunate that more space could not be devoted to the candid thoughts of practicing catalogers within the text. For example, when explaining why commercially released materials were not viewed before cataloging, one respondent asserted that "such material is usually what it says it is—the Archive is prepared to accept the risk for the rare ones that turn out not to be" (p. 23). One respondent summed up the difficulties of setting policy for handling mul-

multiple versions: "It is difficult to set forth rigid guidelines for cataloging multiple versions of films since each case may be unique and may affect the appraisal or preservation function" (p. 124).

Another drawback to the *Compendium* is its format. The conscious decision to limit examples in the print text in order to keep the volume at a manageable size is understandable. In cases where examples are truncated, reference is made to the full example located in Appendix E on the accompanying Web site (accessible from <<http://www.amianet.org/>>). Since examples in the *Compendium* are reproduced only as text, this is useful particularly where the full examples on the Web site are given in their original form, such as a screen shot of a non-MARC database.

The distinction between information presented in the text and that presented only on the Web site does not work as well as one could hope. For example, each institution is given a number in the appendix. In the print work, institution names are spelled out in full, with subsequent references using a logical abbreviation. In the record examples, however, the institution name is spelled out again. This inconsistent nomenclature is confusing and repetitive.

Also, a great deal of space seems to be wasted. Often only one or two examples are reproduced per page; better layout and typesetting would have made better use of the space as well as making it easier to identify institution names and elements of the record without constant repetition of text. The lack of header text and distinctive chapter divisions makes it difficult to determine where in the analysis a given example falls. Also, the nearly limitless space available on the Web site was not fully utilized. The complete responses to the survey would have been very interesting, especially given the revealing comments quoted throughout the text that are apparently not available in their entirety.

In a way, the *Compendium* consists of two discrete parts: the analysis and summary of the survey responses, which are of interest to a general audience, and the examples to illustrate the responses, which might be of more interest to catalogers working with particular formats or genres. Perhaps bibliographic and database records could have been presented only on the Web site for those interested in consulting the full example without detracting significantly from the analysis. As is it, however, the text and the Web site must be consulted together by anyone trying to really grasp the structure of the records. Since *AMIM* uses only MARC-coded examples, it is particularly useful to see non-MARC records for cataloging records reproduced faithfully on the accompanying Web site.

Despite these formatting drawbacks, several important points emerge from the examples and their accompanying analysis. Even among institutions with similar structures or collecting areas, there is very little shared cataloging practice. Decisions fundamental to the creation of cataloging records can be made in many ways dependent on the institutional context and they can all be "right." Archives that use MARC records appear to be as variable in how they construct records, at least in some fields, as their non-MARC counterparts.

Another theme throughout the *Compendium* is of archives in transition. In some ways, moving image archives are less traditional than print archives, but even so the responses make it clear that policies are being changed, practices are being reviewed in light of technological changes, and material is being handled differently because of external

forces such as grants and staffing. The frequency with which many institutions answered “not yet” to a variety of questions dealing with practice and policy indicates that archives are aware of possible changes on the horizon.

This thought-provoking work presents many different ways for catalogers to accomplish the goal of enhanced access to often specialized collections. The same survey might have yielded completely different results had it been distributed to a different set of institutions. Its usefulness, therefore, lies in its ability to highlight workable approaches, rather than as a guide to best practice in moving image archival cataloging. Since many decisions about how to catalog moving image materials will be made based on factors removed from abstract cataloging ideals, the *Compendium* helps save catalogers from reinventing the wheel when determining cataloging policy and practice. It would be very interesting to see this work updated or revised on an ongoing basis, particularly if the problems with the layout could be addressed. Nonetheless, the snapshot of cataloging practice it offers is interesting, thorough, and stimulating.

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<sup>1</sup> White-Hensen, Wendy. *Archival Moving Image Materials: A Cataloging Manual* (Washington, D.C.: Library of Congress, 1984); 2nd ed. (Washington, D.C.: Library of Congress, 2000).







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