

## FOLKLORE ARCHIVES: ETHICS AND THE LAW

On November 11, 1971, at the annual meeting of the American Folklore Society in Washington, D. C., Ellen J. Stekert chaired a panel titled "Ethics, Security, and Copyright: People, Archives, and the Law." Watergate-inspired paranoia has more recently underscored the timeliness of the topic. Ellen Stekert has submitted both her own edited introduction to the panel and transcriptions of the comments and discussion of the panel members and audience participants. Stekert's Introduction focuses on the problems explored by the panel: what ethics and laws govern the preservation and utilization of the materials we study? She singles out the folklore archivist as the one most likely to be charged with responsibility in the treatment of "sensitive" archive materials.

Copies of transcriptions were sent to panelists for editing and permission to publish. The panel originally included Ellen J. Stekert, Chairman, Philip P. Mason, William Ivey, Alan Jabbour, Frank J. Gillis, Edward D. Ives, D. K. Wilgus, and Bruce R. Buckley. Mason preferred that we delete his comments, and Ivey failed to respond to repeated requests for permission to publish. The comments that were returned vary nicely in style, some bearing a bit more polish, others bearing witness to their oral originals. We trust our readers will find delight in the variety and approve our untampering hand.

One additional note should be inserted here. As Alan Jabbour pointed out in a telephone conversation, panel participants were originally invited to present a brief description of the archives they represented before moving on to a more direct consideration of the problems presented in the Introduction. These instructions were followed faithfully by most of the participants, so the resulting introductory descriptions should not be seen as a reluctance to focus on the problems but rather as a willingness to set the stage. Hopefully publication of the panel material will encourage further discussion of the topic.

Sandra K. Stahl  
Special Editor  
Folklore Forum

Introduction

Ellen J. Stekert  
Department of English  
University of Minnesota, Minneapolis

Few folklorists today can ignore the problems inherent in the collecting, retaining, and utilizing of the materials that they study. Whether we like it or not we must recognize that many of our collections contain potential legal dynamite. This pertains to both our personal fieldwork and that which we may have supervised and possibly incorporated into an archive. Some of us have explicitly developed and donated such collections to the institutions for which we work, while others of us have regarded the supervised materials collected by the students in our classes as our own archives

and not those of the institutions that granted the credit hours to the students. We have yet to see what will become of the latter collections if push comes to shove and a legal precedent is established.

The day has passed in folklore scholarship when materials could be gathered, classified, and utilized by the combination teacher-scholar-archivist. In a few regions this still may be possible, but such cases are becoming more and more the exception, and we must look ahead to see what might be in store for us. The problem is not trivial; involved in it is the very integrity of our discipline. What ethics and laws govern the preservation and utilization of the very materials we study?

As the field of folklore grows, so do the archives. More collecting is being done and in areas not previously explored. As new areas open to the student and scholar of tradition, so too, problems develop with the increasing collecting of what might be called "sensitive" materials. Certainly, lore from groups that are considered illegal must be protected so as to protect the informants; but also, apparently innocent material may be damaging if it is made known to specific persons within a community, making it imperative to "protect" the vast majority of archival material. But how can we both "protect" material and utilize it at the same time? This is not an easy question to answer, even if we begin to develop the long-needed skills of disguising the identity of informants while retaining the necessary cultural and contextual data.

Certainly, the first step toward solving many of our current and future problems is to develop the skills needed to mask the identity of an informant. There is no reason for us not to learn this lesson from sociologists and anthropologists. As mass media become increasingly pervasive, as folklore remains eminently marketable, and as more collecting is done in urban centers, there will be increasing feedback to the informants--the human beings--from whom we collect. We must be prepared to face irate persons who disagree with the scholar about what is innocuous material handled in an objective manner. In the older, what we might call the "classical" collections, many of which contained quaint (often ethnic) material from informants who presumably could neither read nor write, the folklorist seldom concerned himself with the consequences of publishing undisguised sources as well as materials. Times have changed.

We appear to be entering an increasingly legalistic age, one in which people are intensely concerned about invasion of privacy and affirmation of ownership. Our ethos is a "mine" one. And when the sense of "mine" runs from informant, through collector, through archive, through institution, through publisher, we are in the midst of burgeoning conflicts. In addition, materials in folklore archives are marketable in direct proportion to the growth of ethnic consciousness within a country. North American archives will be increasingly addressed by commercial concerns intent on selling ethnicity. Books already published and those not yet written will be more widely read than in the past. Both professional folklorists and commercial firms are interested in the same materials - materials housed in folklore

archives. Regardless of the infamous early article by Alan Dundes,\*there is hardly a person associated with an archive of traditional materials today who does not adhere to the goal of having the collectanea used. However, the materials, the informants, the persons classifying the lore, the institution of the archive as well as any institution to which it belongs, and the collectors--all must be protected along with the persons utilizing the lore for academic and/or commercial purposes. So we find ourselves in a particularly sensitive situation, one in which we must protect yet utilize, guard without petrifying. A healthy anal as well as a healthy oral orientation is not an impossible combination here. Our problem is how to achieve it before it is too late, before lawsuits are filed or before archives are arbitrarily absorbed into institutional organizations by administrators either frightened by the thought of lawsuits or intent on building empires.

Folklore archivists or persons with collections of traditional materials have yet another important problem to face that other types of archives have already confronted. Almost all other kinds of archives bid against one another for collections; at times bidding takes on the aspect of thinly disguised warfare. There is still time for folklore archives to avoid this pitiful situation; we can look forward to the development of regional archives but we should also think in terms of developing a central archive with a retrieval system available throughout the country so that we do not have to bid against one another for collections.

In order to predict, and hopefully obviate, problems that folklore archivists will encounter, we must first take a brief look at the role of the folklore archivist in the past. Most folklorists with archives are connected with institutions of higher learning. As the teacher-scholar-archivist wrestles with the problems of how to classify material, he or she recognizes that this struggle has to do with the very heart of folklore scholarship. The questions of classification are those of conceptual theorizing for the entire field. There are many questions we have not begun to answer, and the folklore archivist will have to be a skilled professional with a solid grasp of the field of folklore, not simply a cataloguer, in order even to begin grappling with the problems of classification. In addition, archive work for the folklorist now must take up the majority of his or her time; managing and developing a professional folklore archive is hardly part-time work. Not only must such a professional folklorist direct a staff and manage a budget, he or she will have to develop systems of classification, decide what materials to bring into the archive, and how they are going to be brought in. Often, in fact ideally, the folklorist-archivist will have a major role in training collectors. Certainly proper managing of folklore archives is not insignificant work.

Historically, folklore archives in universities and colleges have served as the center and the focus of most folklore activity, teaching, and research, on the campus and in the community. Folklore archives have functioned as much more than repositories of material; they have been intimately involved in the teaching of folklore, the research of scholars and citizens in other areas and fields, and in coordinating activities and providing clerical help for professional folklorists on campuses that have no centralized folklore program. In fact, many, if not most, folklore programs have grown out of the archive structure. The necessary use of the folklore archive in this manner, a use not antithetical to its primary purpose, will remain, and should remain, as long as folklorists are tied within universities and colleges to separate budgets within separate departments. Unfortunately, if we are not alert to the danger, folklore archives can be scooped up by other organizations looking for prestige and possible grant monies that might accrue to their materials. It is a sad fact that such situations have come to pass; there is at least one prestigious folklore archive that has been made practically immobile by such an administrative sweep put into effect without any consultation of the professional folklorists who developed the organization. When budgets are tight, as they have been in recent years, the small organization is often the victim of vacuum-cleaner penury where archive slots, funds, and holdings are swallowed by larger segments of the university. Certainly there is an important question of ethics raised in such situations.

As folklorists have come to be increasingly accepted in academe, the folklore-archivist, who views the archive holdings and contributions as an integral part of teaching and research in the field, suddenly discovers that the "archivist" part of his role has already become professionalized. The strength of the archival profession is easily assessed by a glance at the official publication of the Society of American Archivists, The American Archivist, now in its thirty-fifth volume. The folklorist must work out some kind of happy arrangement with the professional archivist. The professional archivist has much to teach the folklorist, and indeed all folklore archives should have at least one professionally trained archivist on their staff assisting in the utilization of the archive and advising in the development of the conceptual areas. In a like manner, folklorists may certainly aid archives of nonfolklore materials; for example, the professional folklorist has much to offer archives that comprise oral history projects.

In conclusion, it can be said that the folklorist-archivist has four major concerns. First, he has to guide the use of the archive: who is allowed to use it and for what purposes? Second, he has to know about the profession of archiving and hopefully have a professional archivist advisor. Third, he must know how to manage an organization with a set staff and budget while also having professional training in the discipline of folkloristics. Fourth, he must be concerned with the legal status of the collection. In a sense we are faced again with the familiar question "Who owns folklore?" It is a question that might be reduced to "Who can be sued for the use of folklore or collected data?" With these questions comes another: "Who owns the folklore archive?" And so we find ourselves back where we began, but hopefully more alert to problems we never thought we might face. We

not only have to seek answers about the relationship of lore to law, but we also must ask about ethical imperatives: to whom is the folklorist responsible and how must institutions treat folklorists, as well as the objects of folkloristic research, in a responsible manner? At the risk of ending on a weak pun, we will observe that these questions are not purely academic.

### Panel Comments

Alan Jabbour  
Head, Archives of Folk Song  
Library of Congress, Washington, D.C.

The Archive of Folk Song has a longer history than some of the archives that we're dealing with today, and a more complicated history in certain ways. It was founded in 1928. There's a quote that we still toss out occasionally, "to meet a pressing need for the collection of American folksong," or something like this. Its original mission was to collect American folksong and folk music. That mission was rather soon broadened to all the Americas, not just the United States, then to other foreign countries. Soon it broadened to include folklore, oral history, and other related materials that could appropriately be housed there.

Its collections consist, first of all of sound recordings, cylinder recordings, dating from 1890 to the early 1930s, field recordings of American Indian and other materials; disc recordings done on instantaneous disc machines that were portable--portable I'm told in the sense that if you had some porters you could carry it--from the mid-thirties, the early to mid-thirties, up to around 1950; wire recordings from the post war period; and tape recordings, beginning about 1949 and 1950 and coming right up to the present. The Archive also has a very large collection of manuscript materials, the great bulk of which has been transferred to it from other government agencies and projects, most notably WPA materials from the Federal Writers' Project. And there are other miscellaneous materials, a few photographs and such things. The Library of Congress has other, you might say, archival entities which take care of other media. There's the Motion Picture Section in the Library, and there's the Prints and Photographs Division, which has a huge collection of photographs of all sorts. There are other entities, such as the Recorded Sound Section adjacent to the Archive, which focuses on commercial recordings of all sorts and noncommercial recordings of spoken word and the like.

The sources of materials that come in are: staff collecting, beginning from the very beginning in the late '20s and early '30s - Robert W. Gordon and after him John Lomax and Alan Lomax did a huge amount of recording on Library time for the Library of Congress; materials that came to us from other government agencies that concluded we were the best repository of these materials; gifts from institutions both from the United States and abroad -