Private Lives: Confidentiality in Manuscripts Collections

SARA S. HODSON

Librarians and archivists administering collections of modern personal papers encounter a number of concerns inherent in collecting materials by individuals who are still living. One of the chief concerns for archivists and manuscripts curators who manage modern collections relates to the questions of privacy and access. These questions encompass both legal and ethical considerations that are of ever greater concern to those of us who undertake the responsible administration of modern manuscripts. This paper will consider some of these issues, drawing examples from experiences with modern literary collections at the Huntington Library.

When acquiring and processing a modern manuscript collection, a curator or archivist must be alert and sensitive to the privacy rights of the individual who generated the papers. Moreover, the correspondence files for a living or recently deceased individual will contain not only the individual's letters but also those of friends and family, many of whom are likely to be still living. Therefore, the privacy of a good many people may be at stake when a modern collection is opened to researchers. In the SAA Manual Archives & the Law, Gary Peterson and Trudy Huskamp Peterson identify the invasion of privacy as a civil offense that can occur in any of several ways: “1) intrusion upon the individual’s seclusion or solitude, or into his private affairs; 2) public disclosure of embarrassing or private facts about the individual; 3) publicity that places the individual in a false light in the public eye; 4) appropriation, for another person’s advantage, of the individual’s name or likeness.”

To guard against any of these kinds of invasion of privacy, restrictions may be placed on all or part of a collection. Usually, it is the donors (or sometimes the sellers) who place restrictions on material, based on their knowledge of the content and of the people represented. Such donor-imposed restrictions are commonly made for a time limit, either a specified period (10 years, 20 years, 50 years, for example), or for

Sara S. Hodson is Curator of Literary Manuscripts, The Huntington Library. This paper is a revised version of a talk presented at the annual meeting of the Society of California Archivists in May 1989.
the length of an individual's lifetime. This kind of restriction is entirely reasonable and is easy and straightforward to administer, for it applies to all access even-handedly and it sets forth clear guidelines for the eventual lifting of the restriction. This simple type of restriction is exemplified in the papers of the English author Kingsley Amis, acquired two years ago by the Huntington Library. At Amis's request, a restriction has been placed on a file of correspondence written by the English poet Philip Larkin. The letters are not to be seen until Amis's death (Larkin died in 1985). Amis's reason for the restriction is that Larkin's letters contain frank references to mutual friends still living. Amis also restricted — again for his lifetime — the manuscript draft of an unfinished, unpublished novel, for the same reason that he has decided not to publish the work: he feels it will be construed as an autobiographical novel, and he does not wish to expend the time and energy that would be required to refute that interpretation.

These two examples illustrate the usual kind of restrictions imposed by donors to protect their own privacy or that of a friend or family member. Such restrictions are fair and reasonable and do not force the curator to make difficult decisions about access. Sometimes, however, donors may make unreasonable requests of the curator. They may, for example, stipulate that only certain individuals or groups be denied access to a collection, or they may assert that the material is for the exclusive use of one or more persons and that all others are to be turned away. In cases such as these, the restriction option is not really being exercised in order to ensure privacy but to wield power by granting or denying access, or to make the material and its use a forum for personal, political, racial, or other biases or prejudices. Moreover, such unequally applied restrictions constitute a denial of the principle of equal access, a precept to which librarians and archivists are ethically bound to adhere.

What is to be done by curators who have the responsibility of administering collections burdened with inappropriate or onerous restrictions accepted by their predecessors? Often, the curators have no choice but to put up with a situation not of their own making. They might be able to renegotiate the restrictions if the donor is still living and approachable. If a curator is very fortunate and a collection came to the library far enough in the past, from donors long since deceased, he or she might be able quietly to lift inappropriate restrictions. This was, in fact, done by a recent Curator of Manuscripts at the Huntington upon promotion to department head. A collection decreed by its donor never to be used by women was opened by the (female) curator for unrestricted access, as was another collection which had been closed to any individuals of British extraction. A third collection had long been closed to Jews, Roman Catholics, and the donor's nephew. Clearly, all three collections had languished under unreasonable restrictions. This curator also, by the way, rectified the effects of an overzealous previous curator, Captain Reginald Haselden, a retired British military man who in the 1930s benevolently supervised the manuscript cataloging done by a cadre of spinster ladies. Legend has it that the Captain, before
doling out new collections to the ladies for cataloging, would sanitize the papers by removing and restricting any love letters or other racy items he found.

In contrast to the vigilant Captain Haselden, curators and archivists today are concerned with the possibility of placing curator-imposed restrictions, not to safeguard the sensitivities of staff members, but to protect the privacy rights of individuals who are authors, addressees, or subjects of modern manuscript materials. In those situations where no restrictions were imposed by the donor but the curator discovers potentially defamatory or sensitive material in a collection, he or she is faced with an ethical, and perhaps a legal, dilemma. To make available material that violates an individual's privacy or is potentially libellous or defamatory may make one's library vulnerable to legal action. At the very least we curators must be concerned about the ethics of privacy. The Code of Ethics for Archivists, approved by the Society of American Archivists in 1980 says, "Archivists respect the privacy of individuals who created or are the subjects of records and papers, especially those who had no voice in the disposition of the materials."

The message is clear: it is in our hands to safeguard the privacy of those who cannot do so themselves. Yet, curator-imposed restrictions must be used with great caution. When the case for restriction is not clear-cut, there can be a danger that the curator’s values may be imposed on the material. The curator or archivist must seek to protect individuals’ privacy without engaging unwittingly in censorship. Letters, after all, are by their very nature private communications, but we would not therefore, in the name of guarding privacy, restrict all letters written by individuals still living. Rather, we make the difficult, delicate judgments on a case-by-case basis, and there are no easy rules to follow.

While cataloging the Kingsley Amis Collection mentioned above, I considered the possibility of restricting one correspondence file. The file consists of letters to Amis from another English author, containing scores of bawdy, even obscene, limericks. Knowing that this author is still alive and presumably unaware that his letters are in a research library in California, and keeping in mind the privacy statement in the SAA Code of Ethics, I had to consider the possibility that he might be embarrassed if his letters are read by scholars. In addition, I knew that the Philip Larkin letters had been restricted at Amis’s request to protect third parties mentioned in the letters. I even discussed with colleagues the possibility of writing to the individual to learn his reaction. This notion was ultimately rejected on the grounds that we might only invite trouble by calling his attention to the letters and pointing up their ribald qualities. I finally decided against restricting the file because, by restricting it, I would merely be projecting my own sense of propriety into this individual’s letters. We had, after all, no real reason to conclude that he would be embarrassed by his limericks being read by others.

A more clear-cut case arose over letters in another twentieth-century British collection, the papers of Lord Kinross, a journalist and author who died in 1976.
Shortly after the Huntington Library acquired the collection, an elderly gentle­woman who had been a friend of Kinross’s came to look at the papers. After reading a series of his letters describing some homosexual liaisons, she came to me in extreme distress to plead that such material be restricted to protect his memory. She had known of his homosexuality but had apparently never thought a great deal about how the lifestyle might be reflected in his personal correspondence. I felt much sympathetic distress at the shock she had received from seeing those letters, and I assured her we would consider her recommendation, but by no means could I ultimately restrict the letters. Lord Kinross is dead, he left no descendants who might be embarrassed, and his lifestyle was known to his friends and associates.

Of far greater professional concern to me are scores of sensitive letters in the Kinross Collection written by other homosexuals. I have no way of knowing whether these individuals, many of whom are still living, would be embarrassed if their lifestyles as reflected in their correspondence were to be known to researchers. Moreover, the fact that these individuals wrote openly to Lord Kinross concerning rather intimate details of their lives cannot be construed as evidence of an open, generally known lifestyle. To an astonishing degree, Kinross was a confidante to dozens of his friends so, when a letter contains sensitive information, it is often impossible to determine whether or not Kinross is the sole recipient of such information. Even if I do decide to restrict some files, many of the individuals are not prominent enough for their death dates to be easily ascertained as a terminus for the restriction. This is a dilemma whose solution I don’t know. On the one hand, I must consider, in the context of SAA’s Code of Ethics, that the individuals whose letters are in the Kinross Collection don’t know their letters are in California, they had no say in this disposition of their correspondence, and their privacy rights cannot be ignored. On the other hand, I have no concrete indication in most instances that the individuals would be embarrassed if their letters were opened for research. At this time, I do not know how I will handle these correspondence files.

It is in cases such as this that curators and archivists experience the greatest difficulty in balancing freedom of access with respect for privacy. Rather different in nature are those instances when a curator discovers in a collection material that is defamatory to a living person. Defaming an individual is a more serious matter than invading that person’s privacy, and it is more likely to be considered actionable. For curators, perhaps the most problematic kind of defamation is the accusation or revelation of criminal activity contained in a manuscript collection. In this event, the curator or archivist must attempt to determine whether the documents reveal merely an unsubstantiated accusation, or actual evidence of wrongdoing, a distinction described in the Petersons’ legal manual as trying to “tell a smoking gun from a water pistol.” As the Petersons point out, if a collection includes clear evidence of a crime, the curator or archivist is constrained to make this known to legal authorities. However, if documents contain only allegations unsupported by evidence, then there
is no clear obligation to report the accusations. The trick, of course, is to recognize clear or firm evidence. The Petersons’ wise counsel is that legal advice may well be necessary in such a case. If a determination can be made that an accusation is indeed without evidence, then the cautious curator should restrict the material until the defamed individual’s death, both to protect the individual and to protect the curator and the repository. While a researcher who publishes such allegations is probably a more likely target for a lawsuit than is the institution holding the documents, still it is wise to hew to the prudent course and close the file in question.

Thus far, we have considered the ethical and legal implications concerning privacy and the restriction of modern manuscripts. No less important are the mechanics of administering restricted materials. In a strictly practical sense, there are a number of basic procedures the archivist or curator can follow to ensure that restrictions are complied with by both donor and institution and are smoothly and properly handled by all staff members. Most important for materials with donor-imposed restrictions is the deed of gift. A signed deed of gift is an essential instrument accompanying any new acquisition as proof of ownership for the institution. But it is particularly important where restrictions are concerned as a means of establishing the terms of the restrictions and the donor’s agreement to them. If a collection comes to an institution as an unrestricted gift, this should be explicitly stated on the deed of gift. If a collection or any parts of it are to be restricted, the deed of gift should state the nature and length of the restrictions fully and clearly. This serves not only to guide curators and archivists, but also to protect them and their institutions in case the donor suffers a change of heart or a lapse of memory about the terms of the restrictions. Moreover, it is probably wise to document the date that restrictions are lifted, again to protect the curator and the institution.4

Once restricted materials are accepted in an institution, or once the curator has placed restrictions on materials, they should be stored separately from the collection of which they are a part, and separately from other collections. This is an obvious procedural measure which ensures that restricted items will not be provided mistakenly to researchers. Preferably, restricted materials should be kept under separate lock from the rest of the library’s holdings, accessible only with a key that is not readily available to all staff members. If separate storage is not possible, or in the case of materials that can be seen only with the donor’s permission, for example, then the boxes, shelves, and records for the material should be clearly labeled to forestall error.

It is useful in implementing and administering restrictions to draw up an in-house list of restricted materials, identifying the materials by collection or file name and setting forth the terms of the various restrictions. Such a list should be distributed to the appropriate staff members involved with manuscripts. Like the separate storage of restricted materials, the restrictions list helps to ensure that the staff does not mistakenly provide access to the material.
The conscientious curator, in dealing with the myriad practical, ethical, and legal complications involved in administering modern manuscripts, faces a daunting responsibility—one that has become ever more complex in the litigious and more privacy-conscious 1980s and 1990s. In the light of several recent cases, the curator's position is an ever more uneasy one. The case of J. D. Salinger and the unauthorized biography by Ian Hamilton became well-known as it unfolded over the past several years. It began as a privacy case in which Salinger sought to preserve his privacy by refusing to cooperate with Hamilton. It became a copyright case as well when Salinger retroactively copyrighted his private letters held by Harvard, Princeton, and the University of Texas in an effort to block Hamilton from quoting the letters. The courts ultimately upheld Salinger's case, ruling that Random House could not publish Hamilton's book with quotations or even paraphrases of Salinger's letters. Hamilton rewrote the book one last time and it was finally published, no longer a biography of Salinger so much as an account of why it isn't a biography.5

This case has disturbing implications for archivists, librarians, scholars, and publishers concerned with freedom of access and fair use. Indeed, the Salinger case has already been cited as precedent in two other cases concerned with copyright and fair use. In Craft vs. Kobler, a 1987 case concerning a biography of Igor Stravinsky, Robert Craft, Stravinsky's personal assistant, filed suit against the author and publisher of a work to be entitled Firebird, A Biography of Igor Stravinsky. Craft's suit held that Kobler exceeded "fair use" in quoting the composer's words. The Southern District Court of New York agreed with Craft, despite the fact that the letters and interviews had already been published, and issued a preliminary injunction against the publication of Firebird. Similarly, in a 1988 case, a court stopped the second printing of Russell Miller's biography of Scientology founder L. Ron Hubbard. In order for the book to be published, most quotations and close paraphrases from Hubbard's unpublished letters and interviews would have to be excised.6

Now, if the issue of privacy seems to have been lost in a tangle of copyright and fair use issues, it is because Salinger himself clouded the question by copyrighting his letters. The Salinger ruling, while overtly a copyright decision, does seem to have implications for the question of privacy. It showed that living authors or other well-known figures who discover that their letters are housed in a research library to be read and used by scholars, can find recourse in court. They can, in other words, safeguard their privacy by means of a strict application of copyright law. This is, indeed, a sobering thought for curators and archivists who are already well aware of the ethical dilemmas inherent in dealing with modern personal papers. We may take little comfort in the knowledge that, although Salinger did consider naming the Harvard, Princeton, and Texas libraries in his suit, he finally brought suit against only Hamilton and Random House.

Whether coincidence or another sign of the greater concern with privacy, at least one other recent incident gives us reason to worry that excessive zeal in maintaining
privacy can result in the permanent loss of important modern papers. According to
a report of the Manuscript Society, “An international symposium that had gathered
to honor the memory of novelist James Joyce ended in angry, stunned disbelief when
a Joyce descendant announced he had destroyed Joyce family letters. Also destroyed
was correspondence by playwright and novelist Samuel Beckett.” Stephen Joyce,
the novelist’s grandson, had destroyed all his letters from his aunt, James Joyce’s
daughter Lucia, who died in 1982. Stephen Joyce’s announcement drew angry
criticism from literary and scholarly circles, as well as protests from descendants of
poets William Butler Yeats and Ezra Pound, who contended that material about great
writers cannot remain private but has wider import for the world. Joyce defends his
decision as a personal one, made in order to guard his family’s privacy. However,
Joyce and Beckett scholars assert that what he destroyed was of tremendous
importance to the study of the relationships among Joyce, Beckett, and Lucia.
Stephen Joyce admits that his motivation to destroy the letters was based on his anger
at hearing of the emphasis on the explicit, erotic 1909 love letters between James and
has not read the book although, according to a review in the Times Literary
Supplement, he did censor its text. Acting through Britain’s Society of Authors, Joyce
expurgated the book’s final chapter, which briefly recounted the last 30 years of
Lucia’s life, spent in an English mental institution, following Nora’s death in 1951. In
justification for his action Joyce remarked, “Nora’s life ended on April 10, 1951. What
has anything after that to do with Nora’s life? The answer is nothing.”

Stephen Joyce further justified his action in a letter to the New York Times Book
Review published December 31, 1989, insisting on his family’s right to privacy and
expanding on his point that, since Lucia’s letters were written long after James and
Nora Joyce’s lifetimes, they have no bearing on Joyce’s life or writing. The grandson’s
argument in favor of his position is strong and impassioned, as would be expected
from one who had taken such a permanent and controversial step: “I have not
destroyed any papers or letters in my grandfather’s hand, yet [emphasis added].
Unlike others close to the Joyce family, I do not sell Joyce papers, letters, memorabilia, etc. I keep those I am fortunate enough to have, buy others and destroy some,
such as Lucia’s letters to us, which if seen by outsiders and made public would be an
intolerable, unbearable invasion of my family’s privacy.” In the face of what he feels
to be unusually intense incursions into the Joyce family’s privacy over the years, Joyce
goes on to state the credo lying at the center of his actions: “I firmly believe that there
is a part of every man or woman’s life, no matter how famous he or she may be, that
should remain private. . . . Enough is enough, even too much.” Clearly, Joyce’s ire
arises not only from the public outcry which has beset him, but also from previous
instances in which the Joyce descendants have felt besieged by intrusions.

Into the climate of notoriety surrounding the Joyce letters has stepped another
literary descendant, Janna Malamud Smith, whose father Bernard Malamud died in
1986. Prompted by the Joyce case, Smith recounts in the *New York Times Book Review* the dilemmas she and her family face in trying to determine the disposition of her father’s papers. In a cogent, well-reasoned discussion of authors, their published writings, and personal papers, Smith rightly questions the trend in recent biographies toward the disclosure of intimate, private details of their subjects. Noting that authors have, in effect, surrendered their own and their families’ privacy by the publication of their works, she points out the powerlessness of authors’ families to refute intrusive or untrue biographical accounts. Smith’s conscientious struggle with the question of how much access to allow researchers into private family matters leads her to only a tentative, partially satisfactory conclusion: “Will we burn papers or letters? I do not yet know. . . . Because there are few limits to what biographies these days will write, I imagine many families will become more careful about what they tell. If an audience for his fiction persists, my grandchildren might wish to make public Bernard Malamud’s private letters and journals. I doubt I will.”

To Smith, the library and archival professions can only send a message Stephen Joyce either did not receive, did not heed, or received too late: restrict sensitive or personal papers for as long as you deem necessary, but please don’t take the ultimate step of destroying them. Long after the deaths of those who would suffer embarrassment or undue invasions of privacy concerning sensitive materials, the papers of literary and other public figures will be of great value to coming generations of scholars.

In marked contrast to Stephen Joyce’s irreversible actions and to Janna Malamud Smith’s worries is the openness of the widow and children of John Cheever. The Cheevers elected to publish the late author’s letters and diaries with no hint of suppressing or expunging their frank revelations of his bisexuality and alcoholism. Cheever’s son Benjamin, who edited the volume of letters published in late 1988, stated his reason for not deleting the sexually explicit portions of the letters: “I had an implied contract with my readers. You don’t leave something out because it is impolite. Had I done so, I would have imposed my priggishness on his life.” While it is true that the Cheever family’s own interests appear to be served best by retaining control of the papers and issuing the letters themselves, and while it is true that the family remains locked in a court battle over the publication of John Cheever’s uncollected stories, still there is apparently no indication that they have attempted to guard Cheever’s reputation or privacy through either destroying or restricting any of his letters.

While scholars and archives professionals are right to decry Stephen Joyce’s destructive acts and to admire the Cheever family’s apparent openness with regard to the letters, no ethical archivist or manuscripts curator should be immune to the Joyce family’s impassioned pleas for privacy or for the well-reasoned concerns of Janna Malamud Smith. In light of the above cases and others, is there cause for hope that we can manage modern research collections ethically and legally without unduly restricting freedom of access? There are no ready solutions to these dilemmas, but
some general guidelines present themselves. First, the privacy of an individual ends upon death, and libel, although legally extending to both the living and the dead, can be used as a basis for lawsuit only by the libeled individual. Heirs may bring such a suit only if they, as well as the individual, have been injured.\textsuperscript{15} Therefore, although an individual's descendants may feel that the family privacy is at stake, it is only the individual whose privacy is directly affected by correspondence which he or she has written or in which he or she is named. This means that curators and archivists need feel no legal constraints to guard the privacy of individuals no longer living. They are, however, bound by ethical constraints to honor any reasonable restrictions of sensitive material requested by the descendants of those individuals.

A second and very different guideline must be followed when dealing with sensitive and private materials in the papers of living people. In such instances, the curator or archivist must attempt to discover whether the sensitive data about the individual are already matters of public knowledge. If not, then he or she must seek to determine whether the revelation of such information would result in embarrassment or injury to that individual. In the event that these determinations cannot be made with any degree of confidence, then the archivist or curator must try to make the difficult decision as to whether the private information is in any way consistent with the individual's public persona or known ethos, or whether it is at variance with his or her customs and mores and therefore likely to cause embarrassment if revealed. The curator or archivist may also need to consider the established customs, ethics, and morals of the individual's society and social circles when attempting to determine whether revealed information would be embarrassing or injurious. Obviously, this approach is inexact, and librarians and archivists following it may feel themselves to be on footing no firmer than quicksand.

This in-depth treatment of the papers of living people presupposes the curator's detailed knowledge of a collection, or it rests on the collection being of small, manageable size and the curator having the time to examine the material closely. What is to be done with an enormous modern collection that can be given no more than bulk or batch processing due to staff and time constraints? There is no small irony inherent in the fact that, because of the massive size of many modern collections, we often cannot give them detailed attention, but that particular attention is precisely what we ought to give them because of their currency and the legal issues at stake. This is one of the most perilous predicaments of all for curators and archivists, and I know of no easy, clear, or even very satisfactory solutions.

Yet some general recommendations can be made. The curator's first recourse is to the donor of the material. The donor is the person most likely to have intimate knowledge of the papers, particularly if the donor is closely related to the creator of the papers, and he or she should be questioned about the existence and nature of any sensitive materials and about restriction possibilities. Beyond this, in order to decrease even minimally the risk of inadvertently releasing embarrassing private papers for research, curators would be well advised to become as knowledgeable as
possible (given the usual constraints of time) concerning the lives and careers of the principal individual(s) represented in the personal papers being collected and processed. Any information that can be gathered from any source beyond the donor, be it an entry in a biographical dictionary or a full-fledged biographical or historical monograph, will not only facilitate the simple name recognition of those present in the collection’s files, but it can also increase the curator’s chance of successfully assessing the potential presence in the papers of sensitive, embarrassing, or defamatory materials. Armed with even a rudimentary knowledge of the people and events, the curator might be able to review selectively and quickly the files or portions of files that bear potential for restricting. The curator or archivist could also randomly sample other portions of the collection in search of sensitive material. Clearly, this is far less than ideal and is far less than a guarantee that all (or even any) private materials will be identified for restriction, but for large collections it might be all the curator can accomplish. The only way to be absolutely sure about sensitive materials is to review collections in search of them, and curators and archivists would do well to do as much as they can manage, whether it be random sampling, the informed selection of files for review, or an exhaustive review of the entire collection.

Finally, if private, sensitive material in our keeping does become publicly known, we can take what uneasy comfort we will in the knowledge that libraries and archives are not apt to be sued. Archivists are unlikely to have knowledge of the falsity of the information, this being the necessary condition for a libel suit. Moreover, the more likely party to be named in a libel or invasion of privacy suit is the researcher who publishes the sensitive information, not the curator or archivist who administers the papers containing that information. This is reassuring to those of us who seek to administer modern collections in a conscientious manner. However, it is by no means a guarantee or even a strong indication of archival immunity. We still must tread the narrow, rock-strewn path between responsibility to the privacy rights of individuals on the one side, and open access to research materials on the other. We must be aware of the right to privacy but not paralyzed with apprehension or indecision as we deal with modern research collections. Curators and archivists can, as adherents to sensible and responsible guidelines, succeed in appropriately protecting privacy while making modern papers available for research.

NOTES


8. The Joyce and Salinger cases are reminiscent of the Harding family’s protection of Warren G. Harding’s reputation years after his death. After adulterous love letters from Harding to Carrie Phillips were discovered by biographer Francis Russell in 1963, the Harding family obtained the letters and denied Russell permission to publish or quote from them. Russell’s biography of Harding, *The Shadow of Blooming Grove* (McGraw-Hill, 1968), was issued with blank spaces (literally, hyphens enclosed in brackets) taking the place of the disallowed quotations. For an account of the letters’ discovery and disposition and of the Harding family restrictions, see the preface and chapter 22 of Russell’s book. See also Kenneth W. Duckett, “The Harding Papers: How Some Were Burned . . .,” *American Heritage* 16 (February 1965): 24–31, 102–109, and Francis Russell’s companion piece in the same issue, “The Harding Papers: . . . and Some Were Saved,” an earlier version of the account given in chapter 22 of his biography.


11. Ibid.


16. Ibid.