

## PRIVACY IN THE WORLD OF LITERARY MANUSCRIPTS

In the past few years, a couple of events very significant to the world of Privacy & Literary papers occurred. On January 27, 2010 the author J. D. Salinger died at the age of 91. Salinger, of course, was the poster boy for authors' privacy rights. More recently, on January 1, 2012, the copyrights to James Joyce's works published in his lifetime expired. Joyce's grandson Stephen had exerted draconian control over the author's literary rights preventing publication and performances of works by and about James Joyce. In light of these fairly recent happenings, I thought it might be interesting to begin this discussion by revisiting the Salinger and Joyce cases.

In the early 1980s, the British author Ian Hamilton was looking for a topic for a biography. His biography of Robert Lowell had been published in 1982 and was received with some acclaim. Hamilton had known Lowell and was given authorization to write the biography by Lowell's widow. Lowell's friends and family for the most part cooperated with Hamilton and Lowell's papers were open and available at Harvard University. Hamilton was now ready to move on, in his words, from writing a biography "of a dead author whom I knew, to a living author whom I've never met."

Knowing Salinger's obsession with privacy, Hamilton planned to work entirely from the public record--the books, archival material in public institutions--and interviews with Salinger's contemporaries, at least those of them who would speak with him. He would not approach Salinger until he had completed this research and then, he hoped, Salinger would be impressed

by his efforts and cooperate. But this was not what happened.

J. D. Salinger had burst onto the literary scene with the publication in 1951 of his novel, *The Catcher in the Rye*. Though successful with almost every subsequent effort, Salinger's last published work appeared in 1965. He retreated to his estate in Cornish, New Hampshire where he remained in relative seclusion. His books remained in print and Salinger received a handsome income from them, but Salinger would even make demands on his publishers.. He refused to allow his work to appear in anthologies; he also demanded that his four books could be reprinted in paperback but only if each edition featured the text between two plain covers with no advertising, blurbs, or even a photograph of the author.

In spite of Salinger's lack of cooperation, a number of scholars **had** produced essays and even books on Salinger over the years, but the reclusive author's life remained a mystery which fascinated his audience and the media. In 1982, W.P. Kinsella even included a character named J. D. Salinger in his novel *Shoeless Joe*. In the novel, the protagonist kidnaps J.D. Salinger and takes him to a Boston Red Sox game where Salinger speaks freely about his life and work. When the film version was made, the Salinger character, played by James Earl Jones, was renamed Terence Mann and his vocation changed to computer software author, presumably to avoid any unpleasantness with J. D. Salinger. By 1985, Hamilton had completed his research for his biography and submitted the manuscript for *J.D. Salinger: A Writing Life* in July of that year. In the manuscript, Hamilton quoted approximately 300 words from more than 100 of Salinger's letters which he had discovered in open collections within University Library Special

Collections and presumed that “fair use” would apply to these unpublished passages. Shortly before the book was to be published, Random House and Hamilton heard from J. D. Salinger’s attorneys who threatened legal action if the unpublished material was not removed from the biography. Although much of the unpublished material was removed, Salinger did not want any of it to appear and filed suit. The first judge to review the case ruled in favor of Random House; however, upon appeal, Salinger was vindicated and Hamilton was not even allowed to paraphrase from the unpublished material. Hamilton had to re-write the book which was published in 1988 under the title *In Search of J. D. Salinger* and it was as much a book about Hamilton’s travails as it was about J. D. Salinger.

Of paramount importance to us is the fact that J.D. Salinger used his rights as a copyright holder successfully to protect his privacy. Having retreated back to his estate as the victor, one suspects he thought the matter now closed, which in the case of Hamilton was true. Ian Hamilton went on to write another book, *Keepers of the Flame*, which is a fascinating look at the complicated world of literary estates and executors, before his death in 2001.

But the Salinger saga continued. In 1998, Joyce Maynard published *At Home in the World: A Memoir*. In the book, Maynard revealed how as an 18-year old college student, she entered into a correspondence with the then 53-year old Salinger. Eventually she left school and moved in with Salinger with whom she lived for nine months, when, according to Maynard, he unceremoniously threw her out. The memoir, written nearly thirty years later recounts their affair. I have not found any printed reaction from Salinger, but one assumes he wasn’t happy to

have his privacy once again invaded. To make matters seemingly worse, in the summer of 1999 Maynard consigned the original letters Salinger wrote her to Sotheby's where they sold at auction for \$156,500. The buyer, a California software developer, told the press that he planned to return the letters to Salinger so the author could do with them as he saw fit, but I could not discover if this actually occurred.

In 1999, a sort of "stealth biography" of Salinger was published, by Paul Alexander. Alexander, interestingly enough, had access to all of Ian Hamilton's Salinger research archive, which he had deposited at Princeton, as well as all records relating to the 1986 legal dispute, including Salinger's lengthy deposition. Alexander even provides directions to Salinger's house in Cornish, NH.

And fate would deliver yet another blow to J. D. Salinger. In September of 2000, his daughter, Margaret A. Salinger's memoir, *Dream Catcher*, was published and even more of Salinger's privacy was invaded. Curiously, when Margaret Salinger tried to sell her own collection of 32 letters from her father at Sotheby's they did not meet the reserve price and were withdrawn from sale. I don't know if they were sold privately. In the years prior to his death Salinger was largely unheard from, and one assumes he did not cruise the Internet. If he had, he would have been bombarded with information about his life, writing, and idiosyncracies. Sites such as "Dead Caulfields," "Levity.com," and Wikipedia provide more information on Salinger than Ian Hamilton could have conceived in his wildest dreams. It is hard to say what effect Salinger's death will have on scholars and critics who want to write about his life and work. But we have

already seen one full-length biography appear.

Born in 1932 and educated at Harvard, from which he graduated in 1958, Stephen Joyce began managing the estate of his grandfather, James Joyce, in the 1980s. Prior to this, Joyce scholarship had thrived. Several biographies had been published, scholars freely accessed unpublished Joyce manuscripts and papers, and he became one of the most popular dissertation subjects of all time. Stephen Joyce's primary concern was the protection of the Joyce family honor, so when scholars, particularly biographers, began to write "warts and all" accounts of James Joyce, his wife Nora, and daughter Lucia, Stephen began exerting his legal might. He blocked publication, forced authors to make changes, charged hefty permission fees to publishers, and tried to control access to unpublished manuscripts and letters housed in private hands and archives. Stephen also tried to control HOW his grandfather's work was interpreted and routinely blocked attempts to adapt Joyce's work into other genres and media. He even interfered with the traditional "Bloomsday" readings that occur each year on June 6, the day on which *Ulysses* takes place.

At a 1988 Bloomsday symposium in Venice, Stephen horrified the audience when he announced that he had destroyed all the letters his Aunt Lucia had written to him and his wife. He added that he had done the same with postcards and a telegram sent to Lucia by Samuel Beckett, with whom she had pursued a relationship in the late nineteen-twenties. "I have not destroyed any papers or letters in my grandfather's hand, yet," Stephen wrote at the time. But in the early nineties he persuaded the National Library of Ireland to give him some Joyce family

correspondence that was scheduled to be unsealed. Scholars worry that these documents, too, have been destroyed. He has blocked or discouraged countless public readings of “Ulysses,” and once tried unsuccessfully to halt a Web audiocast of the book. In 1997, he sued the Irish scholar Danis Rose, who was trying to publish a newly-edited version of “Ulysses,” calling it “one of the literary hoaxes of the century.” Stephen Joyce won his suit against Rose, which lasted five years, but cost the estate over a hundred thousand dollars. Around the same time, Stephen expressed his intention to obstruct a proposed new edition by the American scholar John Kidd; he told Kidd’s publisher, W. W. Norton, that he was “implacably opposed” to the project, which was never completed. In 2004, the centenary of Bloomsday, Stephen threatened the Irish government with a lawsuit if it staged any Bloomsday readings; the readings were cancelled. He warned the National Library of Ireland that a planned display of his grandfather’s manuscripts violated his copyright. (The Irish Senate passed an emergency amendment to thwart him.) His antagonism led the Abbey Theatre to cancel a production of Joyce’s play “Exiles,” and he told Adam Harvey, a performance artist who had simply memorized a portion of “Finnegans Wake” in expectation of reciting it on stage, that he had likely “already infringed” on the estate’s copyright. Harvey later discovered that, under British law, Joyce did not have the right to stop his performance.

Suffice it to say, Stephen Joyce’s effect upon Joyce scholarship and biographical studies has been pronounced. So it was with great joy and optimism that scholars reacted to the news, on January 1, 2012 that the copyrights to James Joyce’s works published in his lifetime expired. One newspaper headline I came across practically screamed “Joyce Copyright Expires, Ending

Grandson's Reign of Terror." But as we know, copyright law is quite complex and U.S., British, and European Union laws are all different so we will have to stay tuned to see how things develop with James Joyce.

So what role did archivists and curators play in all this? All of the archives involved granted Ian Hamilton permission to use materials and he signed the usual agreements stating that he would not publish material without obtaining permission from the copyright holder. This he did not do, of course, preferring to assume that his minimal use would fall under fair use. Was there a third-party rights issue here? Not really, the contents of the letters is not the sort that would trigger a red flag to an archivist. And none of the collections had access restrictions. So the archivists pretty much did their jobs. In the case of Stephen Joyce, the curators had to deal with intimidation and threats, but they also managed to do their jobs for the most part without making major compromises or capitulating to him.

I think it's easy to see how these two privacy-obsessed individuals have frustrated scholars, restricted access, and blocked publications, but most of us are not fending off lawsuits from J. D. Salinger or waging war against literary executors like Stephen Joyce. So what issues do we routinely face?

Many privacy issues in private papers are dealt with and potential problems avoided at the point of acquisition. But the acquisition of literary papers often takes on complexities that we don't face with family or personal papers so I thought I would look at the primary ways in which we

acquire literary collections..

1. Dealing directly with a living author.

One would think this would be the ideal situation, but in some ways I find it the most difficult. You're never quite sure just how to broach the topic of sensitive material, correspondence from others, third-party situations, diaries, etc. If you raise a potential problem with them, there is always the possibility that a portion of the collection might be sanitized, restricted, or even withdrawn. On the other hand, if these issues aren't addressed and dealt with in a formal agreement, they usually come back to haunt you in one form or another.

2. Dealing with an author's heir or executor.

This type of situation is also fraught with potential pitfalls. "Keepers of the Flame" like Stephen Joyce might wish to control access or restrict access to material and the archivist needs to tread carefully. Such individuals can frequently be overly sensitive to such personal material as diaries and love letters which might show the author in an unflattering light, or unpublished or unfinished manuscripts that may be viewed as below the level of an author's known work, even though these might be the most important or interesting part of a collection. I have found that when this situation concerns a potential donation, I am much more likely to agree to restrict certain types of material for a specified period of time as a last resort. But with literary collections, you are often involved in a purchase and here you have to be able to justify to your



institution that a collection is worth expending what might be a considerable amount of money. It's very difficult to convince a faculty member of the worth of a new acquisition if you have to tell them a portion of it will not be open during their lifetime.

### 3. Dealing with a dealer.

Many, if not most literary manuscript collections are purchased through the intervention of a third-party, a dealer. Authors consign their papers to a dealer who will then seek out a buyer. In some ways, this can be the most straightforward way of doing business, but it's very easy to overlook things. Unless a dealer has discussed things like access issues, copyright, etc. with an author or his or her heirs, a collection can come to you with a variety of baggage. I can think of an author's papers we purchased from a dealer some years ago which had been consigned to him by the author's widow. There was a complete inventory of the papers, so we knew what they contained, and the dealer assured us that there were no restricted portions. However, some months after we acquired the collection, the author's widow visited us and immediately brought up the issue of restrictions. Luckily, for us, the portion of the papers that concerned her were family materials that in all likelihood would currently be of interest only to family members. So we agreed to restrict access to this portion to family members for a period of time after which they would be open.

Another development I've noticed over the years is that literary collections acquired via dealers seem to be less "picked over." In the past dealers would often work with authors to determine what materials—usually manuscripts and correspondence from other authors—had monetary value

and offer these high spot collections to libraries, minus what they determined to be the dross. This typically would be routine correspondence, financial and publishing records, and a lot of other material which archivists and scholars find valuable. Most of us want to be the ones to make appraisal decision so collections are coming in via dealers with a lot of material that hasn't necessarily been reviewed.

So what are some of the other issues that are unique or at least more heightened with literary manuscripts.

Value.

As I noted earlier, literary manuscripts typically command a higher fair market value than other archival genres and are therefore sold, sometimes for incredible amounts of money. There have been any number of collections purchased by institutions in recent years with price tags over \$1,000,000. Periodically collections are also sold at auction which puts them in the public spotlight. When you are considering a collection based on monetary value and getting the best deal you can, concerns about privacy are often overlooked.

Copyright

Copyright is typically more of an issue with literary papers than with other types of collections.

With literary papers, copyright is seldom transferred to the repository and is retained by the author, heirs, or executor. In addition, the copyright of other authors whose manuscripts and letters are part of a writer's papers is also retained by the individual authors, even though they may be unaware that this material is now in your repository. This was the case with J. D. Salinger whose letters were in other archives and who was able to invoke copyright to help protect his privacy.

### High profile figures

Many collections of literary papers center around high-profile authors and the incoming correspondence in their papers is often from other well-known figures who may or may not know that their private letters are now available to the public. Over the years I have had a number of authors call to demand that I return their letters to them and must inform them that my institution is now the owner of the physical property though they retain the copyright. Someone once told me about an author who wrote all of his correspondents asking them to return his letters so he could make copies. He then turned around and sold them all to a dealer; I didn't hear what happened next. And though we like to think that high profile figures sacrifice some of their privacy by being public figures, as we've seen in the cases of Salinger and Stephen Joyce, this doesn't always hold true,

### Ego

Another thing I've found is almost always true is that when it comes to their papers, authors are usually very "author-centric," i.e. they and their manuscripts are the reason why the collection is important NOT the letters or writings from others which happened to have come along with the collection and may even be the reason why it commanded the price it did. Along this same line, many authors keep journals or diaries which arrive with their papers. In addition to details about the author, such diaries can also contain sensitive information about third parties. Many authors also think that anything that comes across their desk—junk mail, household receipts, fan letters, etc.—has value because of its association with them. Some of this material is easy to deal with, but what about documents like student papers, reviews of grant and fellowship applications, faculty tenure discussions, etc. and other potentially sensitive third-party material which we find increasingly present in authors' papers. One very distinguished author whose papers we hold was also a retired faculty member who remained close to many individuals on campus and was often used as a sounding board or as an outlet for griping, sometimes from both sides of a dispute. So far we have not had any unpleasant situations arise and one reason we have avoided problems with this collection and others is that we have only partially processed the papers since new additions come in regularly

## Time

One reason why situations such as this can occur is that repositories often acquire an author's papers at the height of or even early in their professional life, rather than at the end of a long career or after they have died. The potential for collections having sensitive information about

living individuals is heightened. In the past we would often resolve potential problems as I just mentioned simply by delaying the processing of an author's papers or compiling a very basic finding aid and problems would be lessened by the tincture of time. But archivists are increasingly under pressure to get collections processed in a timely manner and mount finding aids--and even entire collections--on the Internet where they are easily accessible. The chances of missing sensitive material is much greater and the odds of individuals discovering that their letters, manuscripts and other materials are in an author's papers and now available to researchers is also increased. It is not uncommon to receive an e-mail or a call from an individual who has "googled" their name and found that they are now a vital part of a library's holdings.

## Conclusion

I have gone on at some length trying to identify privacy issues unique to literary collections, but in these issues are quite similar to those we face with most collections of contemporary personal papers be they literary, political, or a faculty member's papers. What I have tried to suggest is that privacy issues in literary papers are often heightened by things like copyright, fair market value, and the fact that authors are often high profile figures. In terms of developing strategies or policies for dealing with these issues, I am afraid there are no clear guidelines in this area. But let me conclude by quoting from Sue Hodson, who is the leading authority on privacy in contemporary papers and whose article on "Privacy in the Papers of Authors and Celebrities" is must reading on this topic and is available in *Privacy & Confidentiality Perspectives*, the reader which Peter Wosh edited with Menzi Behrnd-Klodt. Sue concluded her article by stating:

“There appear few guidelines for handling potentially sensitive letters and manuscripts. 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 archivists can devote to examining individual items, archivists must arrive at policies and procedures that reflect an awareness of both the legal and the ethical aspects of individual’s 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....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.”

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