Acquisition procedures take different forms depending on the nature of the repository. Government archives and business archives work with transfer agreements and retention cycles. Private and local archives typically grow through gifts or donations. Many fine manuscript collections depend upon commercial purchases from dealers and auction houses. Often a given repository will rely on a mix of these three main categories, each of which has its own unique complex of issues. The following discussion highlights only the ethical quandaries that come up and does not duplicate or replace the manuals on the subject. This chapter will sketch the terrain in general terms. Each working professional needs to draw up a specific map for navigating around problem areas based on the particulars of an individual acquisitions program. The twenty questions listed at the end of the chapter are intended to help acquisition specialists think through the issues to consider in mapping out a trusted collecting policy. The appendix at the end of the book provides one sample acquisitions policy as a useful model that can be adapted or used as a point of departure for hand crafting an institution-specific suite of policies. Many other samples are available in the literature and online.

A Fundamental Task with an Inherent Dilemma

To start at the beginning, the accumulation of archives and noncurrent government records has roots deep in the ancient world. Ernst Posner's 1972 book on the subject takes the process back to the cuneiform-imprinted clay tablets of Mesopotamia, tablets which often had neat clay labels for identification. Cuneiform documents belong to a continuous tradition that lasted for some three thousand years, far longer than our paper-based practice has been in existence. Posner cites an inscription on an Assyrian building, from the thirteenth century BCE—an inscription that references an even older temple that had been built 580 years prior to the existing monument. He extrapolates that some overworked Mesopotamian clay tablet manager must have been "called upon to furnish information for commemorative inscriptions."[4] It is easy to visualize the powerful ruler

asking the custodian of cuneiform records for the date of the earlier building, and the scribe then scrambling among the heavy ceramic documents, fervently hoping that the right chunk of clay had been transferred to the archives centuries before to answer his sovereign's urgent question. Many contemporary archivists have been faced with similar requests: "Do we still have the original blueprints for our building?" In response, the archivist may have to spend hours shifting heavy, oversize boxes, all the while hoping the earlier generation of archivists knew enough to save those fundamental architectural drawings. The ancients knew that collecting archives is important. In fact ancient Babylon's pantheon included one god who presided over archives, Nabu, and also a scribe-goddess, Belet-seri, who kept accurate records. One could make the case that acquiring archives is a fundamental task in any civilized state.

Few archivists are aware at the beginning of their careers just how complex acquisition policies can be. Based on cumulative experience, most practitioners develop, over time, a certain intuition for where the pitfalls are and how to avoid them. The intuition that comes from experience is eventually useful, but it can be painful to acquire. There is a positive side: the very act of selecting materials to save adds value to them. The value is enhanced every time researchers read those materials and bring their own knowledge to bear. The excitement of initiating this scholarly communication with a new acquisition is tempered by the sense of a certain responsibility and trust.

A good acquisitions archivist knows when it is important to collect seemingly unimportant records, even—in some cases— laundry receipts, which can document where a person was on a particular date. No documents, no truth, no history. There are also times when an ethical archivist resolutely turns down attractive donations, as when the papers have an unclear title or when they might pose a financial liability for the archives. In this light, acquiring archives takes on an essential gravity that may not be obvious to the casual observer or the new employee. Here is the essential dilemma: collecting an incomplete record presents a distorted version of events, but a complete set may be too big to search at all. In the last two decades this dilemma has intensified. Electronic records, often vast and

unruly, are even more difficult to capture and preserve than traditional paper records.

Collecting archives, then, is a fundamental task of a civilized society, and one that entails some inherent quandaries.

A Map of the Ethical Minefield

What at first glance seems like a simple maneuver, transferring papers from an office or a donated collection from a private home to a formal repository, turns out on closer examination to be surprisingly complex. Ensuring compliance with ethical and procedural requirements at this early stage will prevent a cascade of problems from developing down the road. It is not an accident that the longest section of the groundbreaking SAA manual by Gary M. Peterson and Trudy Huskamp Peterson on archives and the law was devoted to the cluster of issues surrounding acquisitions.[5] In *Navigating Legal Issues in Archives*, Menzi L. Behrnd-Klodt pays extensive attention to three major areas: acquisitions, copyright, and privacy.[6] In the case studies examined in Karen Benedict's pioneering volume on archival ethics, many of the cases stem either directly or indirectly from flawed acquisitions practices. "Procedures for acquisition of collections, especially the lack of signed legal instruments for the donation or deposit of holdings, are a major bane of archives and archivists."[7] Verne Harris has explicated the moral implications of the appraisal process: What does society retain and how does it weave these shreds of history into a narrative? "Appraisal is the telling of a story using records systems and the sites of records creation as the primary raw materials."[8]

Appraising, selecting, and acquiring electronic records involve even greater challenges than those posed by paper records. For example, what does one do with voluminous casual emails, which the writers frequently treat as private conversational communications, yet are crucial to understanding "what really happened," as Leopold von Ranke demanded. Acquiring and preserving email as essential documentation has been an issue since the very beginnings of this technology. During the Iran-Contra

investigations of the 1980s, Oliver North assumed that, unlike official memos, email was unofficial communication, easy to delete. The investigators were eventually able to recover the messages as evidence, but it took such a long time that the political impact was blunted.[9] Stated in the simplest terms, democracy works best when there is an understanding of essential records and the motivation to have them archived. Beyond the technical difficulties of appraising and selecting, preserving email and electronic documentation in general is fraught with privacy, authenticity, and copyright issues just as the preservation of paper records is. Most of all, it is the sheer quantity of electronic information that is the biggest obstacle to capturing the record needed in a civilized democracy. Even with massive modern records, completeness is still an issue. Sins of omission are more common than not. A collection assembled without careful thought will typically leave out the essential background story on turning points in history.

documents and collections.

Sharing collecting responsibilities is as much a necessity as a courtesy. No repository, however large, can be comprehensive. Even the vast U.S. National Archives and Records Administration specializes in preserving selected official American government records. It would not make sense for NARA to enter the field of international literary manuscripts, for example. Likewise it would be foolish for a literary repository to collect records generated by a U.S. government office. Increasingly this latter point is a matter of law: government-generated records should be recognized as government property. It is also a matter of ethics: government records are best maintained together with related materials by experts trained in the intricacies of the bureaucracy. And it makes good sense.

Surprisingly, then, large quantities of government records have escaped into private repositories, including documents with security classified markings, such as "Top Secret." The keeping of official government archives has a highly inconsistent history in the United States, with lapses that verge on the irresponsible. Unlike European officials, their American counterparts, especially in earlier eras, often treated correspondence and memoranda as personal property in a way that would be unthinkable in most countries. Government workers who would never consider stealing a statue in the hallway walked off with packing boxes full of government documents when they left office. These documents can show up in donations from private individuals.

Even U.S. presidential papers were considered the president's personal property until the 1978 Presidential Records Act which did not go into effect until 1981, astonishingly late. The fifty states did not consistently assert ownership of gubernatorial papers until recently. Sometimes they did not have adequate housing, as was the case in California for most of the twentieth century until the construction in 1995 of a new archives facility in Sacramento. Legislation formalized the state's ownership only after much California history disappeared into private hands.

The dislocations created by this situation in past decades is unlikely to be rectified retroactively as retrieving stray government records involves

prohibitive expense and unpleasant disputes. Transferring government documents out of private hands into official archives may never happen on a systematic scale. Prevention is perhaps the only cure. It is important to remember that this historically casual approach to government records in the United States is no longer acceptable. Past practice is not considered best practice. Without some very persuasive justification, the ethical archivist in a private repository will turn down the offer of papers that are government property and refer the donor to the appropriate official in the local, state, or the national archives.

Thus, the ethical archivist makes objective recommendations on the best home for collections. Sometimes this means turning away a valuable collection that is out of scope and finding a more suitable archival home for it. An acquisitions archivist's loyalty to broad professional standards will ultimately profit the home institution. If all acquisitions curators did this in a symmetrical way, the mutual benefit would be enormous. If some follow these guidelines, while others "poach" on other specialties or troll for inappropriate trophy collections, the disposition of materials becomes distorted. Worse, there is an impact on the marketplace for manuscripts, and prices can be driven up artificially. Moreover, out-of-scope collecting complicates the work of research which flourishes when related materials are held together in the same place.

The Authority to Collect

Well-publicized mission statements facilitate collaborative collection development, a basic ethical principle that promotes the integrity of collections in a mutually beneficial manner. Closely related to the mission statement is the authority to collect. Collecting policies and guidelines expand on these two basic documents, and define how the mission will be implemented in concrete terms. Traditional archives have been governmental offices of sovereign states. The mandate to collect has been built into the legal structure for the government to manage its own property. The transfer is from one internal department to another. In these cases the mandate is fairly self-evident, but the work benefits when the authorization is spelled

out on two levels. The exact legislation authorizing the archives should be clear and simple. Then it is supplemented by procedural regulations that can be easily modified as the situation changes. What are the obligations of the departments to preserve and turn over noncurrent records? What are the retention and disposal cycles? Who is responsible for selection?

Transfers of Government Records

The way in which government agencies transfer noncurrent records to the archives is a technical subject in its own right. What the ethical archivist needs to be aware of is how the custody of archival records is in some sense a map of power relationships and a test of sovereignty. After the fall of communism in the Soviet Union in 1991, President Yeltsin issued a presidential decree for the preservation of government archives. The decree mandated the transfer of obsolete records from the Soviet Foreign Ministry to the newly reorganized State Archives of the Russian Federation. Yeltsin claimed the records as property of the state. Decree or no decree, the transfer never took place. The ministry insisted on guarding its own history and had the power to do so. Likewise, transfer of the Soviet KGB files to the new Russian Archives Service was ordered, and ignored. In apartheid-era South Africa the security services simply destroyed documents rather than turn them over to the national archives, which was perceived as hostile once it was run by the new democratic regime.[20] Implementing seemingly self-evident principles will not infrequently trigger power struggles with unpredictable outcomes.

Government archives belong as property to the government, which in general terms has the legal power to keep or destroy or restrict them at will. Ethical issues begin to apply as a government recognizes the right of the public in a democracy to accurate information about its leaders, the rights of one branch of government to know what is going on in another branch, and the rights of historians to primary sources in the great tradition of Leopold von Ranke. Here again access is a map of power. Technical legal requirements can be manipulated and changed by those with authority. As described above, government archives generally have two types of

authorization documents: a legislative mandate to follow, and then as a separate document a more detailed acquisitions policy that is easy to update as needed. One issue that has been debated extensively is just who is responsible for selection of the records to be retained. Traditionalists such as Jenkinson place the responsibility with the office that generated the papers in the first place on the assumption that it knows best what is important.[21] In practice government offices are focused on current operations, and not primarily concerned with their own history. For that reason the trend has been for subject specialists within the archives to take on the responsibility for selection, a task with weighty implications.[22] In an ideal world the originating agency begins the appraisal process. The archives oversees implementation of retention cycles and completes the appraisal after taking custody.

The importance of ethics comes into play on both collective and individual levels. Two generally accepted principles should inform legislation governing the retention of documents by official agencies: (1) Archivists need to have the authority to ensure that documents are preserved long enough to be evaluated for enduring value and not destroyed until that determination has been made, and (2) a democratic society makes the information in its documents accessible to the greatest extent possible, consistent with protection of state security and the privacy of its citizens. The next level of ethics confronts individual government employees. If, for example, a supervisor orders that certain internal emails be deleted and there is a mandate to preserve records for evaluation by the archives, the employee has some difficult decisions to make. Destruction of legal evidence is, after all, a criminal offense. Here the value of a written mandate becomes clear.

Transfers of Business Records

In a mechanism analogous to governmental archives, private organizations and commercial ventures retain certain files of permanent interest that they generate themselves in the course of doing business. Again, it is private property that they produced and they own. The organization or business

needs to draft some kind of mandate for the preservation of essential records. The mandate should assign responsibility to one office. Sometimes business archives begin as a subsidiary of the information technology (IT) department or as part of the legal office. It is not a bad idea to have a lawyer-archivist oversee essential records. Business recordkeeping generally starts with the retention of files for legal, tax, and audit purposes, and then often expands into organizational history, documentation for annual reports, and public relations. As with government archives, organizational and business archives benefit from both a clear mandate stating authority to collect (citing the date of a resolution at a board of trustees meeting, for example) and a fuller acquisitions plan that clarifies points such as whether to collect from outside the organization to supplement internal files, access policies, etc.

The mandate should clarify lines of responsibility for selecting, transferring, and establishing retention schedules. Without clear authorization, there will be duplication of effort and inconsistent preservation habits. That all sounds well and good, but implementing systematic cross-departmental recordkeeping is never simple. Lateral attempts at coordination will usually run afoul of the territorial instincts of managers. Leadership and directives need to come from the top of the hierarchy.

As with government records, private business records are increasingly understood as a cultural legacy belonging to society as a whole with the ethical dimensions that entails. Ethical business archivists are very alert to both official and unstated boundaries between proprietary information for internal use only and public information. A careful access policy defining that boundary prevents conflicts over time as both internal and outside researchers request to see documents. Even in a private business archives, archivists occupy a position of public trust. They balance transparency while protecting confidential information, knowing that sensitive material that is not carefully restricted is likely to be destroyed.

Ernst Posner explained the traditional belief that the best archivists were by nature private people not given to gossip. The archivist "must not be talkative, but must have his tongue in his heart and not his heart upon his tongue. He should have adequate fundaments and should in general talk

very little lest he blab out the secrets of his registry."[23] While the protection of state and trade secrets remains important, Posner did not anticipate the role of archives in public relations—a role which requires archivists to publicly advertise and interpret their holdings. (Wells Fargo Bank, for example, used its corporate archives to good advantage to strengthen its corporate identity going back to the era of stage coaches.) Balancing open communication with the public and guarding privileged information will remain a challenge for business archivists.

CHAPTER 4

Equitable Access

Everyone has the right . . . to seek, receive and impart information and ideas through any media and regardless of frontiers.

—*The Universal Declaration of Human Rights*
Article 19, the United Nations, December 10, 1948[1]

WHEN JOHN HOPE FRANKLIN (1915–2009) WAS A HARVARD GRADUATE STUDENT CONDUCTING RESEARCH FOR HIS DISSERTATION, HE WAS DENIED ACCESS TO SEVERAL ARCHIVES' READING ROOMS BECAUSE OF HIS RACE. Clearly both a personable and patient scholar, he was able to negotiate with the archives' directors to set up special arrangements and work around the restrictions. Franklin went on to write seventeen books and to receive many honors over the course of his long career.[2] While Franklin ultimately prevailed, undoubtedly many other people in his situation were simply discouraged and never managed to get around the barrier of inequality. Quite a few important collections in the United States were originally closed to specified categories of users—such as women, Roman Catholics, Jews, or even just the donor's nephew—restrictions that have since been lifted by more enlightened management.[3]

Hopefully, such arbitrary discrimination is now a thing of the past, but as some barriers come down others arise. Market forces and globalized technology are building other types of barriers in the form of gated communities of data. Some barriers result from restricting sensitive content:

the professional literature justifies restricting over a dozen different categories of papers, as discussed below. Achieving open and equal access is an ongoing struggle.

The freedom to "receive and impart information and ideas through any media and regardless of frontiers," as enshrined in article 19 of the Universal Declaration of Human Rights, is now a major tenet of American practice. Information professionals are committed to provide open and equal access to books, archives, records, and digital media, to the extent consistent with legal provisions for security and privacy, by balancing these conflicting rights. Most versions of the codes of ethics for archivists advocate unhampered use of archives, including article 6 in the 2005 SAA Code of Ethics for Archivists:

> Archivists strive to promote open and equitable access to their services and the records in their care without discrimination or preferential treatment, and in accordance with legal requirements, cultural sensitivities, and institutional policies. Archivists recognize their responsibility to promote the use of records as a fundamental purpose of the keeping of archives. Archives may place restrictions on access for the protection of privacy or confidentiality of information in the records.[4]

Equal access without discrimination or preferential treatment is a hard-won principle. Its value has not always been self-evident, either in the centuries-old archives of Europe or in American institutions.

The major thesis of this chapter will be developed in the context of "ground truth" and real-life examples: achieving open and equitable access is the result of complex ongoing transactions. There is an inherent tension between the legitimate right to information and legitimate restriction of proprietary data. For this reason, access policies must be drawn up and periodically revised with great care by experienced archival professionals. The seemingly boring policies have serious consequences, some intended and some unforeseen. The examples will show that professional archival ethics are linked to both moral values (even saving lives, as in the case of tobacco research files) as well as democratic values, such as preserving

accurate information for the voting public, as in the case of access to White House email traffic secured by the National Security Archive.

In this discussion, the term *access* covers a range of meanings, from purely physical access in the reading room, to user-friendly websites, to privileges for use, to intellectual access through finding aids and databases. Intellectual access is provided by technical staff. Hands-on access is provided by the reference staff. All of the different functions are intertwined and need to operate together smoothly. The finest, most detailed finding aids will not reach the right scholars without a coordinated interpretive program from reference staff. In fact, occasionally the technically best-crafted finding aids are incomprehensible to the most knowledgeable historians, who may be less adept with online tools than younger novices. From the standpoint of the researcher, the one thing that matters is getting to the relevant documents.

Sometimes the term *equitable* is substituted for *equal*, to suggest that there are situations when it is reasonable and appropriate to provide one researcher with more in-depth help than another. Common sense dictates that both a widely published scholar and a first-year student may require more time from reference staff than the average reader. The point is that all researchers should receive the type of help they need. Traditionally this service has been provided in a physical reading room, although increasingly access assistance takes place via email, links, and texting in a virtual arena.

The Archivist as Gatekeeper vs. the Archivist as Facilitator

Who gets in through the archives' door? Writing in 1956 in the *American Archivist*, Howard Peckham wrote of the model repository: "If it should open its doors to competent scholars, then it should close them to those who are not competent."[6] Today it seems presumptuous that a reference archivist would vet a researcher's competence. Peckham's view was not uncommon at the time and was linked to older customs, some of which have left lingering traces in access policies.

Archives have a far longer history in Europe than in the United States. For centuries in the European tradition, archives were treated as secret state papers, a tool for designated representatives of a sovereign state, not accessible to the common people or to foreigners. In Prussia the state archives were named the Geheimes Staatesarchiv, using the word for secret or privy, *geheim*, in the very title. Access by trusted historians depended on privilege and connections. In nineteenth-century Russia, the great poet Alexander Pushkin had to petition the Tsar himself for "the permission to occupy myself with historical research in our state archives." The Tsar personally granted the famous author's request. That kind of access was reserved for a few very privileged intellectuals of the higher aristocracy.[7]

Traditionally reference archivists have played a gatekeeper role. A service oriented staff was not the norm. They enforced rules on who was permitted into the archives reading room, and then determined who was allowed to see what. First the applicants for using the archives were screened for their qualifications, then the documents were screened for restrictions. While access in state archives was the privilege of highly placed government officials for performing their duties, a few historians were allowed into these hallowed halls as an exception. In these traditional archives the staff would turn away the unworthy, and hold back materials often at their own discretion. These modes of access evolved out of the ancient customs found in European government repositories, ecclesiastical manuscript collections, and the private collections of wealthy aristocrats. The papers were the absolute property of the state, the church, or elite families, who had historic entitlements—and often historic reasons for secrecy.

The first cracks in this fortress opened up in the Enlightenment of the eighteenth century. Open access to public records in Swedish archives can be traced back at least to 1766.[8] By that time, what we might today call transparency was already a strong element of Scandinavian culture, rather typically stronger there than in other European countries. In a small, predemocratic monarchy such as Sweden at the time, open records functioned both to enforce conformity to social norms among the lower classes and at the same time to reduce the potential for serious abuses of power by the elites. In larger countries such as France, violent clashes between different classes forced open the public records, at least in part. It is the populist orientation of the French Revolution that is generally credited with launching the public archives tradition. To remind Americans of this principle, Ernst Posner cited article 37 of the Messidor decree issued in 1794 following the French Revolution: "Every citizen is entitled to ask in every depository…for the production of the documents it contains."[9] In the nineteenth century, access to government records in European countries was still generally tightly controlled by entrenched political and religious elites, while in the United States official archives were not systematically collected at all.

Over two centuries the trend toward open access has been gradually strengthened. The Council of Europe has come out in favor of open and free access in principle, within certain constraints. Archival experts have made recommendations for implementing a modern European policy on access to archives. The section on ethics is worth summarizing.[10] The general policy is the now-familiar one of open and equal access. The first principle is that "Access to public archives is a right." This derives from the ideals that emerged in the French Revolution. The corollary is that the right to have access to archives should apply to all users. The European Council has been working on the complex project of harmonizing access policies across Europe. All restrictions, in this view, should have an expiration date, and restrictions should apply equally to all users. This sounds very familiar. However, the authors go on to recognize the normal European practice of closing all governmental files transferred to the archives uniformly for thirty years, and closing all files with personal information for 100 to 120 years after the birth year of the "data subject." Despite a sincere commitment to open access, in practice records are routinely closed for decades. And scholars' credentials are still vetted.

First, there are problems when records are closed for lengthy restrictions. Open and equal access does not seem very helpful if records are closed for decades, basically until the people most directly interested in them are dead. Here is the crux of the ethical dilemma posed by access questions, only magnified by European practices of lengthy and automatic blanket restrictions. From the American perspective, government archives need to be made available promptly, barring some security issue. The most compelling reason is the need to know what government is doing in order to vote intelligently and to formulate responsible public policy. Timeliness counts. A second reason is that historians are increasingly interested in current events—the history of the present—an area once thought to be the purview of journalism rather than historiography. History now begins with yesterday. A third reason is to let individuals know what documentation has been saved concerning their lives, the right of access by so-called data subjects during their lifetimes. For all the lip service to transparency, governments find ways to close archives. In the European tradition blanket

closure is used to restrict access; in the American tradition there is heavy reliance on classifying large swaths of archival documentation.

In addition to restrictions on the documents, archivists screen researchers and their projects to determine who gets access to records. As to vetting researchers' qualifications, most Americans, especially those denied access, would consider this historic archival custom to be excessively stringent and capricious and simply unacceptable. Increasingly most democratic countries have achieved a public consensus that open information benefits society as a whole. The notion that the archivist could rule on a researcher's competence to use the material is generally deemed elitist and undemocratic—in a word, unethical. It was once the norm, and still remains surprisingly common. And it is sometimes justified.

Where is the line between protective policies and obstructive ones? Europeans and Americans usually draw that line in different places. For a traveling archivist it is always an interesting exercise to request access at different institutions in different cultures.[11] Most try to balance the modern sense of a universal right to information with older provisions to preserve the prerogatives of sovereignty and privilege. There are continuing preferences for national academic users and discrimination against foreigners and outsiders. In 2000 the author asked about access to the Hungarian security police files in Budapest. The archives director politely explained that an American would not be able to see the files of the communist-era secret police, but that Europeans would be able to gain access because European and Hungarian laws were compatible, but American laws were not. While Americans react negatively to this explanation, in conflict with the right to information regardless of frontiers, many Europeans tend to agree with the principle involved.

For the most part, American reading rooms permit access to anyone willing to show identification and abide by the rules for safe handling of materials. Letters of recommendation or advance notification of publication plans are usually not a factor in gaining admission. Several examples of more restrictive access policies, from Britain, California, Germany, and Russia, illustrate the lingering access restrictions from an earlier era that have persisted into modern times, particularly in older, more traditional

institutions. In government archives the restrictions seem to stem from a desire to preserve the prerogatives of sovereignty. In elite manuscript collections the restrictions are driven by two kinds of concerns. The first is the physical preservation of delicate and often ancient documents. The second is the prevalence of sensitive information in manuscript collections. This protective attitude is at odds with current, use-oriented American practice, but it can be well justified. Just as with deaccessioning, discussed in the previous chapter, there is an inherent conflict between protectionism and pragmatism. The question is not which side is right, but rather what balance is right for a particular institution.

Tradition in a British Library

Since Shakespearian times, the archivists of the University of Oxford's Bodleian Library Special Collections have been very protective of their materials. This gatekeeper mentality has had a positive effect. This respect for the archives has helped to preserve and protect them from loss and wear. In 1654, the Bodleian archivists purportedly turned down a request from Oliver Cromwell himself to borrow a manuscript. When a researcher visits the Bodleian to conduct research, there is a detailed application and screening process. In 1998 the author complied with these procedures and then was photographed. Then the archivists administered an archaic oath that had to be repeated out loud. Researchers promise not, among other potential transgressions, to bring kindling into the reading room as it constitutes a fire hazard. The admission process dates from Sir Thomas Bodley's own statutes, which he issued in the early 1600s. It has an undeniable antiquarian charm. Today independent researchers still need to establish their credentials, demonstrate the seriousness of their work, prove that they cannot conduct this research from published nonarchival sources, and produce references to vouch for them.[12] For independent researchers there is a modest use fee that can be waived in hardship cases.

Those scholars permitted into the facilities at the Bodleian must adhere to time-honored restrictions. For instance they may only read personal documents if the authors are already safely dead. In one famous case,

materials, and even help with finding accommodations and transportation. Most of all they have become experts at interpreting the confusing array of finding aids, registers, and indexes that vex research for the uninitiated, and negotiating through tangles of descriptions to find the "smoking-gun" document. Then the researcher publishes the results. In this shift from gatekeeping to mediation, the self-effacing reference archivists function like anonymous Sherpa guides taking mountain climbers up the slopes of the Himalayan mountains, and then letting the foreigners in the land take the credit and glory for reaching the goal.

In her manual on reference service, Mary Jo Pugh has described this fundamental transformation: "In general, the archival profession has moved from a custodial role, in which the archivist's primary duty was to protect repository collections by limiting use, to a more activist role promoting the wider use of archives."[26] Despite the residual gatekeeping duties, she concludes: "Equality of access is now the governing principle for use of records in most repositories. Information to be protected is identified and segregated during acquisition and processing. Access policies are therefore administered, but not determined, at the reference desk." She supplies a helpful checklist for keeping procedures in line with this goal.

American professionals have confronted the inherent illogic of advocating transparency on the one hand and then on the other hand imposing privacy and other restrictions. These conundrums have received extensive treatment at SAA conferences and in the literature.[27] But they cannot be neatly resolved.

Constraints on Open Access

The principle of open access, then, is tempered by a surprisingly large number of privileged categories of information. Since Behrnd-Klodt and Pugh provide great detail on these conditions,[28] they will simply be summarized here:

- *Security-classified documents,* such as those with the U.S. government "top secret" designation, fall under the most serious

restriction; the intent is to protect national security secrets. Complex laws and rules govern the handling of such materials. These laws frequently change. Given the serious consequences of mishandling classified information, a surprisingly large amount of classified documentation has found its way into private hands and into private collections. Any documents, even seemingly innocuous ones, with such top secret markings or stamps should be sequestered until qualified, cleared professionals can examine them and determine their status. The best resource is the Information Security Oversight Office (ISOO) of the National Archives.[29] ISOO experts know the complicated regulations for handling classified materials. They can help identify which documents are candidates for declassification so that they can eventually be returned to normal storage. Not just anyone with a clearance can see any classified documents. There has to be a "need to know." Americans respect the classification of documents from allied governments. Declassification of documents held by a government agency may be requested through the Freedom of Information Act or FOIA. Until the FOIA procedure is successfully completed, only cleared personnel should handle classified documents, even obviously innocuous ones.

- *Donor imposed restrictions* need to be carefully negotiated at the time of acquisition to ensure that they are provided with a reasonable end date and that the restrictions are applied equitably. Exceptions such as privileged access for an authorized biographer should also be considered very carefully. Inappropriate or discriminatory restrictions on older acquisitions should be renegotiated with the donor or heirs according to current practice.
- *Privacy* may need to be protected for some period of time. Privacy protection generally expires when the person dies. There are exceptions in cases of celebrity. The family members may require privacy protection even after the death of the person in question. Just what information is considered private or sensitive varies

widely. One donor was perfectly agreeable to releasing information about her father's extramarital affairs, but did not want to release a letter she wrote fifty years ago mildly criticizing her sister-in-law. There is general agreement on the need to conceal such things as social security numbers and private bank account numbers to prevent identity theft and electronic pilfering. As such information may be sprinkled throughout the collections, it is not an easy rule to implement. An effort should be made to redact out such private data by deleting from the online use record, but with a clear indication of what has been removed. With paper records the practice has been to photocopy the document, black out the information, and then re-photocopy the redacted text for the use copy. (See chapter 6.)

- *Trade secrets* are typically jealously guarded by business archivists. Industrial espionage is a big business and guarding against it requires constant vigilance on the part of commercial enterprises. (See the discussion of the cigarette papers case in chapter 5.) While business archives are the property of the corporation that generated them, there is a growing sense that the right to information extends to historical records in private corporate archives. Such archives contain a great deal of social history and economic history that belong to the larger culture that made the company possible. At issue is the time at which these records should be released from the proprietary claims (ten years? twenty years?) and be made available to the public.
- *Personnel records* are typically privileged during the lifetime of the subjects. Information on promotions and reprimands is especially sensitive. Papers relating to university tenure decisions are prone to litigation and should be guarded from casual eyes. Objectivity can be difficult. One donor was adamant about opening foreign military personnel files in his collection because he felt strongly that they had historical significance. When asked if he would want his own U.S. Army personnel file available for anyone to read, he

was just as adamantly opposed. Data subjects should have access to the information in their own files, but third parties should not.

- *The attorney-client privilege* has a long history. It also has a long history of abuse as a shield for protecting incriminating materials from the legal process of discovery.
- *The priest-parishioner relationship* has typically been protected to preserve the confidential relationship in confessional conversations.
- *The husband-wife relationship* has certain privileges of privacy.
- *Medical records* have come under very strict legal restrictions. Every archivist managing medical files needs to be conversant with the latest regulations in this area, typically referred to by the acronym as HIPAA since the Health Insurance Portability and Accountability Act has a privacy rule.
- *Student records,* such as grades, are also considered privileged, sometimes even restricted from parents of adult students. This category is usually referred to as FERPA, from the Family Educational Rights and Privacy Act.
- *Journalists' sources* have traditionally been shielded. Collections from reporters should be examined with this in mind and discussed with the donors.
- *Library and archives circulation and use records* have traditionally been privileged. If a journalist phones the archives and asks whether a certain person has used a certain collection, normally that information is not divulged without a subpoena.
- *Internal financial records* of the host institution will be saved in many institutional archives, and these are typically not revealed except to high-level executives. Any archivist in charge of such materials needs to have a clear understanding of who has access rights and carefully document each use and the required permission.

- *Exceptionally rare and fragile records* may be restricted for preservation purposes. In these cases a surrogate use copy should be prepared as quickly as possible in some form. Microfilm, photocopy, and digital copies have all been used successfully as stand-ins for fragile originals.
- *Unprocessed collections* may be restricted until there is intellectual control. This constraint has several justifications. Without a register, it would be difficult to verify a theft from the collection. Without a register, it would be difficult to determine if the collection contained privileged information. The sheer volume of modern records and the mandate for increased access is eroding this constraint. An argument put forth by archivists Mark Greene and Dennis Meissner, that time spent on detailed processing delays research, is gaining national support.[30] Increasingly, unprocessed materials are being opened for use with minimal processing (either collection-level descriptions or preliminary inventories). The responsibility for compliance with constraints on revealing privileged information is shifted from the archives to the researcher. Given the size of modern collections this is the pragmatic solution. It is not clear whether court decisions will always support this practical approach.
- *Copyrighted materials* are sometimes restricted as the only sure method of preventing copyright violation. One repository was threatened with a lawsuit over the unapproved publication of a document even though the publisher had received a letter from the archives specifically prohibiting him from publishing the copies he had made. Every archivist needs to bookmark the section on copyright in Pugh's SAA manual on reference and update it as needed. Just knowing to provide a link to a digital text rather than the text itself can prevent legal difficulties. It is a good practice for libraries and archives to maintain online copyright reminders based on legal counsel and updated regularly for advice on such things as electronic coursepacks and podcasting.[31]

- *Licensing contracts for databases* comprise another restriction that is becoming controversial as more people find that the documents they need are online and available only to subscribers to a commercial service that may cost thousands of dollars or more a year.
- *Authorized biographers* sometimes restrict materials for their exclusive use. This is a controversial restriction. Often donors or heirs will select a biographer and then reserve the papers until the biography is published. For the safety of the papers, it is best if they are in the archives while the biographer works and not in the writer's own home or office. Such discriminatory access may be justified for a limited time if it protects the papers from damage, dispersal, or loss during the writing of such a book. Stanford law professor Gerald Gunther retained exclusive access to the papers of Judge Learned Hand for decades while composing the great jurist's biography. One reviewer estimates that Gunther spent thirty-seven years writing the biography. Many scholars chaffed at the loss of easy access to the Hand papers, but the resulting biography has been acclaimed as a magnificent contribution to legal history.[32] Does a superb biography justify unequal access to cultural patrimony? One can argue both sides.

One restriction that is *not* acceptable is for archivists to withhold materials from reading room use while they themselves prepare documents for publication. The Loewenheim case of 1970 established this principle.[33] The American Historical Association (AHA) looked into Professor Francis Loewenheim's charges that staff at the Franklin D. Roosevelt Presidential Library had improperly withheld documents from a researcher in order to publish the information first themselves. The AHA absolved the archivists of wrongdoing, but emphasized that withholding documents would have been unethical if it had actually happened.

The list of restricted categories is long. These accepted restrictions do not all carry the same weight, and there are many significant exceptions. The ethical implications become interesting when such standard restrictions collide with the right to know. Then the ethical archivist has a

challenge in negotiating the best balance of rights. Open access may trump restrictions in cases where the topic is sufficiently important to the public welfare. Accelerated access to relevant information is required when public policy is being formulated. No archivist, however good at mediation, can navigate these obstacles in isolation. And often the correct procedures can be very complex, and sometimes expensive to implement. The importance of coordinating with legal counsel and the higher administration is made clear in the case of the cigarette papers, described in detail in chapter 5.

In almost every restricted category there is a famous exception that proves the rule. In the case of security-classified documents, the first and most serious constraint on access, proper maintenance and storage can be time-consuming and expensive to enforce correctly. Any archivist in charge of such papers first needs to attend special workshops and then needs to educate the archives' parent institution about the proper procedures. Only in the gravest situations has the release of classified information been condoned. The primary example is the Pentagon Papers, top secret documents that were illegally released to the press in 1971 by Daniel Ellsberg. The papers revealed details of secret decision making in the Vietnam War, important information that had been withheld from the American public. After a hard-fought battle, both in the courts and in the arena of public opinion, influential policy makers sided with freedom of information: the country simply had a need to know the facts.[34] Using similar logic the courts decided in favor of open access to the cigarette papers, even though these papers were originally thought to be covered by the attorney-client privilege and definitely contained proprietary trade secrets. The Diane Middlebrook biography of poet Anne Sexton used medical therapy tapes that many psychiatrists considered privileged (see chapter 6). Archivists need to be very familiar with these restricted categories, but also with the history of exceptions in order to provide higher administration with seasoned advice when necessary.

The archival community in the United States and the American public have reached a consensus on the value of open and equal access. On rare occasions open and equal access even trumps security classification, proprietary trade secrets, and privacy, but only if the issue is sufficiently

important. Since the eighteenth century, restrictive archives both in the United States and in Europe have modified their procedures in the name of democratic openness. The tension between openness and privilege appeared to be in equilibrium. Then the information technology revolution led to an entirely new set of issues that soon pervaded the archival and information business. The large-scale digital library brings with it another set of access dilemmas. And information technology is combining with several other seemingly unstoppable forces—and transforming the ethics of archives. Mapping hard-won and long-cherished values over into the digital environment is the new challenge.

Proprietary Control vs. Free Access in the Digital Environment

For half a millenium, since the Gutenberg revolution in the fifteenth century, there has been a clear distinction between a published book and a manuscript. The book allows multiple identical copies to be distributed among many readers in many locations. Manuscripts since antiquity have been less stable objects: unique originals have been laboriously copied with many alterations and variants. The manuscripts that serve as the basis of books typically undergo numerous drafts and changes prior to freezing into the more fixed print version. Where do cumulative online texts fit into this schema? Take for example the articles in Wikipedia that are subject to constant revision. It is no accident that information technology (IT) professionals call these unstable texts *documents* and have turned the word *archive* into a verb describing ways to save text in all its variants. This digital format shares many attributes with archives and is increasingly a subject for the archival profession. Is digital text a publication or a document?

American courts have interpreted digitized documents as publications. There is logic to this viewpoint. In the case of the cigarette papers, this interpretation of digitized text as a publication, one that is protected by the First Amendment, saved the archives from surrendering pirated copies. Microfilm versions of archives have long been called *publications.*

Destruction of Records: A Casebook of Examples

Thinking through real-life examples, then, is a useful tool to illustrate the dynamics at work, a painless substitute for real-life experience. The following casebook of seven examples is not meant to cause alarm. Instead it is intended to provide low-risk exposure to the types of incidents that occur so they can be assessed calmly in theory before the practitioner has

to deal with such things in the workplace. They help sort out the different categories in play: minor weeding versus the removal of treasured artifacts, authorized destruction versus unauthorized, the disposal that occurs in originating agencies versus disposal under the supervision of a trained archivist, rare archives that function like museum artifacts, and more routine office files that require bulk processing and "bulk" disposition decisions. Each practicing archivist needs to evaluate the mix in the given workplace and determine which principles best apply.

The first three examples involve government records. Two recent cases from national archives, in Canada and South Africa, demonstrate how in one situation the righteous indignation triggered by document destruction was misdirected and in another it was necessary in the struggle to preserve evidence of human rights abuses. A third example shows how casually American government agencies can discard records prior to appraisal in disregard of normal regulations. These first three examples come from the highly instructive book of case studies edited by Richard Cox and David Wallace.[19]

Case One: False Alarm Over the Destruction of Immigration Records in Canada

Terry Cook relates a situation where accessioned government records were destroyed in the normal course of business. He was implementing routine Canadian Archives retention cycle policies when the news services heard about the destruction of immigration records. Coincidentally, the justice department had begun to look for Nazi war criminals who had illegally sought refuge in Canada. Reporters assumed that the destroyed immigration records contained information on these suspects, and that the files were destroyed deliberately to eliminate evidence. Provocative headlines screeched that "Key documents have disappeared from the vaults of the National Archives," and that the archivists were guilty of "dereliction of responsibility." [20] Fortunately, Cook had followed procedures faithfully, documented the process, and saved samples of the types of materials destroyed. In the end, after considerable investigation into the issues,

Cook was vindicated by the official report.[21] The immigration records did not contain evidence of criminal activity. The Canadian National Archives was not guilty of dereliction of duty. The reporters overreacted to what had been a possibility of loss of evidence. In this case suspicion was misplaced, but the possibility always haunts the process of disposal. While vindication is sweet, Cook would clearly have preferred to avoid the battle in the first place.

This is a success story. By following good policy and by patiently working with critics, Terry Cook's implementation of normal deaccessioning procedure was exonerated in the end. There is no substitute for good policy. It is unlikely that Cook could have avoided the initial bad publicity because of the politics involved. He did the right things in managing the retention and destruction cycles of the records in his custody. He defended his policy intelligently and eventually turned the tide of disapproval. While not always possible, it sometimes helps to "look around the corner," and see the political context. When there are unusual political factors at work, it makes sense to take some extra measures—perhaps getting a second opinion, postponing, or documenting the disposal with more extensive justification—to prevent unnecessary grief. Sometimes a monitored blog can keep interested parties posted on what is actually happening and at the same time provide the archivists with feedback and a sense of public opinion.

Doing the right thing does not always avert problems. Depending on the political climate, ethical decisions may trigger difficulties, particularly if the actions go against conventional wisdom or go against the power structure. Bad publicity can leave lingering doubts about the probity of the archives. Since professional ethics are based in a group's shared values, it is often counterproductive to go it alone. Efforts need to be made to communicate those values to a wider audience, and Cook was able to do this despite initially hostile reactions.

Case Two: The Purposeful Destruction of Evidence of Human Rights Abuse in South Africa

Verne Harris documented the loss of official South African government records, not yet accessioned into the State Archives Services. During the transition to democracy and the transfer of power in 1990–1994, the apartheid government "routinely destroyed public records in order to keep certain processes secret," he charged. The materials were not in the custody of the State Archives Services, but were still located in the originating government agencies. As could be expected, the various security and police services were highly motivated to destroy the records used to enforce apartheid and obstruct the African National Congress. The destruction, on a massive scale, was purposeful and coordinated: "large-scale sanitization of its memory resources, a sanitization designed to keep certain information out of the hands of a future democratic government."[22] Destroying evidence, whether accessioned or not, is both illegal and unethical. At the same time, blowing the whistle on that game is a risky decision, not to be taken lightly. Harris, an archives employee at the time, was unable to activate the archives leadership into opposing the destruction. After exhausting official channels, he turned to unofficial ones and leaked information to the press, the African National Congress and other anti-apartheid groups. After the fall of apartheid, the South African Truth and Reconciliation Commission valued Harris's courageous and independent actions and determined that the official State Archives Services had been negligent in failing to prevent the destruction of the documentary record. Harris was vindicated for going to the press with insider information in an effort to protect evidence of human rights abuses.

This case demonstrates the dynamics of operating ethically during a transition as the rules are in flux. Harris, like Cook, did the right thing. Harris rescued much history. But working in isolation, he had limited means to halt the destruction completely and substantial incriminating evidence disappeared. The destruction of accessioned materials within archives can occur during times of political stress, as we know from the collapse of communist regimes in 1989 and 1991. Unappraised papers stored

in the originating agencies are, almost by definition, far more vulnerable to destruction prior to accessioning into a repository. In times of rapid political change, both accessioned and unappraised records are vulnerable and extra care needs to be taken. There are times when alarms need to be sounded and whistles blown.

Case Three: Purposeful Destruction of American Records

The destruction of evidence can also occur in democratic societies. Shelley Davis worked for eight years as a historian in the U.S. Internal Revenue Service. Her work was hampered by the lack of primary sources. After some inquiries she discovered a situation of institutionalized "massive document destruction."[23] Again these were official government records that were destroyed prior to accessioning in the archives. As Davis interpreted the Federal Records Act, she believed that it was illegal for a federal employee not to take action to save valuable records. Her well-intentioned efforts to secure the records resulted in her losing a position as historian of the IRS.

Both the South African case and the IRS case show how easy it is for government agencies to evade laws and regulations mandating the preservation and transfer of official government documents. This is not just a problem in underdeveloped countries. This is a problem in the U.S. as well. National archives typically do not have the clout to stand up to entrenched government agencies. The security services in all countries have privileges that few archivists can successfully challenge. In the United States, the IRS has a powerful, self-protective bureaucratic culture that is difficult to challenge for different reasons. Verne Harris was able to blow the whistle on malfeasance and still thrive as a professional archivist. Shelley Davis followed the rules and lost her job. Lawyers for government employees in whistleblowing cases agree that Davis's fate is more typical. This is a fact of life. In these three situations, vital government records were destroyed. In the Canadian case the destruction was justified. In the South African case the destruction served a political agenda. In the IRS case both politics and self-protective bureaucratic behavior were involved.

The Shelley Davis case might have had a different outcome in a different culture. In countries that follow British traditions, such as Canada, retention requirements are quite strict for government offices and even government-funded institutions such as museums. In one interesting case, a personnel dispute in a Canadian museum got to court, and it was determined that the relevant memos were emails that had been deleted. The director was let go, and the new director joked that his first order of business was to regularize the handling of email communications. The essence of the joke was that this was something trivial, but in fact it is only trivial when there is not a dispute.[24] Americans can learn from these other systems and adapt what works to conditions in the U.S. The profession as a whole needs to learn how to influence the way legislation is written.

To be successful, professional ethics require political clout more often than not. To protect government records, one needs both clout and well crafted policies. One good example comes from the concise language in the California State Archives website. It makes the chain of authority very clear when it comes to records disposal. Two separate authorities must authorize the destruction of any state records:

> It is imperative to remember that "no record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the director [of General Services] that the record has no further administrative, legal or fiscal value *and* the Secretary of State has determined that the record is inappropriate for preservation in the State Archives" (Government Code 14755a). If records are being destroyed without the prior approval of DGS and the Secretary of State, the agency is violating the State Records Management Act.[25]

As Shelley Davis learned, mandating retention is one thing, implementing it is another, and trying to prevent destruction of records can lead to the loss of a job. The higher the level of government, the higher the political stakes. It is no accident that the most controversial cases of record destruction occur in Washington. Since the advent of electronic communication, the White House has been asked to supply emails to document events under investigation, from the Iran-Contra scandal in the Reagan administration

to the Valerie Plame Wilson investigation over two decades later. These disputes over government email will no doubt recur on a regular basis until sound procedures are in place. Meanwhile, the problem of deleted email will not go away.[26] When the electronic files cannot be found, the responsible parties typically say they were deleted. Trust in the executive branch is badly compromised as a result. The Presidential Records Act, which came out of the Watergate scandal, continues to be a political football between the executive branch and Congress on one hand and historians on the other. Retention and disposal are not just technical issues. They are ethical and moral ones.

THE ERASURE OF POLITICAL HISTORY AT THE NATIONAL ARCHIVES

By Masha Gessen

January 19, 2020

Signs at the fourth annual Women's March, in Washington, D.C., on January 18th. The day before, it was reported that the National Archives had altered photos from the inaugural March, in 2017. Photograph by Zach Gibson / Getty

Last month, a photographer named Ellen Shub died, near Boston, at the age of seventy-three. I had got to know Shub in the nineteen-eighties, when I worked for gay and lesbian publications. At that time, she was already well known as a chronicler of social protest—a role that she continued to perform up until she unexpectedly fell ill, just weeks before she died. Many of her pictures were compositionally similar—frontal, focussed on one person and one sign. In 1975, she took a picture of a woman holding a placard that said "no more back room back alley

abortions." In 1981, at a Boston rally for the Equal Rights Amendment, she photographed a woman who held a sign on which she had pasted "59c"—the amount of money, it was said, that a woman made for every dollar earned by a man. In 2004, when the Republican National Convention was held in New York, Shub took a picture of a protester with a large sheet of cardboard printed with the words " 'dissent is the highest form of patriotism' —thomas jefferson." In 2014, at a rally in Boston, she photographed a young man holding one that said "#icantbreathe." There were many more, and, in each case, the message of the photograph was the message of the sign.

Shub's intention in taking such text-centric pictures was clear: she was creating a historical record. Her medium was photographs published in the alternative media and movement media: gay and lesbian newspapers, feminist newspapers, and city weeklies. If mainstream journalism likes to think of itself as the "first rough draft of history," and indeed forms much of the record that historians use to create more lasting narratives, then the kind of papers to which Shub contributed serve as amendments to this story, a record of what was also said, also written, and also seen. Shub spent decades attending all sorts of protests in all kinds of weather, to insure that—even if contemporary television viewers were unlikely to know it—future generations could learn that we were here and we held signs.

I thought of Shub on Friday, when the Washington *Post* reported that the National Archives had altered the signs on a photograph from the 2017 Women's March on Washington. On the photograph in question, the word "Trump" was blurred on a sign that originally read "God Hates Trump." In other signs in the same picture, the words "vagina" and "pussy" disappeared.

In response to the *Post*'s initial inquiry, the Archives offered two arguments and one excuse. The excuse was that the altered photograph was not part of a current exhibition at the Archives, tracing a hundred years of the suffragist movement, but merely a display that advertised the show. Still, the display would have become part of the Archives' record—indeed, a part of the record that would have been seen more widely than the exhibition itself. The arguments were that the words referring to female anatomy may strike visitors as "inappropriate" and, separately, that the Archives are a "non-partisan, non-political federal agency." The word "non-partisan" seemed to be used to mean "in willful denial of the existence of political opinion." The word "non-political" seemed to mean that the job of the Archives is to create a historical record that obliterates politics. (On Saturday, within twenty-four hours of the publication of the *Post* story, the Archives removed the display photograph and posted a note of apology, which began, "We made a mistake.")

The *Post* and others who went on to pick up the story noted that the director of the Archives, David S. Ferriero, was appointed by Obama. This is indeed an important point, because it provides a measure of how far we, as a society, have drifted under President Donald Trump. By the third anniversary of his inauguration, an organization created for the purpose of creating a historical record—and headed by someone who is not a Trump appointee—has falsified the historical record.

The altered photograph, from the 2017 Women's March on Washington, on display at the National Archives Research Center, on January 17th. Photograph by Salwan Georges / The Washington Post / Getty

Of course, the second thing I thought about when I saw the news was the vast and well-documented Soviet system for excising people from the record: by retouching them out of photographs and by altering books, including the Great Soviet Encyclopedia, which sent subscribers ready-made filler pages to put in place of high-ranking officials newly exposed as enemies of the people. The analogy is floating on the surface, offering itself up to anyone who stops to consider the situation, even for a moment. This suggests that the head and staff of the National Archives did not, in fact, give themselves a moment to consider their actions, perhaps because their actions seemed so logical and right to them. It seems that, unless the media focussed its attention on them, they might not even have realized that they were engaging in the very opposite of what the Archives had been created to do: forge a clear and accurate historical record.

A couple of years ago, I wrote about a book documenting the Soviet practice of eliding people, objects, and facts from photographs. Inevitably, I quoted Hannah Arendt, whose 1967 essay on truth and politics, also published in *The New Yorker*, remains some of the most insightful commentary on the danger of trying to create politics in the absence of shared reality:

The chances of factual truth surviving the onslaught of power are very slim indeed; it is always in danger of being maneuvered out of the world not only for a time but, potentially, forever.

Facts and events are infinitely more fragile things than axioms, discoveries, theories—even the most wildly speculative ones—produced by the human mind; they occur in the field of the ever-changing affairs of men, in whose flux there is nothing more permanent than the admittedly relative permanence of the human mind's structure. Once they are lost, no rational effort will ever bring them back.

In the case of the National Archives and the Women's March, a swift media reaction was probably instrumental in correcting the record—if that is actually the outcome of whatever remedies the Archives has selected. But Arendt warns us that history lost, even if only because it is temporarily pushed underground, is still, indeed, memory lost.

Masha Gessen, a staff writer at The New Yorker, is the author of eleven books, including "Surviving Autocracy" and "The Future Is History: How Totalitarianism Reclaimed Russia," which won the National Book Award in 2017.

STORY

THE NEW GATEKEEPERS: WILL GOOGLE DECIDE HOW WE REMEMBER SYRIA'S CIVIL WAR?

February 19th, 2019 • Ellery Roberts Biddle

This post was written as part of a partnership between Global Voices and Monument Lab. Global Voices is an international and multilingual community of writers, translators, academics, and human rights activists.

"Damascus-Old City - Umayyad Mosque- دمشق- المدينة القديمة - الجامع الأموي," Damascus before the war. (Hani Zaitoun (CC BY-SA 3.0))

One of the most haunting images of war in the modern era shows five young children running barefoot from a cloud of smoke, northwest of Saigon. At the center is a girl who is completely naked, screaming in pain from a napalm bomb that South Vietnamese troops, propped up by the US military, had mistakenly dropped on her village.

"The Terror of War" also known as "Napalm girl" was captured by Associated Press photographer Nick Ut in 1972 and appeared in major newspapers across the world, including the New York Times.

Although it went against the Times' and other newspapers' policies to show a photograph of a naked child, editors made an exception because of the illustrative nature of the image. The photo later won a Pulitzer prize and left an enduring mark on public understanding of the Vietnam War and its consequences for civilians.

In 2016, this very same photo was censored on Facebook. The image was uploaded by Aftenposten, Norway's largest newspaper, as part of a historical review of the war. It was censored by Facebook almost immediately afterwards, because it depicted a naked child.

In response, Aftenposten editor-in-chief Espen Egil Hansen wrote an open letter to Facebook CEO Mark Zuckerberg imploring him to "envision a new war where children will be the victims of barrel bombs or nerve gas. Would you once again intercept the documentation of cruelties?"

Facebook soon thereafter reinstated the image. In an interview with The Guardian, a PR spokesperson explained that Facebook had changed its decision because the image of the girl, Kim Phuc, was "an iconic image of historical importance."

Smoke rises from a building in the Damascus suburb of Jobar after being hit by a hit by a bomb during the Qaboun offensive (February–March 2017). (Qasioun News Agency (CC BY 3.0))

'Envision a new war'

There is no need to envision or imagine this "new war" that Hansen described in his plea to Zuckerberg. It is already happening, in Syria.

I recently watched a series of videos showing the aftermath of a sarin gas bombing in Idlib province, in 2017. Several of them show chaotic scenes at a medical center. In one, a teenage boy lies on the floor, barely conscious, with foam oozing from his mouth, a telltale sign of sarin gas exposure. Another shows a little child of maybe three or four years who is lying on a table in a medical center. A man stands over him and explains in Arabic how the child succumbed to the deadly gas. The man keeps his face out of the frame.

These are a just few of thousands, perhaps millions of videos of this kind. Syria's may be one of the most documented wars in human history. How will this overabundance of videos and pictures affect how the war is understood in the future? And what consequences will they bring for the war's perpetrators?

While it has become increasingly difficult and dangerous for professional media outlets like AP or the New York Times to cover Syria's civil war, it is being thoroughly documented all the same. With mobile phones in hand, Syrians have been recording and photographing bombings, shellings, nerve gas and chemical weapon attacks and uploading these images to the internet. The video I mentioned above was taken by SMART News Agency, a group known for documenting the work of the White Helmets in Aleppo.

A collage of images of chemical weapon attacks and victims. (Adam Harvey, Syrian Archive (CC BY-SA 4.0))

Millions of media files are moving around online, and constantly shifting public understanding of the war and its effects on people's lives. This abundance of documentation has the potential to serve as testimony for the public record and even evidence of war crimes, if regime leaders are one day brought before the International Criminal Court. It has the power to provide the public with a collage of information and memory of the war, the people whose lives it changed and took away, and the place where all this happened.

But the sheer abundance of material at hand — tens of millions of files and counting — is almost impossible to parse or search without guidance.

A group of technologists in Berlin is trying to change this, one media file at a time.

Building the Syrian Archive

Syrian technologist Hadi Al-Khatib left his country for Berlin, Germany in 2011. Later that year, he began helping a group of Syrian lawyers who were trying to gather evidence of human rights violations at the start of the war. The group was overwhelmed with data from digital media files and had no strategy for verifying or classifying the abundance of digital media that was already pouring out of the country.

This was in 2011, at the peak of the social uprisings that spread across the Arab region, changing the course of history in Egypt, Tunisia, Syria and beyond. Al-Khatib had seen firsthand how digital documentation of human rights violations could spark protest and shift public understanding of major events in a country's history.

But he also knew how complicated this kind of documentation could become. The world's most accessible social media platforms were optimized for clicks and advertisements, but not for verification, categorization or contextual understanding.

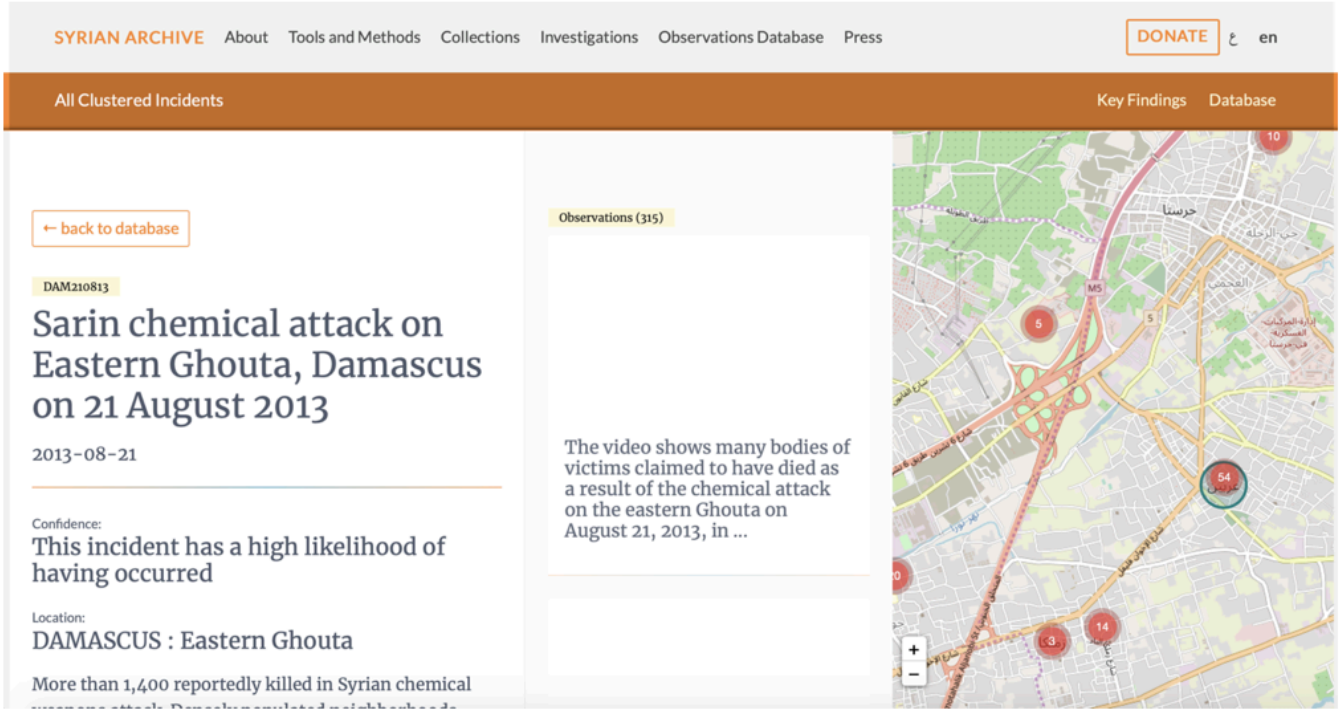
When he returned to Berlin, Al-Khatib recruited a few colleagues to figure out how they could help. The trio spent the next three years collecting, verifying and categorizing digital media files from the war.

In 2014, they launched the Syrian Archive, a public database that today contains more than five million images and video files from the war.

The Syrian Archive is not your average online library. The homepage features investigations of airstrikes by Russian planes, chemical attacks, and shellings that have destroyed hospitals, bakeries and mosques.

The site highlights evidence of chemical weapons attacks, which are forbidden under international humanitarian law.

The keywords and categories one uses to search the archive offer a stark sense of its holdings. One can search videos of attacks by the type of weapon used — barrel bombs, cluster munitions, drones and sarin gas are among just a few of the options in the "weapons used" drop-down menu.



Screenshot of entry "DAM210813, Sarin chemical attack on Eastern Ghouta, Damascus on 21 August 2013," one of the entries in the Syrian Archive's collections database. (Syrian Archive)

Browsing the archive, one gets the sense that this kind of work should be in the hands of a UN agency or international humanitarian organization. But as the archive's materials note, these institutions have not kept up with the pace of this war. The French Foreign Ministry and the UN Commission of Inquiry into Syria have confirmed that 163 chemical weapons attacks have taken place in Syria. The Syrian Archive has documented 212.

If they don't do this work, Al-Khatib says, the materials — and everything they can tell us about the war — may soon become impossible to check or verify. Some of it may be lost altogether.

"This data is useless if it's not labeled or searchable," Al-Khatib told me when we met in Berlin last month. "But if there's context, there are lots of things we can do."

The goal of their work, most immediately, is to provide journalists and human rights workers with datasets that are searchable, verified and contextualized by local and subject matter experts. In a not-too-distant future, the group expects these videos and images will serve as evidence in war crimes cases against the parties involved, thanks in part to partnerships with the UN High Commission on Human Rights and the Human Rights Center at UC Berkeley Law School.

Beyond preserving evidence, Al-Khatib also envisions the archive offering future generations rich material for reconstructing, historicizing and memorializing the war, the people whose lives it changed and took away, and Syria as a country.

“For me, what is most important is to make sure this data is going to be available for the next 10, 20 years,” he says. “I imagine this could contribute to a museum, or a digital memory space.”

But right now, the team has little time to make meaning or narratives from these images. They just know that the images need to be preserved.

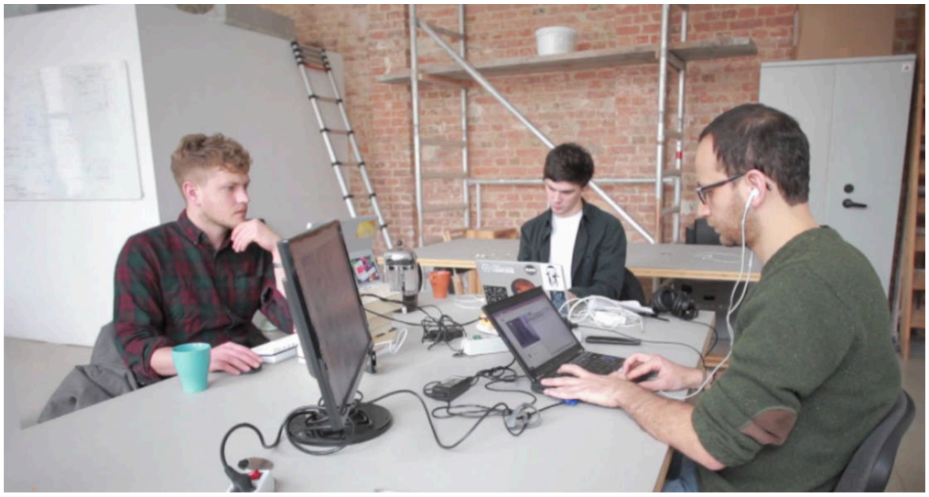
Images of war are disappearing in Silicon Valley

To gather this data, Al-Khatib and his colleagues work directly with local journalists and humanitarian groups documenting the war. They rely heavily on Facebook and YouTube as the primary platforms where these groups and countless individuals upload their files. They estimate that 90% of the media files in the archive come to them by way of these two behemoth social media services.

He and his colleagues have identified several hundred sources across the social web, mainly Facebook pages and YouTube channels, from which their systems automatically capture images and videos each day. This allows them to classify and archive material in ways that these corporate platforms are not built to accommodate.

But increasingly, they are capturing files not only for the sake of archiving them, but to prevent them from disappearing altogether.

Faced with rising pressure from governments to rid their networks of violence and hatred, companies like Facebook and Google (parent company of YouTube) are scrambling to censor graphic violence and anything that could be linked to violent extremist groups like ISIS. Thousands of videos and photos from the Syrian war have disappeared along the way.



The Syrian Archive team, including Hadi Al Khatib, right. (Syrian Archive (CC BY-SA 4.0))

Videos that could be used as evidence against perpetrators of

violence have been deleted upon upload, or censored by the companies shortly after they are published. They are often impossible to replace.

Al-Khatib says they have to do better than this. “The companies have a responsibility to preserve these materials,” he says. “It’s evidence.”

He explains that right now, there are only small, partial solutions to the problem. For example, YouTube allows users to reclaim videos that they’ve uploaded, but which were rejected for violating the company’s rules prohibiting extreme graphic violence.

But, he asks: “What if the source is not alive? What if the source is arrested? What if the source doesn’t have access to email?” These are incredibly common predicaments in Syria.

And there is a great deal of material that never even sees the light of the public internet. We talk about how Google uses machine learning technology to scan videos for terms of service violations, like extreme graphic violence. In some cases, videos are rejected and purged from the site before they even become public.

“We have no idea what doesn’t make it onto the site,” Al-Khatib says. “We don’t know everyone. So if they don’t keep it [on their devices], that’s that.” He seems to care deeply about every video, as if each one is part of the story.

Among the millions of files, there are surely some that could one day become “iconic image[s] of historical importance,” rising to the level of Nick Ut’s photo of the young Kim Phuc running for her life.

But if the person who captures them puts them into the hands of companies like YouTube and Facebook — and then loses her device, or even her life — the image may be lost forever.

How is technology telling our history?

While millions of people have the power to capture these images, a mere handful of privately-owned and operated companies have the power to decide what becomes public and what does not. With minimal regulations or

“Aleppo City at Night,” Aleppo before the war. (Anas A via Flickr)

accountability mandates to comply with under US law, and increasing pressure to keep violence off of their networks in Europe, companies are routinely disposing of this material.

Who is actually reviewing these videos and deciding what stays and what goes? Sometimes companies pay people to do this work, but over the past two years, machine learning tools and other types of artificial intelligence have become a favored (and more affordable) solution to this problem. While AI tools are very good at recognizing the content of an image — such as a naked child, in the case of Kim Phuc — they may never have the capacity to judge its context or legal significance.

Unlike Ut's photograph, carefully considered and contextualized by Ut and his editors at AP, images from the Syrian war increasingly are at the mercy of technical systems — not human ones — that decide which images to allow and which ones to censor.

How should social media companies contend with this abundance of images and video circulating online, some of which may serve as vital evidence of war crimes or human rights violations? And how can people who witness these events document and preserve them in the interest of public knowledge?

The Syrian Archive may be setting the course for developing a new kind of public space online, moving away from the Silicon Valley models that are all built to generate attention for the sake of ad revenue.

What if we had a "social media" space where information was organized based on its context, legal significance and cultural meaning? How might we see the present time, and the past, differently?

The Syrian Archive offers one possible answer to this question. While the future of its subject matter remains painfully uncertain, there is some light in knowing that in the years to come, those who want to tell stories of Syria will have this rich archive of data and stories from which to draw.

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Uncovered Papers Show Past Government Efforts to Drive Gays From Jobs

By Matt Apuzzo

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WASHINGTON — Days after President Lyndon B. Johnson's election to his first full term, an administration official asked a subordinate to explain the policy on firing gays. In particular, he wondered whether someone with a history of gay liaisons could, through years of marriage, be "rehabilitated" into a trustworthy civil servant.

The response came quickly, and in language that would be shocking by today's standards. Technically, rehabilitated gays could keep their jobs. But John W. Steele, a staff member of the Civil Service Commission, which handled personnel matters for the government, said that seldom happened.

"Some feel that 'once a homo, always a homo,' " Mr. Steele wrote. He added, "Our tendency to 'lean over backwards' to rule against a homosexual is simply a manifestation of the revulsion which homosexuality inspires in the normal person."

It was November 1964. Four months earlier, the president had signed the landmark Civil Rights Act banning discrimination on the basis of race, religion, sex and national origin. The policies laid out in Mr. Steele's memo would continue for more than another decade.

It is well known that America's laws and policies, in the name of morality and national security, barred gays from the federal work force for much of the previous century. But documents newly obtained by a gay-rights group offer new details about the views that drove the government's sometimes obsessive effort to identify and fire gays in government jobs.

Memos like Mr. Steele's, and formerly classified documents on an F.B.I. program called Sex Deviate, provide stark evidence of how for decades the government considered gay men and women to be immoral, and not to be trusted with even the most mundane bureaucratic tasks.

"These memorandums were not meant for the outside world to see," said Charles Francis, a gay-rights advocate with the Mattachine Society of Washington. "It's a tide of human indignation."

For the past two years, Mr. Francis has been collecting documents on the government's anti-gay policies, filling a gap that he sees in the archives of the gay-rights movement. Groups such as the Gay, Lesbian, Bisexual, Transgender Historical Society in San Francisco and the Rainbow History Project in Washington have collected volumes of personal records, photographs and objects. But mining government documents has typically been the purview of scholars.

Mr. Francis, working with pro bono lawyers at one of the nation's largest law firms, McDermott, Will & Emery, has used public-records requests to collect hundreds of documents in which gays or policies toward them were discussed. The government has identified thousands more, and Mr. Francis says he plans to someday make the records public as part of what he calls "archive activism."

"Gay and lesbian history is often ignored or deleted," he said. "It didn't happen."

For instance, while much has been written about the F.B.I.'s first and most influential director, J. Edgar Hoover, and his hunt for communists and his suspicion of the civil rights movement, little attention has been paid to his effort to unmask gays in government and academia.

"There were two obsessions at the F.B.I. One was communism. The other was gays," said Douglas M. Charles, a Pennsylvania State University professor who is writing a book on the F.B.I. and gays and who independently reviewed some of the same documents that Mr. Francis examined.

Under Mr. Hoover's Sex Deviate program, the F.B.I. collected information on people suspected of being gay and passed it on to government agencies and, sometimes, the news media. The F.B.I. had a network of informants, including doctors, helping alert the authorities to what was seen as a growing national security threat, Dr. Charles said.

“The Seat of Government has been receiving an increasing number of reports, arrest records, and allegations concerning present and past employees of the United States Government, who assertedly are sex deviates,” a 1951 F.B.I. memo states.

Dr. Charles said the F.B.I. incinerated 330,000 pages of documents related to the program in 1977, leaving behind only a few scattered records. So efforts by people like Mr. Francis to make public the remaining documents, along with documents from elsewhere in government, are invaluable to historians and researchers, he said.

The Sex Deviate program came on the heels of a 1950 Senate report calling for a crackdown on gays in government. The report declared them immoral, emotionally unstable security risks.

Franklin Kameny, a leader in the gay-rights movement, had been fired by the government.
Grey Villet//Time Life Pictures/Getty Images

“Many civilian agencies of government have taken an entirely unrealistic view of the problem of sex perversion and have not taken adequate steps to get these people out of government,” the report declared.

Soon after President Dwight D. Eisenhower took office, he issued Executive Order 10450, which authorized investigations into, among other things, sexual perversion in the federal work force. The order was intended to ensure the “suitability” of federal employees. The government cited suitability in 1957 when it fired Franklin E. Kameny as an astronomer. Mr. Kameny went on to be a leader in the gay-rights movement. Before his death in 2011, Mr. Kameny donated his papers to the Library of Congress and received an apology from the Obama administration.

It was in the government's suitability files that Mr. Francis found the memo from Mr. Steele. While the government clearly labeled files concerning Communism and counterespionage, documents related to gays were not so neatly identified, Mr. Francis said.

The government's anti-gay climate claimed the job of the White House aide Walter Jenkins, one of Johnson's most trusted advisers. He resigned in 1964, a month before the Civil Service Commission memo, after being arrested on disorderly conduct charges in a Y.M.C.A. restroom with another man. Johnson suspected his longtime friend had been framed.

"I couldn't have been more shocked about Walter Jenkins if I'd heard that Lady Bird had killed the pope," he said later. "It just wasn't possible."

In 1975, in the face of lawsuits and protests, the government rescinded its policy that being gay, by itself, was enough to justify being fired. Today it is unlawful for the federal government to fire employees based on sexual orientation.

There is, however, no federal law prohibiting discrimination by private employers. Advocates have pushed for such a measure for years and repeatedly have called on President Obama to ban, by presidential decree, discrimination against gays who work for federal contractors.

Paul M. Thompson, a lawyer working with Mr. Francis, said that he was surprised at how stark the government's language against gays was for so long. "And we're just now struggling with whether there's a need to protect people in the workplace," he said.