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Baylor Univ. Library

Federal Judge Grants FBI Access To Sealed Papers

John A. Neuenschwander

The practice of sealing or restricting access to interview materials is certainly not unknown to oral historians. While there are no statistics on how many programs actually do offer interviewees the option restricting access to their tapes and/or transcripts, the recent decision of a federal district judge in the case of *Wilkinson et al. v. Federal Bureau of Investigation* may prompt reassessment of this practice.

The case arose out of the surveillance activities of the FBI against the National Committee Against Repressive Legislation (NCARL), a leftwing political lobby group. The plaintiffs (NCARL's former executive director, Frank Wilkinson, and four sustaining members) claim that the tactics used by the FBI—including "black bag" jobs—violated their civil rights. (This case is similar to the suit recently won by the Socialist Workers Party against the FBI in New York.) During the course of pre-trial discovery, lawyers for the FBI learned that one of the plaintiffs, Anne Braden, had deposited her personal papers and those of her late husband with the State Historical Society of Wisconsin. Both were longtime civil rights activists and Carl Braden had been jailed in 1961 for his refusal to answer questions before the House Un-American Activities Committee. The Braden Papers consist of over 240 boxes of documents, tapes and microfilm.

The Bradens donated their papers to the historical society with one restriction—only persons who had received written permission from Anne Braden would be granted access to the collection. Terms of the restriction were to

be renewed every five years, a provision that Braden has faithfully renewed at the end of every fifth year.

After efforts to secure voluntary compliance with the FBI's request to examine the Braden Papers failed, the FBI obtained a court order (subpoena duces tecum) to produce all of the Braden materials housed at the State Historical Society. In response to the subpoena, Braden's lawyers sought a protective order from the court. When the presiding judge, A. Wallace Tashima, requested that both parties prepare briefs on the Braden motion, he also allowed amicus curiae (friends of the court) to file briefs. Although the Oral History Association did not officially support Braden's motion for a protective order, Samuel Hand, Ronald Grele, Arthur Hansen and Dale Trelevan were listed as individual amicus.

Two major legal theories were advanced by Braden and the amici in support of her motion for a protective order:

- A) Unwarranted access to personal papers donated to public archives will infringe upon the qualified first amendment privileges of archives and libraries;
- B) The restricted access of scholars to archival personal papers promotes the public interest in the free flow of information while protecting the donor's privacy interests.

The first of these arguments came from cases protecting privacy interests, freedom of association and the right of listeners to hear as well as speakers to speak. The gist of this theory was that the flow of scholarly information would be constricted unless government attempts to gain access to such materials were measured against constitutional standards. Braden and the amici called on the court to grant her this qualified First Amendment privilege.

The second argument addressed the court's statutory authority to create evidentiary privileges. Relying on (1) the concept of academic freedom, (2) on several cases recognizing a so-called researcher's privilege, and (3) on specific federal legislation allowing acceptance of and protection for restricted materials, Braden and the amici urged the court to use its authority to create such an archival privilege.

On July 28, 1986, Federal District Judge Tashima issued a memorandum



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Festival and Sixth International Oral History Conference Offer Fascinating Combination in England

In addition to the Sixth International Oral History Conference being held at Oxford, England, September 11-13, 1987, a special Oral History Festival will extend the opportunity for oral historians to share experiences of their modern research method in a medieval setting.

Sponsored by the History Workshop Centre for Social History, Ruskin College, Oxford, the Oral History Conference will center on the theme of "Myth and History." The program will include papers on such topics as ritual and prophecy, collective memory, national identity and popular myth, war and resistance, struggles for freedom in Latin America and the Caribbean, the sixties, images and consciousness of woman, and psychoanalysis and memory. The conference will be held in the Taylorian Institute and St. John's College, Oxford.

The Oral History Festival has been organized by the Oral History Society to accompany the international conference. The festival will begin with a daylong workshop on September 10 which will focus on using oral history in drama. Held at the Royal Court Young People's Theatre in the Portobello Market of London, the workshop will be led by Elyse Dodgson, director of the theater and coordinator of many oral history and drama projects in London. An evening session will include viewing a working rehearsal at Age Exchange Theatre in Blackheath.

On September 11, one of the Oral History Society's regular workshops on reminiscence therapy with the elderly will be held. Another session that day will be a workshop on family myths led by John Byng-Hall, family therapist. A fascinating background to that session is Dr. Byng-Hall's own interest in family myth shaping behavior. He shares the story of a recurrent fear of cowardice in his own family, which he was able to trace back to the shooting of one of his ancestors, Admiral Byng, for the loss of Minorca to the French in 1757.

The festival will conclude with the "Cradle of the Industrial Revolution Tour." Led by Paul Thompson and other outstanding oral historians from

northern Great Britain, the tour will visit major industrial sites, museums and other places of interest such as working farms, country homes and medieval masterpieces. The tour will conclude in Glasgow, Scotland.

Early booking is essential for all of these sessions, especially the tour. For more information on the festival,

contact the Oral History Festival Department of Sociology, University of Essex, Colchester CO4 3SR, England; telephone 0206-862286/873333. For the international conference, contact Robert King, History Workshop Centre for Social History, Ruskin College, Oxford OX1 2HE, England; telephone 0865-56041.



*'Collective Invention,' after Magritte, 1935
From the flyer for the Sixth International Oral History Conference*

EXCERPTS . . .



I was always intensely interested in history, because I felt that to understand where you are now you must understand the past. And we have so many official histories, every country has them, of people telling us what we really went through, but sometimes that doesn't always square up with reality.

For years I produced drama programmes and drama came increasingly not to satisfy me as a means of working in radio. I thought, 'Here we are now with superb equipment, superb microphones and people are the best resources in radio.' It occurred to me that you could make a drama of sorts out of ordinary people's experience.

It isn't drama in the classic Greek sense—of catharsis and so on, although there are cathartic elements in everybody's life. It's more the sense of seeing that everybody's story is important, that everybody's life is a drama, and that one single sentence from somebody may contain a wealth of information.

I can remember a woman, again talking about the Depression, saying to me, 'I felt so belittled, I was nobody. There's a lifetime's experience in the bitterness of that sentence.'

From an interview by Barbara Farrant with Bill Bunbury, ABC's senior education producer in Western Australia, for the program "We Sculpt in Sound." Reprinted from "Word of Mouth," newsletter of the Oral History Association of Australia, South Australian Branch, March 1985.

Oral History: The Folk Connection

Barbara Allen

When I was a graduate student in folklore at UCLA in 1974, my first fieldwork project was to interview a 77-year-old man, Sid Morrison, living in a small ranching community in northern California and known to his neighbors as a master storyteller. After I had spent a few afternoons with him, I too came to appreciate his abilities as a traditional narrator, but I was less sure about the traditional nature of the stories he told. All the stories he told me were about local occurrences. To someone looking for folk narrative this sounded suspiciously like history. Indeed, Sid had a passionate interest in the history of his home community as well as a real flair for transforming it into dramatic narrative.

When it came time to analyze the material I had recorded from Sid, I didn't know whether to call it folklore or oral history. On the basis of content, it was clearly historical in nature. But on the basis of form, it bore a strong resemblance to folklore. The issue of the relationship between oral history and folklore raised by this first field experience is one I've been grappling with in one way or another ever since. Of course, I'm not the first person to do so. Numerous folklorists and oral historians have wrestled with it, generating in the process a substantial body of literature in which they question everything except the assumption that a connection does exist between the two. The very quantity of ink spilled on the subject seems to indicate that indeed there must be some link between oral history and folklore. After all, as the folk would say, where there's smoke, there's fire. But there has been little agreement on the source of flame.

One school of thought argues that oral history and folklore lie on a continuum and that folklore picks up where oral history leaves off: oral history is firsthand information about the past, while all secondhand or "traditional" information is folklore. A second perspective sees oral history and folklore as overlapping bodies of material within which scavenger hunts can be conducted, with folklorists searching for items of folklore in oral historical materials and oral historians combing folkloric texts for historical data. A third approach to the question

regards oral history and folklore as alike in their use of the spoken word as a medium of expression. All of these approaches focus on the similarities between oral history and folklore, but none really seems to get at the heart of the matter. What happens if we focus instead on the differences between the two, differences that become apparent when we examine the basic natures of oral history and folklore?



While folklore exhibits an almost incredible diversity of form, its fundamental nature is a means of expressing experience through patterned, often indirect or symbolic, always aesthetically pleasing form. Oral history, on the other hand, is the process of eliciting memories through interviews. Those memories can be expressed in a variety of forms, ranging from one-word responses to rambling digressions to crisply structured narratives.

If folklore is defined as creative forms of expression and oral history as memories of the past, then clearly they are not the same thing. If the defining

"The relationship between folklore and oral history is not a matter of either/or. It is instead a matter of both."

quality of folklore is form and the key characteristic of oral history is content, then asking the question "is it folklore or is it oral history?" is an inappropriate approach to a body of material like the stories I recorded from Sid. The relationship between folklore and oral history is not a matter of either/or. It is instead a matter of both. Oral material can be historical in nature and at the same time it can be folkloric in form. What Sid Morrison told me about local history is oral historical; how he conveyed the information—that is, the story form in which he cast it—is folkloric. This is a very useful distinction because it makes it clear that content and form are two separate components of a body of material, that historical content becomes folkloric in form when people draw upon traditional forms of expression, such as narratives, to express themselves. This is the real point of connection between oral history and folklore: the casting of historical experience into creative form. While not all oral history is folkloric in form, nor all folklore historical in content, the convergence of the two allows the past to survive into the present.

Barbara Allen is assistant professor of American Studies at the University of Notre Dame, teaching folklore and oral history courses, and is co-author of *From Memory to History*.

VIDEOHISTORY AT THE SMITHSONIAN

The Smithsonian's Videohistory Project on "Science in National Life," supported by a grant from the Alfred P. Sloan Foundation, is now in full swing. David DeVorkin of the National Air and Space Museum is chair of the advisory committee which oversees the grant. Terri Schorzmans has joined the staff as program manager and Phillip Seitz as program assistant. On September 30, an all-day seminar for Smithsonian staff on videohistory was held with presentations by Jack Goldstein of MIT on his interviews of physicist I. I. Rabi, Charles Weiner of MIT on his video documentary project on genetic engineering, and by Jeffrey Sturchio, Center for the History of Chemistry, on the "Eminent Chemists" series.

Videotaping has begun at the Smithsonian with sessions documenting Herbert Friedman's x-ray astronomy group at the Naval Research Laboratory, the Rand Corporation's contributions to the exploration of space, and the early days of the Manhattan Project at Hanford, Washington, and Oak Ridge, Tennessee. Planned projects include interviews about the history of computers, for use in an exhibit in the National Museum of American History, and on the history of paleontology in the National Museum of Natural History. Project participants are compiling guidelines and advice based on their experiences which they hope to make available to the oral history community in the future.

For the past several years the membership committee has been diligently contacting non-renewing members. When asked why they left OHA, most cite career changes or financial reasons, but occasionally someone levels a blast at something that offended him. Two responses recently caught my attention. One angry letter accused OHA of trying "to control published work in oral history through a 'pseudo-standards' program that amounts to intellectual policing and censorship for a self-righteous cleansing of our field." Another objected that our "professional 'ethical' guidelines are shallow," and concluded that "OHA is too fixed in its own path to listen."

Well, you can't please everyone. This association has been grappling with the sensitive issue of standards for twenty years. OHA has sought to develop and to promote higher standards in oral history through its guidelines, annual meetings, and publications. But we face a difficult task in promoting appropriate methodology in such a fluid and creative field. On one hand, we want to ensure that interviews reach their full potential by collecting as complete, verifiable and usable a record as possible, and that interviewers and interviewees are fully aware of their legal rights and ethical responsibilities. On the other hand, we cannot afford to suppress ingenuity and inspiration. We aim to encourage professionalism and to discourage inadequate interviewing and the misuse of oral history, but we have no aspiration to police or to censor.

OHA first adopted its "Goals and Guidelines" in 1968. Then in 1979 the association sponsored a conference at the Wingspread Center in Wisconsin to prepare evaluation guidelines. Those are now distributed in pamphlet form to all members of the OHA and are available for sale to everyone interested in oral history. Last year, when supplies became exhausted, council voted a limited reprint of the evaluation guidelines without revision. Yet we recognize that during the eight years since Wingspread many issues have arisen and many changes have taken place that OHA should address. For instance, neither the goals and guidelines nor the evaluation guidelines deal with video-

taping. Then a recent lawsuit subpoenaed, among other items, a closed oral history transcript, placing the repository that holds it in a quandry; and John Neuenschwander's pamphlet on "Oral History and the Law" raised further legal issues for consideration. In addition, federal oral historians worry that the donor restrictions on their oral histories may not withstand challenges under the Freedom of Information Act.

These are some of the issues that OHA needs to face, and members most likely have other specific and general concerns. As the council reexamines the guidelines, we need to hear from practicing oral historians—and users of oral history—to be sure that we know your opinions, understand your problems, and try to meet your needs. Do the guidelines need fine-tuning or major overhaul? What areas require revision? What new issues should we consider? Please let us know your thoughts on the subject. Be assured that OHA is determined not to become so fixed in its ways that it doesn't listen.

Elizabeth I. Dixon, the first oral history librarian in the United States, died recently leaving an important legacy to the field of oral history. Among her many activities promoting the proper use of oral history, Dixon served as vice chair of the Lake Arrowhead Colloquium in 1966, which saw the beginnings of the Oral History Association. James Mink writes of her:

Surely one of Elizabeth's legacies to the OHA was the kickoff of protracted discussions about how oral history is conducted and what are the ingredients that go into making it a scholarly discipline. All of us owe her a debt of gratitude for her pioneering contributions to oral history.

Victor Wolf, Jr., managing director of the Foreign Service History Center, died December 18 from injuries sustained when he was hit by a vehicle in Silver Spring, Maryland. A retired foreign service officer with a long and distinguished list of appointments, Wolf was in the process of beginning an oral history project with other retired foreign service officers.

May 14-16	Southwest Oral History Association	Redlands, Calif.
June 19-21	Berkshire Conference on the History of Women	Wellesley, Mass.
August 3-8	Charles Morrissey Oral History Workshop	Montpelier, Vt.
September 2-6	Society of American Archivists	New York, N.Y.
10-20	Oral History Festival	London, England
11-13	International Oral History Conference	Oxford, England
October 2-3	Michigan Oral History Council "Oral History for Michiganians"	Lansing, Mich.
4-7	American Association for State and Local History	Raleigh, N.C.
7-10	Western History Association	Los Angeles, Calif.
15-18	Oral History Association Annual Meeting	St. Paul, Minn.
21-25	American Folklore Society	Albuquerque, N.M.
November 11-14	Southern Historical Association	New Orleans, La.
15	Oral History in the Mid-Atlantic Region	York, Penn.
20-24	American Studies Association and Canadian Association for American Studies	New York, N.Y.
December 28-30	American Historical Association	Washington, D.C.

State & Regional News

The OHA State and Regional Committee is sending out a survey seeking opinions on meetings, publications, and other OHA services and activities. Everyone is urged to respond to the questionnaire so we can better meet the needs of state and regional groups.

The New England Association of Oral History held its annual meeting May at Mystic Seaport Museum in Mystic, Connecticut. This year's meeting concerned New England's seafaring tradition and the use of oral history to document that tradition.

Oral History Association of Minnesota held its second annual conference at St. Paul's historic Landmark Center, February 21. In addition to a beginners' seminar, the conference included sessions for advance work in program management, budgeting and fund raising. An afternoon session featured members of the OHA Council discussing their current projects and views on the changing uses of oral history.

The Southwest Oral History Association held a workshop in Las Vegas, February 28-March 1, which focused on oral history for beginners and for historical societies who wish to start up project. Their spring conference, May 1-16, at the University of Redlands, California, will include a beginners' workshop, sessions and panels, banquet and a tour. Contact Sylvia Arden,

OHA Publishes Guide to Southwest Collections

The Southwest Oral History Association has recently published *Oral History Collections in the Southwest Region: A Directory and Subject Guide*. Compiled by data specialist Kathryn A. Gallacher, the guide contains comprehensive information about collections of oral history interviews and projects in Arizona, Nevada, New Mexico and Southern California. The guide may be purchased for \$14.95 (includes postage) from SOHA Directory and Database Project, c/o Oral History Program, 136 Powell Library, UCLA, Los Angeles, CA 90024. (California purchasers need to add 84¢ for state sales tax.)



The Texas Oral History Association gathered for its spring meeting in Galveston March 6-7. OHA President Don Ritchie presented Tom Charlton with a plaque honoring him for his ten years of service to the OHA as editor of the newsletter.

SOHA President, San Diego Historical Society, Box 81825, San Diego, CA 92138; 619/232-6203.

Oral History in the Mid-Atlantic Region held its spring conference on March 21 at Northern Virginia Community College, Woodbridge Campus. The conference focused on "Using Oral History to Study Institutions—Educational, Religious, Governmental," and included sessions on how not to do an interview and how to work with the written record. William Moss of the Smithsonian presented the keynote address.

The Northwest Oral History Association held a conference April 23-25 in Spokane, Washington, in conjunction with the meetings of the Northwest Archivists and the Pacific Northwest Historians. The conference included several sessions on oral history, plus a luncheon address by OHA President Don Ritchie, "The Historian as Interviewer."

The Michigan Oral History Council sponsored a session at the Local History Conference at Wayne State University, April 9-11. The council recently received a grant from the Michigan Council for the Humanities and the Michigan Department of Commerce for its conference next October, "Oral History for Michiganders," which is being designed to help celebrate the state sesquicentennial.

The Oral History in Ohio Association held its fourth annual conference in Columbus on May 1 at the Ohio Historical Center. OHIO also has published its first newsletter, which will report on oral history activities throughout the state two times a year.

New Oral History Directory Being Compiled by Simmons College

Simmons College in Boston is collecting information for a new directory/register of oral history collections in the U.S. The directory is intended to provide information on small and large collections of oral history materials throughout the country. To be included, the materials can be a small portion of a larger library, a portion of a special library, an autonomous collection, or a collection of a private individual who is willing to share it.

To be included in the directory, a collection needs to have adequate cataloging and indexing and be willing to let researchers have access to it. For a questionnaire, contact Allen Smith, Graduate School of Library and Information Science, Simmons College, 300 Fenway, Boston, MA 02115.

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decision in which he denied Braden's motion for a protective order. Because of the potential importance of this decision for archives, libraries, and oral historians, a careful review of the decision is presented here.

Judge Tashima wasted little time in disposing of Braden's initial claim that the nature and content of her papers entitled her to a qualified First Amendment privilege. While acknowledging that such a privilege is recognized by the U.S. Supreme Court, he found that it had been limited almost exclusively to the protection of First Amendment associational rights. In the leading case on the subject, *NAACP v. Alabama*, 357 U.S. 449 (1958) the issue was whether the NAACP could be compelled to reveal the identity of its rank and file members. Because of the very real possibility that disclosure of the lists would subject individual members to discriminatory acts, the Supreme Court found the potential infringement on the associational rights outweighed the interest of the state in discovering the evidence. The failure of Braden and the amici to cite any cases that applied this privilege to general discovery requests such as the one before the court, prompted Judge Tashima to conclude that no qualified First Amendment privilege could apply.

Judge Tashima devoted the major portion of his decision to Braden's second argument, namely, the call for a court-fashioned archival privilege.* Such attention was deemed warranted because he considered this to be a question of first impression and also the most substantive argument offered in support of the protective order.

As noted earlier, Braden and the amici offered three related but distinct grounds to justify court creation of an archival privilege. The first of these was the general concept of academic freedom. While Judge Tashima conceded that the Supreme Court had indeed extended limited First Amendment protection to certain types of academic

practices (i.e., no required loyalty oaths for university faculty), he remained unconvinced that the privilege could be stretched to cover personal papers housed in an archive.

The two major cases cited by Braden, *EEOC v. University of Notre Dame du Lac*, 715 F. 2d 331 (7th Cir., 1983) and *Gray v. Board of Higher Education*, 692 F. 2d 901 (2d Cir., 1982), addressed the issue of whether the names and identities of faculty participating in peer review were protected by this First Amendment-based academic freedom privilege. While the courts in *EEOC* and *Gray* were favorably inclined to the applicability of the privilege, Tashima noted that at least two other federal appeals circuits had flatly rejected the application of an academic freedom privilege to tenure cases. He concluded that,

Like the First Amendment associ-

"If you have not in the past told interviewers that you might be unable to protect their materials from a subpoena, you may wish to consider offering this caveat."

ational privilege, the cases that do apply an academic freedom privilege have tailored it narrowly to apply only to protect a university's tenure-related or other core function. No claim is made here that any such considerations obtain with respect to the sought discovery. The claim of academic freedom privilege is specious. (Memorandum Decision, p. 16)

The second basis offered by Braden and the amici for creation of an archival privilege involved federal and state statutes which recognized the validity of donor access restrictions. In the case of Wisconsin, Sec. 44.015 (3) Wis. Stats. specifically charges the State Historical Society to:

Accept collections of private manuscripts, printed materials, tapes, films and artifacts, and it may enforce any and all reasonable restrictions on accessibility to the public, use or duplication of said collections which are agreed upon by the donor and the historical society.

As interpreted by the amici, this section of the statute when read together with the provision in the Historical Society's agreement with Braden that it would "exhaust all

available legal remedies to maintain and protect the . . . agreement, based upon the statutory authority granted under sec. 44.015 (3) . . .," creates a state law privilege. Judge Tashima was urged to create a federal counterpart. An amicus brief filed by the Wisconsin Attorney General's Office also seemed to support this interpretation. Although Judge Tashima admitted in the absence of any case law on the subject he was unsure whether the Wisconsin legislature had actually created an archival privilege, since this matter was in federal court, state law was only advisory and not controlling.

He expressed no such doubts about the absence of any support for an archival privilege in the federal statute cited by Braden, the Presidential Records Act of 1978, 44 U.S.C. §2201. In authorizing the president to restrict access to certain categories of presiden-

tial records for as long as 12 years, subsection §2205 (2) (a) expressly requires production of any restricted records required to be produced "pursuant to a subpoena or other judicial process issued by a court of competent jurisdiction for the purpose of any civil or criminal investigation or proceeding." A companion subsection also mandates production to either house of Congress. Having thus ruled that the federal statutes in question provided access protection only against third parties and not courts, Judge Tashima moved on to assess the third legal basis offered by the proponents of the protective order, the so-called researcher's privilege.

Although Braden and the amici sought to link this privilege with the more general concept of academic freedom, Judge Tashima's analysis of the former is more important for our purpose here. Braden cited two cases to support her contention that a researcher's privilege, analogous to a newsgatherer's privilege, had been recognized, *Richards of Rockford, Inc. v. Pacific Gas & Elec. Co.*, 71 F.R.D. 388 (N.D. Cal. 1976) and *Dow Chem. Co. v. Allen*, 672 F. 2d 1262 (7th Cir., 1982). While admitting that "... libraries do not stand precisely in the

* Federal Rule of Evidence 501 authorizes federal district courts to create evidentiary privileges as the need arises. As Judge Tashima noted, any such request must be balanced against the fundamental principle that "the public . . . has a right to every man's evidence." Since courts traditionally have favored discovery over protection, the burden that a requesting party like Anne Braden must meet is a very substantial one and any protection that is extended will most likely be narrowly defined.

es of "scholars," Braden and the amici argued that compelled disclosure either would surely "... inhibit the selection and flow of information to the researcher, and through him or her, the public."

In the first case cited by Braden, *Harbors of Rockford*, the plaintiff sought to compel a third-party researcher to testify and produce documents concerning certain confidential interviews he had conducted with employees of Pacific Gas & Electric. Although the court agreed to consider his status as a researcher in its decision regarding discovery, it explicitly denied that in doing so it was granting any specific researcher's privilege. More central to its decision that the researcher did not have to turn over his notes were his nonparty status in the lawsuit and the peripheral nature of his research to the case before the court. Similar factors mandated the same result in *Dow Chem. Co.*

Although Judge Tashima found that these two cases provided inadequate authority for the so-called researcher's privilege, it is clear that he would not have extended such a privilege to a donor of archival material like Anne Braden even if they had provided clear precedent. As a party to the litigation itself, and since she was requesting general rather than specific protection for designated confidential sources, her status was easily distinguishable from the researchers in both *Richards of Rockford* and *Dow Chem. Co.*

Before concluding his memorandum Judge Tashima paused to reflect upon both the immediate and wider impact of his ruling. He stressed that Braden's

access restriction was still enforceable against all third parties, including the government. Since he was not striking down the restriction in its entirety but rather subjecting it to what he termed a narrow exception, he was sanguine that "the incentives that currently induced donors to contribute their documents to archives should not be materially affected by the instant

"... the suggestion of this writer is that you consider lobbying your legislature for passage of a statute offering very explicit protection."

decision." (Memorandum Decision, p. 20)

If you or your collection currently holds sealed or restricted interviews, a natural question at this point is "How is this decision going to affect my program?" The analysis that follows may not answer this question to your full satisfaction. However, it is not offered as specific legal advice but only as a general assessment.

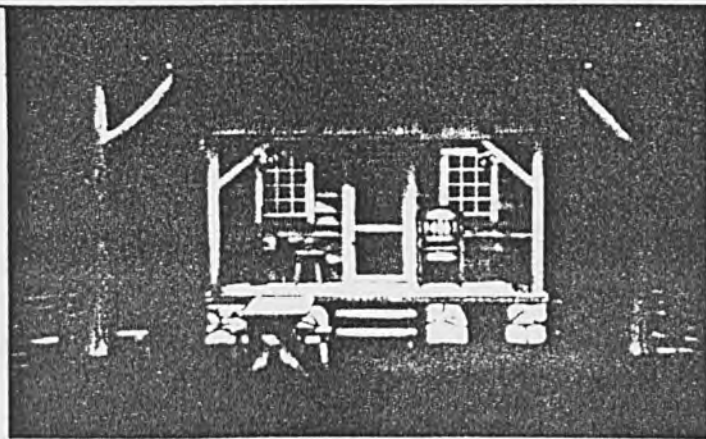
The first issue to be addressed is whether or not this is a representative ruling. Is it one that is likely to be followed by other courts? In this writer's opinion the answer is yes. Whenever asked to strike a balance between ordering and not ordering discovery of evidence, most judges will say "Let them have a look at it." The often strained and very tenuous nature of the precedents that Braden and the amici offered in support of her various privilege claims also suggest that such protections are neither widely recognized by courts nor likely to be in fashion for some time. Before discussing the potential legal implications of this

decision, careful note should be taken of the fact pattern that prompted the ruling. Judge Tashima made much of the fact that Anne Braden was both a party to the lawsuit and requesting blanket protection for materials that seemed highly relevant to the case. Take away these facts, Braden's chances of securing a protective order would have been much improved. The point to be

made here is that Judge Tashima's ruling is a narrow one. It is not a general assault on access restrictions. Thus if a subpoena duces tecum is ever addressed to interviews in your possession, the specificity of his decision might provide a realistic basis upon which a court could grant a protective order.

The most immediate effect of this ruling may be on the information that you or your program provides to interviewees about sealing and access restrictions. If you have not in the past told interviewees that you might be unable to protect their materials from a subpoena, you may wish to consider offering this *caveat*. The damage to the credibility of your program may be much less if interviewees realize from the start that a seal or access restriction is not an absolute guarantee against unauthorized disclosure. Such information up front may deter a few individuals from talking into your microphone, but the vast majority will appreciate your candor.

Finally, courts are enforcers and interpreters of law, not lawgivers per se. If a legislature chooses to immunize sealed and/or restricted papers from discovery by subpoena, this could be done. While the Wisconsin statute on the subject may some day be construed by an appellate court as creating an archival privilege, the suggestion of this writer is that you consider lobbying your legislature for passage of a statute offering very explicit protection. Otherwise, court protection appears to be a very "ifly" prospect as evidenced by the ruling in *Wilkinson v. FBI*.



Glor i gamal ved ("glow in old wood") set from the Norwegian version of *Foxfire*, which brought the play to audiences in Norway by boat! Leighton Ballew of the University of Georgia and Helge Hoff Monson of the Norwegian National Theater collaborated to have the play presented by the Sogn og Fjordane Teater in rural Norway. The boat traveled from fjord to fjord providing entertainment during the harshest months of winter, 1985. (Photo courtesy of *Hands On, Newsletter for Cultural Journalism*, winter 1985-spring 1986)

John A. Neuenschwander is part-time professor of history at Carthage College and municipal judge of Kenosha, Wisconsin. A former OHA president, he has written *Oral History as a Teaching Approach* and *Oral History and the Law*, and has been a practicing attorney, specializing in appellate and copyright law.

News

Free one-day on-site workshops to plan programs celebrating the bicentennial of the U.S. Constitution are now being offered by the American History Workshop and the L. J. Skaggs and Mary C. Skaggs Foundation. The American History Workshop produces public history programming. In addition to programs on the Constitution, the workshops will help plan other events of local and national importance in the years ahead. Contact Richard Rabinowitz, President, American History Workshop, 588 7th Street, Brooklyn, NY 11215; 718/499-1900.

A new service created by Heritage Productions of Littleton, Colorado, offers family history put into video documentary form. Combining interviews with photographs, music and a chronological narrative, the production company promises to create a permanently recorded film documentary for future family members.

The Louisiana State Archives is moving into a new building in Baton Rouge and, to commemorate this special transition, Assistant Director Lewis M. Morris, Jr., has launched an oral

history project in which leading figures in the development of the state archives will be interviewed.

The Scottish Oral History Group held a conference April 18-19 in conjunction with the Edinburgh Folk Festival. Some of the presentations at the "Oral History and Folk Song" conference were on the oral culture of the Scots in Newfoundland, songs as historical evidence, and a disappearing generation of singers. An afternoon workshop focused on various aspects of oral history techniques with special reference to folk music.

Summer Workshops

Charles T. Morrissey has scheduled his annual two-week oral history course in Oregon for July 6-16, 1987. This will be the eighth offering of this "how-to-do-it" workshop. For more information, contact Charles M. White, Director of the Summer Session Office, Portland State University, P.O. Box 751, Portland, OR 97207; 503/229-4081. Morrissey's one-week oral history course in Vermont is scheduled for August 3-7. For details on it, contact Alan Weiss, Director of Continuing Education, Vermont College, Montpelier, VT 05602; 802/229-0522.

Salt is again holding its summer field program on cultural journalism. This off-campus program teaches students to use their academic skills to document the culture of Maine and then to publish their materials in the magazine, *Salt*. For more information contact Salt Field Studies Program, Cape Porpoise,

P.O. Box 1400, Kennebunkport, ME 04046; 207/967-3311.

Call For Papers

The American Culture Association will hold its 1988 annual meeting in New Orleans, Louisiana, March 22-26. Persons interested in proposing papers, sessions or other presentations involving oral history and American culture should submit 200-word abstracts by September 1, 1987, to Carl Ryant, Department of History, University of Louisville, Louisville, KY 40292, 502/588-6817 or 800-334-8635.

Call for Manuscripts

The *Journal of Forest History* is interested in publishing excerpts from forest-related oral histories or research results which are based wholly or in part on oral history. It also will publish brief notices of completed oral histories which are forest-related. Send notices to Alice Ingerson, Managing Editor, *Journal of Forest History*, 701 Vickers Ave., Durham, NC 27701. Please write or phone (919/682-9319) to inquire before submitting manuscripts.

Twenty-First Century Press, a new book and software publisher in Frederick, Maryland, is seeking manuscripts for the oral history component of its "American Archives Series." The books in this series will collect archival and documentary materials in the fields of history, political science, sociology, and anthropology. For more information contact Jeffrey Shulman, President Twenty-First Century Press, 44 North Market St., Frederick, MD 21701.

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Address editorial matters to: Jaclyn Jeffrey, Editor, Baylor University, CSB Box 401, Waco, TX 76798, or phone 817/755-3437. Book Notices Editor is M. Rebecca Sharpless. Associates are Thomas L. Charlton, Lois Myers, M. Rebecca Sharpless and David Stricklin.

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