January 1997

The Ethics of Disclosure: The Case of the Brown and Williamson Cigarette Papers

Kurt X. Metzmeier
University of Kentucky College of Law

Follow this and additional works at: https://digitalcommons.kennesaw.edu/provenance

Part of the Archival Science Commons

Recommended Citation
Available at: https://digitalcommons.kennesaw.edu/provenance/vol15/iss1/3

This Article is brought to you for free and open access by DigitalCommons@Kennesaw State University. It has been accepted for inclusion in Provenance, Journal of the Society of Georgia Archivists by an authorized editor of DigitalCommons@Kennesaw State University. For more information, please contact digitalcommons@kennesaw.edu.
The Ethics of Disclosure: The Case of the Brown and Williamson Cigarette Papers

Kurt X. Metzmeier

The story of the Brown and Williamson Cigarette Papers reads like a screenplay inspired by a John Grisham novel.

Scene 1: In late 1992 Kentucky attorney J. Fox DeMoisey receives a bombshell, a banker's box full of documents stolen from the state's largest law firm, Wyatt Tarrant and Combs, by his client Merrell Williams. While working as a paralegal assigned to a project indexing secret documents of his firm's client, the Brown and Williamson Tobacco Company, Williams had furtively copied documents he thought demonstrated that the cigarette maker had deliberately hidden its knowledge of tobacco's lethal qualities, qualities that he believed were the cause of his current heart problems.¹

Scene 2: The locale shifts to the University of California San Francisco (UCSF) Medical School in the early summer of


PROVENANCE, vol. XV, 1997
1994. A large Federal Express package bearing the return address of "Mr. Butts," a cartoon spokesman for the tobacco industry, arrives at the office Dr. Stanton Glantz, a colorful biostatistician and nationally known antitobacco activist. On reviewing the four thousand-plus documents in the package, Glantz concludes that the documents are the same ones tied up in the Kentucky courts and could gravely injure the entire tobacco industry if released. Dr. Glantz deposits the collection in the UCSF Archives and Special Collections department of the library where the documents are soon digitized.

Scene 3: On 29 June 1995, the twenty-fourth anniversary of the Pentagon Papers decision, the Supreme Court of California rules that the UCSF Archives and Special Collections may provide public access to the "Mr. Butts" papers. Although Brown and Williamson had earlier attempted to intimidate staff and researchers by dispatching private investigators to 'stake out' the repository's public areas, the archives opens the Cigarette Papers over the World Wide Web. In its first month on-line the web site gets over 65 thousand hits, perhaps the biggest opening of an archival collection in history.

The deposit of these documents in the special collections department of a publicly supported university raises important ethical issues for archivists. The provenance of the papers is

---

3 "UC To Release Tobacco Firm's Papers in the Wake of Ruling," Los Angeles Times, 1 July 1995, p. 34.
hopelessly tangled, and clearly the original creators of the documents did not part with them voluntarily. Nor did the documents fairly represent the records series from which they came; in fact, each item was deliberately chosen to prove a point, that Brown and Williamson knew of and ignored the dangers of cigarettes. On the other hand, there is a strong moral impetus for a public university dedicated to providing information to citizens to make the documents readily accessible to the public, and because of its special expertise in the handling of like collections, the archives is the most logical entity within the institution to take on the task. Which should take priority for the archives: dedication to provenance and original order, or commitment to public access to documentary materials?

Archivists' major statement of professional responsibility is the 1992 Code of Ethics published by the Society of American Archivists, the first major revision of its ethics code since 1980. In spite of its relatively recent date, the 1992 code does not directly address the specific ethical quandaries that arrived on the UCSF's doorstep in the summer of 1994. The general principles underlying the code nonetheless remain the starting point for any discussion of the ethical issues raised by the Cigarette Papers.

Did the mission of the archives justify accepting the documents in spite of the dubious circumstances of their acquisition? What measures could the archives take to

---


mitigate the issues of authenticity raised by its creation and acquisition? Should a repository disseminate a collection of documents copied without the creating institution’s knowledge or consent to further political and legal objectives contrary to the interests of the organization that created them even if a court had determined that the archives’ action would be lawful?

Nothing in the code refers directly to whether an archives should receive a collection of surreptitiously copied documents, especially when the publication of the collection has been adjudicated as proper by the courts. Section I, The Purpose of a Code of Ethics, notes that the code “presumes that archivists obey the laws and are especially familiar with the laws that affect their special areas of knowledge; it also presumes that they act in accord with sound moral principles.” Since the UCSF archives transgressed no laws in this situation, application of this provision turns on the question-begging determination of “sound moral principles.” More specifically relevant is Section IV of the code, Relations with Donors and Restrictions, which enjoins archivists seeking to obtain “documentary materials of long-term value [to] seek fair decisions based on full consideration of authority to transfer, donate, or sell.” Nothing in the commentary would suggest that anything more than a judicial determination of “full consideration of authority to transfer” is required of an institution.

Section III, Collecting Policies, suggests that the stated gift policy of an institution is valuable to this analysis, noting that it is important that the acquisition of documentary materials be “in accordance with their institution’s purposes, stated policies, and resources” in order to “ensure the preservation of materials in repositories where they will be adequately processed and effectively utilized.” In spite of the serendipitous circumstances of their acquisition, the Brown and Williamson Papers fit comfortably within the UCSF
principles for contemporary collecting and for digital archives. According to its mission statement, the repository's purpose is "to advance science, foster excellence in teaching and learning, and promote health science through the collection, development, organization, and dissemination of the world's health sciences knowledge base." The archives has identified three main areas corresponding to research areas at UCSF where it is focusing its collecting efforts and its efforts to make material digitally accessible: AIDS history, biotechnology, and tobacco control.

The mandate of the Tobacco Control Archives is "to collect, preserve, and provide access to papers, unpublished documents and electronic resources relevant to tobacco control issues primarily in California." The showpiece of the collection is the Cigarette Papers, a sample of Brown and

---

10 The AIDS History Project seeks to document the history of the AIDS crisis, with a focus on San Francisco, a city not only hit hard by the disease but also one that had set a model for its response to the crisis by forging an often uneasy cooperation between government agencies and community-based organizations (CBOs). The collection includes oral histories, archives of several CBOs, and a digitized image collection and is available at <http://www.library.ucsf.edu/sc/aph/> 21 January 1999.
12 "Tobacco Control Archives," <http://www.library.ucsf.edu/tobacco/> 21 January 1999. The genesis of the collection was not the arrival of the "Mr. Butts" package, but rather the passage of Proposition 99, the California antitobacco initiative approved by the voters in 1989, which funnels cigarette taxes into health education. The documentation of the history of this measure, as well as other antitobacco initiatives and antismoking organizations, is a primary focus of the collection.
Williamson's internal reports, research results, correspondence, internal memoranda, minutes and agendas of meetings. These documents are strongly presumed to be the material excerpted by Merrell Williams from papers sent by the tobacco firm to their legal counsel in anticipation of litigation. So in a sense they have been twice selected. A mere five cubic feet of photocopied documents, these papers are accessed almost exclusively in their digitized form.

While at face value the acquisition of the Brown and Williamson papers appears questionable, a careful analysis of the Code of Ethics suggests that no ethical principles have been offended. The principles discussed in Sections I and IV appear to be satisfied by the decision of the California courts establishing the legal right of the archives to accept and provide public access to the papers. From the history of the UCSF Tobacco Control Collection prior to the arrival of the "Mr. Butts" package, it is clear that the UCSF archives had an existing policy of collecting tobacco-related materials. Given these facts, as well as its close connection to a major school of medicine, the UCSF Archives and Special Collections was best situated to "ensure" that the papers were "effectively utilized."

The second area of ethical inquiry concerns the integrity of the arrangement of the Brown and Williamson Papers as they were received by the UCSF. It is a matter of record that the collection was created by the selective removal of key documents from a larger collection to provide evidence for legal case. This purpose is clearly at variance with both the theoretical foundations and the ethical principles of archives.

In Section VI, Appraisal, Protection and Arrangement, the Code of Ethics notes that it is the role of archivists to "protect the integrity of documentary materials and ensure that their evidentiary value is not impaired in the archival work of arrangement, description, preservation, and use." The situation faced by the UCSF archives certainly is not unique since collections of materials culled and arranged to influence history are as old as the letters of Cicero, but the code is not clear about how an archives can remedy the selection and rearrangement done by a donor before it receives the material.

The UCSF archives has made every effort to mitigate the donor's impact on the original order of the records by highlighting the circumstances of the acquisition of the documents and providing thorough abstracting of and indexing to their contents. The image-based system chosen by the archives for digitization cannot be searched directly, but project staff have created abstracts for each document which can be searched by keyword\(^\text{15}\) or browsed within seventeen subject categories.\(^\text{16}\) Abstracts of one hundred fifty words are not uncommon and typically one to three keyword(s) have been assigned to each document. Other indexed fields include author and secondary author, title, year, date, and type of work (letter, minutes, and so forth), all of which can be accessed using the collection's search engine.\(^\text{17}\)


\(^{17}\) The rudiments of the indexing methods are found on the "Help on Searching the Tobacco Control Archives" page, which is available at <http://www.library.ucsf.edu/tobacco/ta-search.html>, but the actual tools used to construct the database are not discussed. Either AskSam or Microsoft Access would be satisfactory. The search engine used is FreeWAIS, a freeware search engine widely used on the Internet.
The utility of the site is best reflected in the number of scholarly books and articles made possible through the collection,\(^18\) including the University of California's own volume, *The Cigarette Papers*.\(^19\) However, it also clear that the site has been a boon to litigants seeking compensation from the tobacco industry for personal injuries or, in the case of several state attorney generals, suing the industry for increased health care costs and higher state contributions to Medicare-Medicaid.

The question still remains: Should the UCSF archives have made the material available at all? From its beginning the Code of Ethics makes access one of its most important values, twinning it with the traditional value of preservation. Indeed, the first words of the commentary direct archivists to both "preserve and make available documentary materials of long-term value that have lasting value to the organization or public that the archivist serves." Section VIII of the code, Use and Restrictions, calls for archivists to "encourage use of them to the greatest extent compatible with institutional policies, preservation of holdings, legal considerations, individual rights, donor agreements, and judicious use of archival resources," while Section V of the code, Description, advises archivists to "establish intellectual control over their holdings by describing them in finding aids and guides to facilitate . . . access by users of the archives."\(^20\)

In order to carry out the code's mandate, the UCSF archives had to grapple with practical questions about how to use digital technology effectively in order to make a collection


that is both time sensitive and of global interest accessible to users. The resulting web site is a model for what an electronic archives can be. The documents and their provenance are well described while abstracts and indexes coupled with a computerized search engine make the contents intellectually accessible on a number of levels. The archives met its duty to inform users of parallel research by posting notices of publications based on the collection. The repository also insured that use of the materials was not reserved to its own researchers by litigating for the right to erect the Cigarette Papers web site.

The UCSF archives has to a large degree mitigated the ethical taint left by the documents' questionable pedigree by making the Brown and Williamson Cigarette Papers available to the widest possible audience. The means by which the documents came into the archives' possession were problematic, though lawful, and their checkered provenance introduced bias into their arrangement. Many archives and special collections would have avoided the conflicts, moral ambiguity, and legal headaches inherent in this controversy. However, the UCSF archives did not cause these problems, and by indexing and abstracting it provided researchers with the means to break free from Merrell Williams's arrangement of the documents. At a time when archivists strive to recast themselves full partners in the information revolution, the

21 The Cigarette Papers not only have been used in U.S. tobacco litigation from Mississippi to Massachusetts but also are involved in a large class-action lawsuit in the United Kingdom. Peter Pringle, "Tobacco Giants Face Billion Dollar Lawsuit," London Independent, 14 December 1994, p.13; Vicki Orvice, "Tobacco Firms hid Danger," London Daily Mail, 20 June 1994, p.11.

22 It is not surprising that the UCSF collection is highlighted in the newly inaugurated California Digital Library's Online Archive of California. California Digital Library, "Online Archive of California," at <http://sunsite2.berkeley.edu/oac/> 26 January 1999.
UCSF Archives and Special Collections has thereby shown the way for archival repositories to promote research leading not only into the distant past but also into social action in the present.

Kurt X. Metzmeler is the coordinator of Information Systems Services for the University of Kentucky College of Law and a Librarian III in the UK library system. He holds a J.D. (1995) from the University of Louisville School of Law and has been a member of the Kentucky Bar since 1995.