

In Secret Kept, In Silence Sealed: Privacy in the Papers of Authors and Celebrities

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Abstract

When administering collections of modern personal papers, archivists must deal with the competing ethics of promoting free and open access to the material while ensuring that the privacy of those represented in the collections is not violated. Lacking specific procedural guidelines, archivists and their repositories must devise their own policies. This paper discusses the issues involved in overseeing modern collections in which there are privacy and confidentiality issues, and it focuses on the special challenges presented by the papers of authors and other celebrities. These challenges are the result of the high level of public interest in celebrities' papers, the personal matters discussed in correspondence in these collections, the potential for issues of privacy to be intertwined with copyright, and the fact that repositories increasingly collect the archives of living authors and celebrities as the papers are being created.

The human heart has hidden treasures,
In secret kept, in silence sealed;—
The thoughts, the hopes, the dreams, the pleasures,
Whose charms were broken if revealed.

(Charlotte Bronte, "Evening Solace"¹)

Like the human heart with its hidden treasures, collections of modern personal papers often possess personal or sensitive data, kept in secret, sealed in silence. When modern manuscript collections contain personal letters and other writings by those who are still living, such materials can present acutely difficult challenges to the curator or archivist charged with overseeing them. In collecting recently-created manuscript material, archival repositories take on the responsibility of properly administering potentially

¹ *The Poems of Charlotte Bronte & Patrick Bramwell Bronte* (Oxford: The Shakespeare Head Press, 1934), 56.

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private or confidential material that could, if seen by researchers, violate the privacy rights of a living individual. In the case of both literary archives and the papers of other famous individuals, this potential problem is often exacerbated. This paper will discuss the definitions of privacy, the difficulties of identifying and dealing with private or confidential materials, the competing ethics of providing access while protecting privacy, and the special qualities that make the papers of authors and celebrities a far more difficult administrative challenge for archival professionals than the papers of ordinary people.

The modern concept of privacy, a right to which Americans assume they are entitled, and from which springs the archivist's concern with privacy and confidentiality in collections of modern papers, is a relatively recent addition to the American legal landscape. The first enunciation of privacy rights in the United States came from the 1890 article "The Right to Privacy (the implicit made explicit)" by Samuel Warren and Louis Brandeis.² Believing that existing law did not sufficiently cushion individuals against the improper or unwarranted revelation of their private affairs and seeking to combat the propensities of the era's yellow journalists to publish gossip and salacious information, Brandeis and Warren sought explicit protection of individuals' rights to keep private information safe from public exposure. In the more than one hundred years since their article appeared in the *Harvard Law Review*, subsequent definitions and interpretations have elucidated and broadened this right. For example, the legal scholar William Prosser identified four ways in which the invasion of privacy can occur: intrusion upon the individual's seclusion or solitude, or into his private affairs; public disclosure of embarrassing or private facts about the individual; publicity that places the individual in a false light in the public eye; and appropriation, for another person's advantage, of the individual's name or likeness.³

Any of these invasions of privacy, but especially the first two—intrusion into an individual's private affairs, and public disclosure of embarrassing or private facts about an individual—can occur as a result of a manuscript repository acquiring and making available the personal papers of a living or recently deceased person. To what degree should manuscripts curators and archivists be concerned with the possible invasion of privacy by virtue of opening a set of personal papers for research? If such concern is appropriate and justified, what resources exist to provide guidance in identifying sensitive material and deciding whether it safely and wisely may be made available for research?

² Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (1890): 193–220.

³ William L. Prosser, "Privacy," *California Law Review* 48 (August 1960): 383–423. See also Menzi L. Behrnd-Klodt, "The Tort Right of Privacy and What It Means for Archivists . . . and for Third Parties," forthcoming in *Privacy and Confidentiality Perspectives: Archivists and Archival Records*, ed. Menzi L. Behrnd-Klodt and Peter J. Wosh (Chicago: Society of American Archivists, 2005).

Conventional wisdom suggests that the right of privacy ends at death, since the dead obviously can no longer be embarrassed by the revelation of personal information. A corollary to this standard tenet acknowledges that modern archives that include the papers of living people do hold the potential for embarrassing those individuals. Even when the creator of a manuscript collection is no longer living, some or even all of his or her correspondents might still be alive and therefore still possess a right of privacy. In fact, the privacy of so-called third parties who may be represented in a collection can be the most worrisome and difficult to address. These third parties had no voice in deciding the fate of the papers, and are unlikely to have been consulted about any potential sensitivity in the collection. In addition, archivists must keep in mind that collections of papers contain letters that are, by definition, private communications intended solely for the eyes of their recipient(s), not for viewing and study by researchers or the curious public. Private letters may well reveal sensitive matters or confidential information that is meant solely for a close friend or relative, or for a confidante.

In view of this possibility, how should archivists proceed when dealing with modern papers of persons still living? The Code of Ethics for Archivists, adopted by the Council of the Society of American Archivists in 1992, offers this advice: "Archivists respect the privacy of individuals who created, or are the subjects of, documentary materials of long-term value, especially those who had no voice in the disposition of the materials. They neither reveal nor profit from information gained through work with restricted holdings."⁴ The overall ethical tenet is clear: archivists must be aware of, and perhaps take steps to safeguard, the privacy of individuals represented in archival collections. The statement does not provide specific guidance, however, about who will determine what is private, or about what criteria might be appropriate in making such a judgment.

Faced with difficult decisions about identifying sensitive materials, and with only general guidelines to follow, archivists, curators and their repositories have devised a wide range of policies and practices. At one end of the continuum, many repositories make no effort at all to define privacy. They even-handedly make available all manuscript material, whether by living or dead persons, regardless of the content of the manuscripts. At the other end of the scale, at least one institution has routinely sealed all letters by living individuals, thereby even-handedly guaranteeing protection of the privacy rights of all living persons represented in the collections. This latter institution, the Bodleian Library at Oxford University, England, came under fire for this policy during 1993 and 1994. Eric Jacobs, the authorized biographer of the English author Kingsley Amis, requested copies of Amis's letters that had been housed in the Bodleian. Even after Amis himself requested the copies, the library declined to produce

⁴ Society of American Archivists, *Code of Ethics for Archivists* (Chicago: Society of American Archivists, 1992).

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them, citing the policy under which it automatically sealed all letters by living individuals. Ultimately, after considerable unpleasant media attention and lengthy correspondence between Amis and Bodleian officials, the library produced copies for Amis, who promptly turned them over to his biographer.⁵

Few, if any, archivists in the United States would implement such a blanket policy of closure. Unless they and their repositories adhere to a uniform practice of opening everything for research, and make no attempt to seal possibly sensitive materials, they will need to devise some policy for governing access to private documents. The most common institutional practice relies on the donor to point out sensitive documents or files. Since the donor typically either created the archive, or is a family member, descendant, or close friend or associate, this approach has the advantage of drawing upon the donor's intimate knowledge of the material at hand and the people, situations, and issues represented in the archive. The donor, armed with this background knowledge, and the curator or archivist, possessing a more detached point of view and awareness of professional ethics and of the law, may discuss or even negotiate what materials in an archive should be sealed, for what reasons, and for how long. Occasionally such negotiations can become intense. Donors often exhibit extraordinary concern about matters of privacy, perhaps in an eagerness to perpetuate or sanitize the good reputation of the creator of the papers. The archivist or curator more typically favors opening the collection and making it freely available to researchers. Once the parties agree on terms of any closure of part or all of a collection, such terms should be written into a deed of gift that is signed by the donor and by a representative of the repository, as a protection for both the donor and the repository.

In agreeing to the terms of restriction that have been requested or recommended by a donor, the curator or archivist must take care that the restriction is fairly and impartially imposed to ensure that the professional ethic of equal access is followed in administering the papers.⁶ In earlier days, research libraries routinely implemented inequitable restrictions that had been requested, or insisted upon, by donors. Every institution has its stories of such closures, most or all of which have been quietly corrected in recent decades. According to oft-told tales from the Huntington Library, one manuscript collection had been declared by its donor (a misogynist, we must assume) to be off-limits to women, while another had been sealed to anyone of British descent, and a third could not be seen by Jews, Roman Catholics, or the donor's nephew. Obviously,

⁵ See Eric Jacobs, Letter to the Editor, *Times Literary Supplement*, 15 April 1994, 17; Marianne Macdonald, "Amis Letters to Larkin Stir up Censorship Row," *The Independent*, 17 April 1994, 5; Dale Salwak, Letter to the Editor, *Times Literary Supplement*, 22 April 1994, 17; and Eric Jacobs, Letter to the Editor, *Times Literary Supplement*, 2 June 1995, 15. Ironically, and to the chagrin of those of us at the Huntington Library, Amis held the Huntington up for praise in making his papers open, while he was criticizing the Bodleian for sealing his letters and denying copies even to him. What Amis did not reveal to the media was that his papers at the Huntington contained material that had been sealed at his request.

⁶ Elena S. Danielson, "The Ethics of Access," *American Archivist* 52 (Winter 1989): 54.

such restrictions constitute acts of prejudice that lead to inequitable access, in violation of ethical tenets of the library and archival professions.

Similarly, curators and archivists should not acquire, except in extremely unusual circumstances, any papers that carry with them decrees of selective access in which the donor or other designated individual retains the right to decide, on a case-by-case basis, and according to his or her own criteria, who will be able to see the collection. Donors may wish to limit access in order to reserve an archive for the exclusive use of an authorized biographer, or of those who have demonstrated the proper reverence or respect for the papers' creator, or they may simply wish to wield power over the papers and over applicants for the donors' favor. Such selective availability not only contravenes the ethic of free and unfettered access that remains a cornerstone of the archival profession in a democratic society, it can also lead to trouble for both the donor and the curator. Copies of material that have been made available to an authorized researcher, for example, may well fall into the hands of someone who was not allowed to see it. This happened with the famous case of some of the papers of Sigmund Freud, which languished under a double set of restrictions. Anna Freud, the psychoanalyst's daughter, would allow only those whom she trusted to see papers in her possession, while Kurt Eissler, a collector of Freud material, held the reins of access to the Freud Archives that he deposited at the Library of Congress. After Eissler's protégé Jeffrey Masson, who had been given access to the papers, publicly espoused findings to which Eissler objected, he was dismissed from his position as projects director for the Freud Archives. For her part, Anna Freud refused to supply copies of papers to a researcher named Peter Swales, who eventually obtained them anyway, merely by asking a more respected scholar to get them for him. By 1986, Eissler's successor as head of the Freud Archives, Harold Blum, opened all of the papers that had been, or were about to be, published, and he announced that restricted materials would be opened in the near future.⁷

Sometimes, donors must make restriction decisions based upon outside influences, rather than upon their own beliefs or preferences or their own judgment about the sensitivity of the papers. For example, in 1999 the Huntington Library acquired the papers of the Anglo-American author Christopher Isherwood (1904–1986), probably best known for his stories of life in Berlin in the 1930s that were adapted as the musical *Cabaret*. The collection includes the original diaries that Isherwood kept throughout most of his adult life, some of which had been published in expurgated form in 1996.⁸ The

⁷ For full accounts of the Freud case, see Janet Malcolm, *In the Freud Archives* (New York: Alfred A. Knopf, 1984), previously published as "Annals of Scholarship: Trouble in the Archives," *New Yorker*, 5 December 1983, 59–152, and 12 December 1983, 60–119; and Jeffrey Moussaieff Masson, *The Assault on Truth: Freud's Suppression of the Seduction Theory* (New York: Farrar, Straus & Giroux, 1984).

⁸ Christopher Isherwood, *Diaries, Volume One: 1939–1960*, edited and introduced by Katherine Bucknell (London: Methuen, 1996).

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editor, Katherine Bucknell, in consultation with the collection's donor/seller, Isherwood's heir and long-time partner Don Bachardy, had omitted passages that could be embarrassing to those still living. The publishing firm's attorneys further examined the manuscript of the book for potentially actionable text. Even with this intensive attention to safeguarding privacy, difficulty arose. The attorneys had read and examined the text of the diaries to be published, but they had not checked the footnotes. A revelation of certain information about an individual was discovered in a footnote by a surviving family member who threatened legal action. As a result of this episode, Bachardy, despite his strong belief in free and open access, reluctantly agreed to impose a restriction on the original diaries in the Isherwood archive. Based on the ages and likely life spans of those mentioned in the diaries, a restriction of thirty years was decided upon.

In dramatic contrast, another modern literary collection involved the Huntington in a nascent legal wrangle as a result of the unethical behavior of its creator/seller. The collection consisted of oral history interviews about a twentieth-century author, conducted with some of his remaining friends and family members. The family members who had been interviewed were promised by the collection's creator that only the edited transcripts would be used. The original tapes contained some private information that they wished to seal for a period of time, and I had agreed to take the material under the same condition. Some months after this collection had been purchased by the library, an angry literary agent representing the family members contacted me. The agent claimed that the creator had broken his agreement by publishing a book that contained quotations from, and references to, the expurgated portions of the interviews. The agent threatened legal action by the family if the library did not immediately return to the family the relevant tapes and transcriptions. Returning this material was not acceptable, but I certainly felt that the wronged parties had a valid complaint. More to the point, they could not be dissuaded in seeking redress, so I explained the virtue of sealing the material for a sufficient period of time to ensure that the privacy of the family members would be respected. Following lengthy negotiations that began with the agent insisting on a hundred-year closure, we finally reached an agreement for a restriction of fifty years—a far longer period than I would have wished for, but the shortest time span that the irate family members would accept in lieu of taking legal action.

When donors or sellers do not recommend any restrictions for privacy reasons, when they are not aware of potentially sensitive materials in an archive, or when there is simply no one left who can offer any guidance, then the curator or archivist may face a difficult dilemma. In such a situation, if a document or file contains letters or other materials that defame a living individual, or that could cause embarrassment to persons still living if the information

were revealed, she or he must decide whether a curator-imposed restriction is necessary and appropriate.

The difficulty, of course, involves establishing criteria and defining what is private in a collection of personal papers. Apart from certain legally protected categories of records, such as patients' and students' records and attorneys' case files, no guidance exists concerning sensitive or embarrassing documentation. Thus the curator or archivist is left to his or her own, or the repository's, discretion to determine which documents in an archive might reveal private information if opened for research. How, then, can the archivist be sure that a restriction is appropriate to the collection and the individuals in it, rather than constituting unconscious or inadvertent censorship? No simple solutions exist. Archivists must take care to seal manuscript material only with the utmost caution, rigorously and objectively analyzing the situation without imposing personal beliefs or values. Of course, this places a nearly impossible demand on an archival professional, and this difficulty leads institutions to apply no restrictions on their own, in the absence of donor requests. If, however, an archivist or curator feels that certain material might contain private information and therefore should be sealed, what criteria can help in reaching a decision when the family or donors either do not know of private material or are not available for advice?

In a previous article on privacy, I recommended that archivists should become as knowledgeable as possible about the moral and social milieu of the individuals represented in the collection, and attempt to deal with sensitive materials based on this knowledge.⁹ An example of this approach arose in the late 1980s, when I began to process and catalog the papers of Patrick Balfour, 3rd Baron Kinross, a travel writer who died in 1976. Because Kinross was unmarried, with no direct descendants, his papers were consigned to the British dealer Bertram Rota Ltd., which sold the archive to the Huntington Library. Kinross, a gay man, was a confidante to an astonishing number of people, many of them gay and many of them still living. As a result, the correspondence files contain numerous letters pouring out intimate, confessional details. Keeping in mind the injunction in the SAA Code of Ethics to respect the privacy of people in collections, *especially those who had no say in the disposition of the papers* (italics supplied), I felt great concern about the possibility that private matters, in particular the "outing" of closeted gay men who felt their sexuality was their own business and no one else's, could be revealed if the letters were opened for research.

In reviewing the correspondence files, I realized that no archivist could determine whether the private matters in the letters had been confided to Kinross alone or constituted more general knowledge. With no family available

⁹ Sara S. Hodson, "Private Lives: Confidentiality in Manuscripts Collections," *Rare Books & Manuscripts Librarianship* 6 (1991): 116–17.

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for consultation, I had no recourse except either to open all of the letters, despite my concerns, or to try to arrive at some sense of whether opening the confessional letters would reveal intimate, private information about people who would have no idea that their private letters had been housed in a research library in California. Taking into account the tenor both of the correspondence in the archive and of the time in which Kinross and his friends lived, when the outing of gays was controversial and many gays remained firmly behind the closet door, I nearly decided to try implementing restrictions based on a sense of this milieu. Still, this prospect proved very disquieting and I felt no confidence that restrictions could be consistently or sensibly applied. As events transpired, by the time this dilemma had been duly considered and the collection had been processed, sufficient time had passed since Kinross's death that I felt that all the correspondence files could probably be made available safely without much risk to anyone's privacy. Thus, the situation resolved itself more as a sort of decision-by-default, rather than as a result of a considered determination of the proper course of action.

The debate that lay behind this decision-by-avoidance is possibly emblematic of an over-active sense of ethics that may afflict some archivists. The potential for revealing private information more often constitutes an ethical concern than a legal one. In fact, it seems highly unlikely that a manuscript repository would be sued for invasion of privacy or for revealing private information. Even if the risk for institutions appears small or negligible, however, the administrators of many repositories might still feel considerable concern about their legal liabilities and therefore might seal sensitive materials. An alternative view of the legal responsibility for safeguarding privacy holds that a repository could actually be protected legally by never restricting any material at all, thus avoiding any responsibility for identifying and dealing with private or sensitive items. This approach leaves the burden squarely on the researcher, who could be held legally accountable for publishing private information. Indeed, the more likely party to be sued is a researcher who publishes private information, rather than an institution. Whether for legal or ethical reasons, though, it is prudent for archivists and curators to be aware of privacy rights and issues and alert to the presence of potentially sensitive material in collections. If archivists can set aside their ethical worries about betraying the privacy of individuals represented in their collections, then the blanket policy of opening everything in collections can safely protect the repository. The decision about which course to follow will depend on a repository's comfort level. Ethically motivated attempts to respect the privacy of individuals in collections inevitably conflict with the legal gamble that a repository can absolve itself of liability by disassociating itself from privacy decisions.

Whatever policy archivists and their repositories adopt for dealing with sensitive materials, collections of the papers of modern authors and celebrities seem to present a somewhat greater degree of difficulty in the area of privacy

than do other kinds of collections. Several reasons account for this. First, authors' and celebrities' papers are high profile, generating much public interest. Second, correspondence and other manuscripts in such collections often deal with personal matters, rather than with historical events or situations. Third, copyright can become intertwined with issues of privacy. Finally, within the past twenty years or so, repositories have increasingly begun to collect the papers of living authors, as the papers are being created. Let us consider each of these reasons in turn.

First, the archives of major authors and other well-known figures document high-profile people and contain high-profile content, leading to a heightened level of interest in those individuals and their activities. In the latter decades of the twentieth century and the opening years of the twenty-first, the growth of tabloid journalism and its offspring, the "tell-all" biography, has spawned a public obsession with knowing scandalous and salacious details about the lives of celebrities. The intrusive interest of the public in the lives of famous people has received comment recently from the relatively anonymous author Charles Webb, whose 1966 novel, *The Graduate*, is famous as the basis for the Dustin Hoffman film. In the news again with the publication of his 2001 novel *New Cardiff*, Webb has suddenly become a focal point for media attention, prompting an interviewer to relate this anecdote of his conversation with Webb: "Asked perhaps one too many personal questions, he responded with a gentlemanly but prickly sense of humor: 'Well, what do you think of this? Next time you're at your dentist, what if you said: By the way, I'd be interested in knowing more about your wife. Can I see a picture of her? Is she your first wife? Have you ever been sued? Are you straight or gay? Do you have affairs? How much money do you make?'"¹⁰ This kind of obsession with the private lives of public or well-known figures has meant that increasing numbers of researchers prowl library stacks, in search of new biographical details that can titillate an often insatiable public.

According to American legal precedent, individuals frequently in the public eye surrender a certain degree of their privacy by virtue of being public figures. Most of us would agree, however, that beyond a certain point, some categories of personal information about famous people are private and should be respected as such. Though we might secretly, and with a certain feeling of shame, savor gossip that reveals a sensitive or scandalous tidbit of information about a celebrity, nonetheless we recognize that a boundary line has been crossed when that information becomes public. The sacrifice of complete privacy on the part of public figures does not usually, and should not, constitute free rein to digest every morsel of that person's private life.

The strong interest that we feel in the lives of famous people is not a new phenomenon, but simply an ever-burgeoning outgrowth of a long and

¹⁰ Ambrose Clancy, "A Post-'Graduate' Life," *Los Angeles Times*, 14 May 2002, E4.

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deeply rooted human propensity. Henry James's short story "The Aspern Papers" offers an example from 1887. The real-life seed for the tale came to James's attention earlier that same year, when the young English novelist Vernon Lee recounted to James an anecdote about an elderly lady living in Florence, Mary Jane Clairmont (self-styled as "Claire Clairmont"), formerly the mistress of Byron and the mother of Byron's illegitimate daughter Allegra. A Boston sea captain named Silsbee, who had a passionate interest in Shelley and who knew that Claire Clairmont had in her possession a cache of Shelley and Byron papers, had exhausted every effort to acquire them and finally arranged to rent a room in her villa, where the papers were kept. After Claire died in 1879, her late-middle-aged, spinster niece, who had been casting longing glances in Silsbee's direction, offered him the letters if he would marry her, whereupon he immediately fled the scene.

James recorded this anecdote in his notebook, noting his interest in "the two faded, queer, poor and discredited old English women . . . with these illustrious letters their most precious possession. Then the plot of the Shelley fanatic—his watchings and waitings—the way he *couvers* the treasure. . . . It strikes me much."¹¹ In James's version of this tale, "The Aspern Papers," his nameless narrator, a would-be scholar-collector, insinuates himself into the household of an elderly woman, just as Silsbee had done, intending to inveigle her into giving him letters that she had received many years before from the now-deceased Jeffrey Aspern, a well-known poet and her secret lover. The star-struck, avaricious narrator voices his plan of attack to his confidante: "The old woman won't have her relics and tokens so much as spoken of; they're personal, delicate, intimate, and she hasn't the feelings of the day. God bless her! If I should sound that note [i.e., an offer of money] first, I should certainly spoil the game. I can arrive at my spoils only by putting her off her guard, and I can put her off her guard only by ingratiating diplomatic arts. Hypocrisy, duplicity are my only chance. I'm sorry for it, but there's no baseness I wouldn't commit for Jeffrey Aspern's sake. First I must take tea with her—then tackle the main job."¹²

The "cult of celebrity" and its effect on personal papers also appears as a theme in other works of fiction. A.S. Byatt's 1990 novel *Possession*, for example, concerns a struggle between two twentieth-century literary scholars who vie for first access to a cache of love letters that document the hitherto-unknown love affair between two nineteenth-century authors. The issue seems never to have been more strongly in evidence than in recent years. At its most basic, the human fascination with celebrities and public figures is manifestly evident

¹¹ Quoted in Leon Edel, *Henry James: The Middle Years, 1882–1895* (Philadelphia: J. B. Lippincott Co., 1962), 219.

¹² Henry James, "The Aspern Papers," in *The Great Short Novels of Henry James* (New York: Dial Press, Inc., 1944), 475.

in the tabloid periodicals, which have proliferated in the last few decades and whose screaming headlines seduce the public from every newsstand and supermarket checkout line. Humankind's desire to know everything, even (or especially) intimate details about the lives of celebrities, has also come to pervade the work of both popular and scholarly biographers. As recently as the 1950s and 1960s, when Leon Edel's massive, five-volume biography of Henry James was published, it seemed sufficient to know that James never married, evinced shyness in the company of available women, and might have been sexually conflicted. Fred Kaplan, in his 1992 biography of James, boldly asserted that James was gay. Similarly, in her biography of Anne Sexton, Diane Middlebrook did not merely state that the poet underwent psychological counseling. Rather, she included in her book information from the counseling sessions, causing widespread debate about the ethical proprieties of revealing private medical data, even though the revelation came after the patient's death.¹³

A flurry of news stories from the late 1980s concerning authors' papers and privacy reveals just how large the issue has become. In 1988, Stephen Joyce, James Joyce's grandson, stunned and horrified a conference honoring the Irish novelist when he announced that he had destroyed family letters. Specifically, he burned letters by the playwright and novelist Samuel Beckett and by his aunt, James Joyce's daughter, Lucia, who had died in 1982 after living for thirty years in an English mental institution following the 1951 death of her mother, Nora. He cited his action as a personal one, to protect the family's privacy, and as a justifiable one, since he emphasized that Lucia's life after Nora's death could have no bearing at all for research on James and Nora Joyce. However, his action received widespread condemnation from scholars and from descendants of William Butler Yeats and Ezra Pound, who asserted that the lost letters held great importance for the study of the relationship between Joyce, Beckett, and Lucia. Many felt that such materials about great writers are significant public treasures and must not remain private.¹⁴ In the face of the public outcry against the destruction of the letters, Stephen Joyce passionately defended his action as a necessary one brought about by such revelations of family matters as made in Brenda Maddox's 1988 biography *Nora: The Real Life of Molly Bloom*. Maddox's frank treatment of James and Nora Joyce's erotic relationship, together with her recounting of the last thirty years of Lucia's life, caused considerable

¹³ See Leon Edel, *Henry James*, 5 vols. (Philadelphia: J. B. Lippincott Co., 1953–1972); Fred Kaplan, *Henry James: The Imagination of Genius, A Biography* (New York: William Morrow and Co., 1992); and Diane Middlebrook, *Anne Sexton: A Biography* (Boston: Houghton Mifflin Co., 1991).

¹⁴ "Joyce, Beckett Mss. Deliberately Destroyed," *Manuscript Society News* 9 (Fall 1988): 7. For an analysis of the relationship between the private and public ownership of important cultural artifacts, see Joseph L. Sax, *Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures* (Ann Arbor: The University of Michigan Press, 1999).

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consternation in the family. Stephen Joyce aggressively refuted the view that his grandfather's and other family members' letters are public cultural treasures whose private contents can appropriately be revealed, writing: "I have not destroyed any papers or letters in my grandfather's hand, yet. 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. . . . 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."¹⁵

Also in 1988, Janna Malamud Smith, whose father Bernard Malamud had died in 1986, voiced her concerns about the disposition of the author's papers. Citing the Joyce case, Smith deplored the trend toward revelations in biographies of intimate details about their subjects' lives. While acknowledging that authors have surrendered the privacy of themselves and their families, she nonetheless regretted that the families had no power to refute invasive or false accounts of the authors' lives. Struggling in her analysis of the issues to arrive at a reasonable course of action, Smith reached no firm resolution to the dilemma, writing, "Will we burn papers or letters? I do not yet know. . . . Because there are few limits to what biographers 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."¹⁶

Both Stephen Joyce and Janna Malamud Smith expressed understandably deep and legitimate concern over the revelation of personal details in the increasingly frank biographies that became standard in the latter part of the twentieth century. They both failed to consider the obvious alternative to either destroying sensitive papers or opening them freely to scholars: placing the papers in an archival repository with an agreement that they be sealed for an appropriate period of time. In such instances, the willingness of a library to accept papers that carry a reasonable restriction may ensure that significant but sensitive research materials survive to be used by scholars in future years.

Contrasting dramatically with Stephen Joyce's actions and with Janna Malamud Smith's concerns, the widow and children of John Cheever handled his papers with a remarkable, unqualified openness. The public face of certain aspects of Cheever's private life began with the 1984 publication of his daughter Susan Cheever's memoir, *Home Before Dark*, which disclosed his alcoholism and

¹⁵ Stephen J. Joyce, Letter to the Editor, *New York Times Book Review*, 31 December 1989, 2.

¹⁶ Janna Malamud Smith, "Where Does a Writer's Family Draw the Line?" *New York Times Book Review*, 5 November 1989, 44.

bisexuality. As she explained her action, "I did it out of anguish and love."¹⁷ Then, in 1988, her brother Ben Cheever edited *The Letters of John Cheever*, in which he notably did not expurgate sexually explicit passages, citing his reason: "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."¹⁸

The Cheever family's comfort with the revelation of intimate, sensitive details about John Cheever's life is commendable, and it ensures that the letters and other documents that illuminate the private facets of his life will survive and be available for scholarly research. Most authorial families, however, seem unlikely to adopt such an open-minded, apparently selfless stance with regard to sensitive materials. Since these individuals are well-known public figures, the potential revelations of private details about their lives create an enticing prospect to the public and to researchers seeking to publish. Since such a possibility remains so uncomfortable, even repugnant, to the families of these individuals, they are far more likely to react by trying to protect the privacy and memory of the famous individual, as well as their own privacy. The lives of unknown, ordinary people whose papers are in a repository carry far less risk of attracting attention or generating widespread public interest and therefore present a less serious potential problem with regard to privacy issues.

The second, closely related, reason that literary papers carry heightened privacy concerns is that correspondence and other papers in literary archives usually deal with personal matters, while historical collections more often deal with historic events. The correspondence files of a literary manuscript collection tend to be filled with letters in which authors write about themselves—their relationships with others, the events of their own lives, their progress or lack thereof on their current writing projects, and other authors and literary topics in general. This concentration on the personal is in marked contrast to historical collections that often comprise the papers of unknown or ordinary people who have either observed or participated in major historic events, or have been part of issue-related movements or events. Such collections might consist of documents relating to water rights in California in the twentieth century, or to an activist group dedicated to the preservation of natural resources in the United States. In cases like these, often the fact that the people involved are not famous makes their first-hand accounts so important to the historical record. Moreover, even when such collections date from very recent or contemporary times, these collections would not hold the same level of potential for revealing personal information as would the papers of famous authors or other celebrities.

¹⁷ Quoted in Jerry Schwartz, "Biographers Seek to Air Subjects' Dirty Laundry," *Los Angeles Times*, 11 February 1990, E2.

¹⁸ Quoted in Andrea Chambers, "Son Ben Edits John Cheever's Latest Chronicle—the Literary Genius' Intimate, Often Scandalous Letters," *People*, 21 November 1988, 194–96.

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Literary figures, families, or heirs sometimes “sanitize” the archive, or purge personal letters and documents to safeguard privacy before transferring them to a repository. As a result, an archive loses an important personal dimension that in most instances can never be replaced or re-created. One interesting example of a sanitized collection of personal papers dates to 1922, when the Huntington Library acquired the archive of James and Annie Fields from their descendants. Fields (1817–1881) edited and published the *Atlantic Monthly* and was a partner in the Boston firm of Ticknor and Fields, one of the top literary publishing houses of the latter half of the nineteenth century. His wife Annie was the socially prominent leader of a literary salon in Boston and, as scholars have begun to recognize in recent years, much more of a participating partner in her husband’s literary and business affairs than had previously been known. The collection contains a deep, rich store of literary manuscripts and letters by virtually every major nineteenth-century New England author, including Henry David Thoreau, Ralph Waldo Emerson, Henry Wadsworth Longfellow, Oliver Wendell Holmes, John Greenleaf Whittier, Harriet Beecher Stowe, and Nathaniel Hawthorne. It also contains important documentation concerning American authors active outside the literary center of New England, including Samuel Clemens and Ambrose Bierce, as well as such British figures as Charles Dickens and Edward Lear. This collection illuminates the working lives of these authors, as well as their all-important relationship with their editor and publisher, and it continues to reward researchers with new insights, even after decades of heavy scholarly use. Still, either the sellers or their predecessors in the family removed from the archive nearly all exclusively personal letters to the Fieldses or between them. As a result, the collection is a superb literary and publishing archive, but it presents very little significant insight into the personalities and points of view of James and Annie or into their relationship. One can only assume that the family either doubted the importance of the personal information about the Fieldses, or that it sought to preserve the privacy of the literary couple. This constituted a legitimate concern in 1922, because, although James died in 1881, Annie lived on until 1915. If the family indeed felt concerned about privacy, one can only wish that they had elected to place parts of the collection under closure, rather than to remove permanently its more personal contents. How much richer even this superb collection would be if it had not been sanitized, but had been left intact to afford deep insight into James and Annie themselves. Years after the archive arrived at the Huntington Library, the family donated additional Fields papers. Yet, even this supplementary collection predominantly consists of copy books containing James’s and Annie’s random notes and their own literary efforts. The collection still lacks much material relating to them personally or to their relationship.

The third factor that sets the papers of authors and celebrities apart from other collections is copyright, which remains much more of an issue in literary

or celebrity archives than in historical collections. In the personal papers of ordinary people who are not famous figures, protection or exploitation of copyright of either their image, for example, or of a work of art, literature, or music they have created, is not likely to emerge as an issue in the administration or use of those collections. When considering the papers of well-known figures, in contrast, copyright quite often emerges as a factor. In the case of actors and similar celebrities, the use of their image or likeness might be protected by copyright. The papers of musicians, artists, photographers, and authors typically contain copyrighted creative works. At times, the concepts of copyright and the right of privacy, as they relate to a famous individual's archive, have become intertwined and therefore somewhat confused or muddled. Probably the best-known example of this phenomenon is the case of the unauthorized biography of J. D. Salinger by Ian Hamilton. The fiercely private Salinger refused to cooperate with Hamilton, who was writing a biography of the famously reclusive author. When Hamilton persisted with his plans, Salinger transformed what began as a privacy case into a copyright case by retroactively registering the copyright in his letters held in such libraries as Harvard, Princeton, and the University of Texas, thereby seeking to block Hamilton from quoting the letters. His position was upheld by the courts, which ruled that Hamilton and Random House violated the terms of fair use and must not include in the biography any quotations, or even paraphrases, from Salinger's letters. Finally, Hamilton's rewritten book was issued, less as a biography than as an account of his legal experiences.¹⁹

The Salinger case illustrates how authors or other celebrities who discover that their letters are preserved and available for research in a library, or who feel threatened by the potential use of those letters, can invoke copyright law as a means of protecting their privacy. A similar situation arises when families, descendants, or other literary heirs of a famous individual seek to oversee the use of a collection by applying their literary rights to control access. This occurred with the Jack London Papers at the Huntington Library. Worrying about both the portrayals of London in published works and about the possible invasion of privacy in a collection whose contents dated up until the mid-1950s, the descendants who held the literary rights stipulated in the 1960s that their approval would be required for anyone to have access to the collection. Even though holders of literary rights more commonly grant permission to scholars to use archival material only *after* the scholars have done their research and written their books or articles, the London estate asserted its right to grant or deny such use *before* scholars could begin to use the collection. Privacy is a strong

¹⁹ See Ian Hamilton, *In Search of J. D. Salinger* (New York: Random House, 1988). For a discussion of the relationship between privacy and copyright issues in unpublished manuscripts, see Kenneth Crews, "Unpublished Manuscripts and the Right of Fair Use: Copyright Law and the Strategic Management of Information Resources," *Rare Books & Manuscripts Librarianship* 5, no. 2 (1990): 61–70.

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motivating force in the estate's decision to apply its literary rights in this manner, for, while Jack London died in 1916, his widow Charmian lived until 1955. Thus, in the 1960s, at the time the estate established its access arrangements, living people were represented in the correspondence files, and, even more worrisome to the estate, mentioned in Charmian's diaries. Despite the seeming strictness of these arrangements, the estate always responded reasonably, turning away only a small number of would-be researchers and doing so only in the first years of its oversight. Over time, with more and more researchers using the archive and publishing biographical and critical works on London, and with no hint either of invasion of anyone's privacy or of legal action, the estate has significantly relaxed its administration. Indeed, for some time I have administered the estate's granting of permission in nearly all instances, distributing to researchers permission forms already signed by the estate.

The fourth factor that sets authors' archives apart from other collections of personal papers is the increasing trend for repositories to collect authors' papers during the authors' lifetime, rather than after their death. Reflecting authors' awareness of the high market value of their archives, the keen competition among institutions for authors' papers, and the desire by those institutions to nail down a literary archive as soon as possible, this trend increases the likelihood that collections will contain private and sensitive documents. With any recently created collection, privacy can be a concern, because of the so-called third-party privacy rights that inhere to any of the still-living correspondents, as well as to the individuals who are mentioned as subjects in the collection. In such instances, the injunction in the SAA *Code of Ethics* against violating the privacy of those who had no say in the disposition of the papers must be considered by the archivist or curator in overseeing the collection. When the creator of the papers is still living, the risks and difficulties are multiplied. Moreover, as more papers from the author are transferred to the repository, the curator must consult repeatedly with the author about the possible presence of sensitive materials. Each new acquisition must be surveyed with an eye to privacy, both of the author and of other individuals. The longer the time period for an ongoing transfer of papers from an author, the longer the archivist must continue to deal with privacy and with the possibility of sealing certain documents or files as potential issues for that growing collection, even as he or she is addressing similar questions for other collections being acquired.

These situations arose at the Huntington when in 1987 the library began to purchase the papers of British author Kingsley Amis. The initial contact came from a rare book and manuscript dealer, but thereafter each successive transaction took place directly between the library and Amis's literary agent. Throughout this relationship the awareness of privacy issues was present. In one of the transfers of papers, Amis requested that certain material be restricted until his death. One item to be sealed was the autograph manuscript of an

unpublished novel he had written called *Difficulties with Girls* (not the same work as a different novel that he did publish under the same title). Amis wanted this manuscript closed because he anticipated that critics and readers would incorrectly interpret it as autobiographical, and he did not want to deal with answering questions about it. The other material that he wished to have closed consisted of a large file of letters to him from the poet Philip Larkin. Larkin had already passed away, so his privacy rights were not an issue. Amis knew, however, that the letters contained frank comments about mutual friends still living, and he did not want those people to know what had been written about them until after his own death. His concern clearly was driven by self-interest, to save himself from the possible anger of the people mentioned. The fact that his papers were now in a library, to be opened for research as soon as they were processed, made this an important issue. Had his papers been placed in a repository after his death, this kind of material would not have appeared sensitive. In 1995, when Amis passed away, the sealed items in the collection were opened for research.

More recently, in 1995, the Huntington began acquiring the archive of British novelist Elizabeth Jane Howard, who coincidentally was Kingsley Amis's second wife. According to her request, several groups of correspondence in her papers are closed for various lengths of time, in deference to the privacy of the authors of those letters, who are still living. A slightly different case involves the papers of another British novelist, Hilary Mantel, whose archive began arriving at the Huntington in 2001. According to discussions and correspondence between Ms. Mantel and myself, we have sealed her personal diaries for her lifetime, due to sensitive diary entries. In the Amis, Howard, and Mantel examples, some or all of the restrictions agreed upon by the authors and the library became necessary because the papers had been acquired during, rather than after, the authors' lifetimes.

The high market value of authors' papers, plus the desire by institutions to acquire literary archives early in order not to miss getting them, leads to another kind of situation that could present archivists with a privacy dilemma. In the early 1970s, the British author Stephen Spender was approached by the Bancroft Library at the University of California, Berkeley, which sought to purchase some of his papers. Spender, pressed for money at the time, sold to the Bancroft his file of the letters written to him by Christopher Isherwood. He subsequently wrote to Isherwood with some degree of slightly blustery embarrassment to confess what he had done, to seek Isherwood's approval of his action, and to urge Isherwood to sell his (Spender's) letters to the Bancroft. That letter now resides in the Huntington Library as part of Isherwood's archive, along with the rest of Spender's letters to him, which Isherwood obviously did not elect to sell. I do not know whether the Bancroft closed Isherwood's letters, but many of the letters certainly had been written very shortly before Spender sold them, so that

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privacy could well have been an issue. This situation presents a classic case of third-party confidentiality, in which the recipient of letters sells them to a repository without the prior knowledge or approval of the writer of the letters. Whether Isherwood would have approved the Spender sale if he had known in advance remains an interesting question. The combination of the Spender transaction and the subsequent acquisition of the Isherwood archive by the Huntington means that the correspondence between the two men lies at opposite ends of the state of California, split by one of those odd sequences of events that often play such a large part in the placement of collections of personal papers.

Faced with the competing ethics of free and open access to research collections and the safeguarding of people's right to privacy, and in view of the special problems presented in collecting the papers of authors and other high-profile individuals, how can curators and archivists devise appropriate policies for administering modern personal papers? Unfortunately, no good answers exist. There appear few even satisfactory guidelines for handling potentially sensitive letters and manuscripts. Both institutions and archivists must determine acceptable risk levels for the possible legal fallout of violating someone's privacy rights. Based on such practical considerations as the time that can be spent on processing collections and the level of detail that the archivist and other staff members can devote to examining individual items, archivists must arrive at policies and procedures that reflect an awareness of both the legal and ethical aspects of individual privacy, without being held hostage by the difficulties of administering the personal papers of modern figures. Archivists need to acknowledge that there are few if any absolutes in dealing with sensitive manuscript materials. Nearly all modern collections will present difficult gray areas of privacy for archivists to struggle with. Archivists should be fully informed about the issue of privacy and the options available, and they must behave conscientiously in handling sensitive materials. If sensitive professionals make such good faith efforts, there is reason to believe that modern personal papers may be opened responsibly for research while the private, hidden treasures in them are kept in secret and sealed in silence until they can be safely revealed.