



## NEWSLETTER

## Independent Contractors Win in *CCNV v. Reid*

by John V. Neuenschwander

One commentator has referred to this 1989 U.S. Supreme Court decision as the art case of the decade. The *New York Times* chose a less dramatic but broader assessment of the case when it characterized the ruling in *CCNV v. Reid* 104 L Ed 2d 811 as posing "practical problems" for businesses that rely extensively on independent contractors. It is in the context of this latter characterization that this brief commentary is offered. Since many oral history projects and programs frequently rely upon freelance interviewers, the enhanced claim to copyright ownership that this decision provides for certain independent contractors merits closer attention.

Under the Copyright Act of 1976, ownership of any qualifying work "... vests initially in the author or authors of the work." 17 USCS Section 201(a). An author in turn is the party who actually creates the work, or stated another way, the person who translates an idea into a fixed medium of expression.

A major exception to this provision, that copyright ownership automatically goes to the originating author, is the "work for hire" doctrine. Pursuant to USCS 17 Section 101, there are two ways in which this ownership exception may apply:

"(1) a work prepared by an employee within the scope of his or her employment, or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "sup-

plementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional test" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities."

Until the Supreme Court's holding in *CCNV v. Reid*, Federal Courts in general tended to interpret Section 101(1) in such a way as to favor the hiring or commissioning party over the independent contractor in disputes involving copyright ownership. Now, in the wake of this decision, the balance has tipped toward the independent contractor in situations where there is no written agreement specifying who owns the copyright.

At issue in *CCNV v. Reid*, was a statue of a homeless family entitled "Third World America." The work was originally commissioned by the Community for Creative Non-Violence (CCNV), a non-profit association in Washington, D.C. dedicated to eliminating homelessness in America. The sculptor who was commissioned to do the work was James Earl Reid. Although his studio was in Baltimore, he received rather continuous direction from CCNV officials throughout the two-month period that it took to create the statue. After being on display for over a month, the sculpture was returned to Reid for minor repairs. It was at this juncture that the dispute arose regarding the copyright ownership of "Third World America."

In the trial court, the Community for Creative Non-Violence prevailed. The District Court held that James Reid was an "employee" of CCNV pursuant to 17 USC Section 101(1) and, thus, the statue was a "work for hire." On appeal, the Circuit Court of Appeals for the District of Columbia reversed. The Circuit Court found that Reid was not an employee but an independent contractor. This court reasoned that since the statue did not fit into any of the nine categories of works enumerated in Section 101(2) and there was no written agreement making it a "work for hire," Reid was, therefore, the rightful copyright owner. This final appeal by CCNV to the Supreme Court followed.

Justice Thurgood Marshall, who wrote the unanimous decision of the high court, clearly recognized that the implications of this decision extended far beyond the artist community. As he noted in his decision,

The contours of the work for hire doctrine therefore carry profound significance for freelance creators — including artists, writers, photographers, designers, composers, and computer programmers — and for the publishing, advertising, music, and other industries which commission their works.

Although he did not mention oral history interviewers, they certainly would fit under this broad rubric.

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**Revised Evaluation  
Guidelines on page 3.**



# EVALUATION GUIDELINES REVISED

Does a researcher who conducts interviews for a specific writing project have a responsibility to deposit those interviews in an archive after the book or article is published? Should interviewers announce that they intend to deposit their interviews in an archive without first notifying that archive? What are oral history archives' responsibilities toward their interviewers? What are interviewers' responsibilities toward their interviewees when their interviews are used in public programming? Is the use of anonymity ever acceptable in oral history? Can videotaping become intrusive and change the nature of an oral history? What guidelines should teachers set for students who conduct interviews?

These were just a sample of the issues considered during the first revisions of the Oral History Association's evaluation guidelines, and adopted by OHA members at the business meeting in Galveston, in October 1989. Originally prepared at the Wingspread Conference in 1979, the evaluation guidelines offer a series of questions for evaluating the conduct, processing and preservation of oral history collections. Over the next ten years the Wingspread guidelines proved especially useful to funding agencies as criteria for judging oral history proposals. But as oral historians employed new technology, and

explored new issues, the need for revisions of the guidelines became increasingly apparent.

In 1987, Ron Grele appointed Ron Marcello and Don Ritchie as a task force to determine what revisions were necessary. They identified the legal and ethical guidelines as the section most in need of revision, and suggested three new sections on independent researchers, videotaping, and teaching. Rather than repeat a separate Wingspread meeting, they recommended that all members of the association be invited to participate in the process.

The following year, when Ron Marcello became president, he proposed making the annual meeting in Galveston a second Wingspread. In preparation, he appointed four committees, coordinated by Don Ritchie, to address each of the major issues. Sherna Gluck chaired the committee on ethical/legal guidelines, whose members included Al Broussard, John Neuenschwander, and Linda Shopes. Terry Birdwhistell chaired the independent/unaffiliated research committee, with Jo Blatti, Maury Maryanow, and Holly Shulman. Pam Henson chaired the committee on the use of videotape, with James Murray, David Mould, Terri Schorzman, and Margaret Robinson. The committee on teaching, chaired by George Mehaffy, and

including Andor Skotnes, Richard Williams, Patricia Grummer, Denise Joseph, and Rebecca Sharpless, prepared guidelines for teachers and students.

During the past year these committees prepared the draft guidelines that they presented during sessions at the Galveston meeting. Audience participation at these sessions was active, and a number of changes that members proposed were incorporated into the drafts before they were adopted at the Sunday morning business session. But the process should not end there. The OHA invites comments and suggestions about the new guidelines from all its members, including those who did not have the opportunity to attend the Galveston meeting. The full text of the new guidelines follow.

During the next year, the association will also reexamine, update and expand upon its goals and guidelines, which were first adopted in 1968. Lila Goff has appointed Don Ritchie, Willa Baum, Terry Birdwhistell, Sherna Gluck, Pam Henson, and Linda Shopes to draft new oral history principles and standards, to be debated and voted upon at the Cambridge meeting in November, 1990. Please send any comments or suggestions to Don Ritchie, Senate Historical Office, Washington, D.C. 20510.

## News

**Oral historians on the march:** Anatoli Ilyashov has been to the Soviet Union to conduct a workshop for an oral history project with victims of Stalinism. **Ron Grele** has recently been to South Africa to conduct a workshop, and **Sherna Gluck** is back from Palestine, where she interviewed Palestinian women and conducted a workshop.

In the southern hemisphere: **Dale Treleven** was the keynote speaker for the Oral History Association of Australia's annual meeting this summer, stopping off in New Zealand to see how they have adapted the TAPE System (Time Access to Pertinent Excerpts) which he originated. **Alfredteen Harrison** was the keynote speaker at the National Oral History Association of New Zealand conference. **William Ellis** also spoke at that meeting.

**The Marine Corps Oral History Collection** catalog has been revised and updated and is now available for distribution. Also available for the asking are copies of *A 'Do-It-Yourself' Oral*

*History Primer*. Write to the Oral History Section, Marine Corps Historical Center, Building 58, Washington Navy Yard, Washington, DC 20374-0580.



"They gave me the shove . . . so much for the gold watch." **The Gold Watch Project**, conducted in South Australia by the United Trades and Labor Council and the Trade Union Unemployment Centre, has collected stories of older people who have been pushed out of the work force before they reach pension age. In addition to interviews, the project has collected writings — poetry, letters, essays — from the older unemployed. The interviews have covered such topics as loss of security, retrenchment,

technological change, retraining, age discrimination, long-term unemployment, loss of confidence, and survival skills. Coordinated by Catherine Murphy, the project will result in a book of stories and photographs as well as a resource booklet providing practical assistance to older unemployed people.

**Anne Ritchie** is the new oral historian for the National Gallery of Art, which is preparing to celebrate its 50th anniversary in 1991. Working with the gallery's archives department, Ritchie is interviewing persons associated with the gallery over the past fifty years.

The special, thematic issue of *The Oral History Review* devoted to Puerto Rican women (Fall, 1988) has been reprinted and is available for sale (\$9 each, \$7.50 each for 2-10 copies, \$6 each for over 10 copies) from The Oral History Review, 565 Park Hall, SUNY-Buffalo, Buffalo, NY 14260. Make check payable to the OHA.



# Oral History Evaluation Guidelines

## Program/Project Guidelines

### Purposes and Objectives

- a. Are the purposes clearly set forth? How realistic are they?
- b. What factors demonstrate a significant need for the project?
- c. What is the research design? How clear and realistic is it?
- d. Are the terms, conditions and objectives of funding clearly made known to judge the potential effect of such funding on the scholarly integrity of the project? Is the allocation of funds adequate to allow the project goals to be accomplished?
- e. How do institutional relationships affect the purposes and objectives?

### Selection of Interviewers and Interviewees

- a. In what ways are the interviewers and interviewees appropriate (or inappropriate) to the purposes and objectives?
- b. What are the significant omissions and why were they omitted?

### Records and Provenance

- a. What are the policies and provisions for maintaining a record of the provenance of interviews? Are they adequate? What can be done to improve them?
- b. How are records, policies and procedures made known to interviewers, interviewees, staff and users?

- c. How does the system of records enhance the usefulness of the interviews and safeguard the rights of those involved?

### Availability of Materials

- a. How accurate and specific is the publicizing of the interviews?
- b. How is information about interviews directed to likely users?
- c. How have the interviews been used?

### Finding Aids

- a. What is the overall design for finding aids?
- b. Are the finding aids adequate and appropriate?
- c. How available are the finding aids?

### Management, Qualifications and Training

- a. How effective is the management of the program/project?
- b. What provisions are there for supervision and staff review?
- c. What are the qualifications for staff positions?
- d. What are the provisions for systematic and effective training?

### What improvements could be made in the management of the program/project?

## Ethical/Legal Guidelines

### What procedures are followed to assure that interviewers/programs recognize and honor their responsibility to the interviewee? Specifically, what procedures are used to assure that:

- a. the interviewee is made fully aware of the goals and objectives of the oral history program/project?
- b. the interviewee is made fully aware of the various stages of the program/project and the nature of his/her participation at each stage?
- c. the interviewee is given the opportunity to respond to questions as freely as possible and is not subjected to stereotyped assumptions based on race, ethnicity, gender, class or any other social/cultural characteristic?
- d. the interviewee understands her/his right to refuse to discuss certain subjects, to seal portions of the interview or in extremely sensitive circumstances even to choose to remain anonymous?
- e. the interviewee is fully informed about the potential uses to which the material may be put, including deposit of the interviews in a repository; publication in books, articles, newspapers, or magazines; and all forms of public programming?
- f. the interviewee is provided a full and easily comprehensible explanation of her/his legal rights before being asked to sign a contract or deed of gift transferring rights, title and

interest in the audio and/or visual tape(s) and transcript(s) to an administering authority or individual; and whenever possible, the interviewee is consulted about all subsequent use of the material?

- g. all prior agreements made with the interviewee are honored?
- h. the interviewee is fully informed about the potential for and disposition of royalties that might accrue from the use of her/his interviews, including all forms of public programming?
- i. the interview and any other related materials will remain confidential until he/she has released their contents for use?
- j. care is taken when making public all material relating to the interview?

### What procedures are followed to assure that interviewers/programs recognize and honor their responsibilities to the profession? Specifically, what procedures assure that:

- a. the interviewer has considered the potential for public programming and research use of the interviews, and has endeavored to prevent any exploitation of or harm to interviewees?
- b. the interviewer is well trained and will conduct her/his interview in a professional manner?

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## **Ethical/Legal Guidelines, *continued***

- c. the interviewer is well grounded in the background of the subject(s) to be discussed?
  - d. the interview will be conducted in a spirit of critical inquiry and that efforts will be made to provide as complete a historical record as possible?
  - e. the interviewees are selected on the basis of the relevance of their experience to the subject at hand and that an appropriate cross-section of interviewees is selected for any particular project?
  - f. the interview materials, including tapes, transcripts, agreements, and documentation of the interview process, will be placed in a repository after a reasonable period of time, subject to the agreements made with the interviewee; and that depository will administer their use in accordance with those agreements?
  - g. the methodologies of the program/project, as well as its goals and objectives, are available for the general public to evaluate?
  - h. the interview materials have been properly cataloged, including appropriate acknowledgement and credit to the interviewer, and that their availability for research use is made known?
- b. interviewers are fully informed of all the tasks they are expected to complete in an oral history project?
  - c. interviewers are made fully aware of their obligations to the oral history program/sponsoring institution, regardless of their own personal interest in a program/project?
  - d. programs/sponsoring institutions treat their interviewers equitably, including the establishment of provisions for appropriate compensation and acknowledgment for all products resulting from their work; and support for fieldwork practices consistent with professional standards whenever there is a conflict between the parties to the interview?
  - e. interviewers are fully informed of their legal rights and of their responsibilities to both the interviewee and to the sponsoring institution?

**What procedures are followed to assure that interviewers and programs are aware of their mutual responsibilities and obligations? Specifically, what procedures are followed to assure that:**

- a. interviewers are made aware of the program goals and are fully informed of ethical and legal considerations?

**What procedures are followed to assure that interviewers and programs recognize and honor their responsibilities to the community/public? Specifically, what procedures assure that:**

- a. the oral history materials, and all works created from them, will be available and accessible to the community that participated in the project?
- b. sources of extramural funding and sponsorship are clearly noted for each interview or project?
- c. the interviewer and project endeavor to not impose their own values on the community being studied.
- d. the tapes and transcripts will not be used in an unethical manner?

## **Tape/Transcript Processing Guidelines**

### **Information About the Participants**

- a. Are the names of both interviewer and interviewee clearly indicated on the tape/abstract/transcript and in catalog materials?
- b. Is there adequate biographical information about both interviewers and interviewee? Where can it be found?

### **Interview Information**

- a. Are the tapes, transcripts, time indices, abstracts and other material presented for use identified as to the project/program of which they are a part?
- b. Are the date and place of the interview indicated on the tape, transcript, time index, abstract, and in appropriate catalog material?
- c. Are there interviewer's statements about the preparation for or circumstances of the interviews? Where? Are they generally available to researchers? How are the rights of the interviewees protected against improper use of such commentaries?
- d. Are there records of contracts between the program and the interviewee? How detailed are they? Are they available to researchers? If so, with what safeguards for individual rights and privacy?

### **Interview Tape Information**

- a. Is the complete master tape preserved? Are there one or more duplicate copies?
- b. If the original or any duplicate has been edited, rearranged,

cut or spliced in any way, is there a record of that action, including by whom and when and for what purposes the action was taken?

- c. Do the tape label and appropriate catalog materials show the recording speed, level and length of the interview? If videotaped, do the tape label and appropriate catalog information show the format (e.g. U-Matic, VHS, 8mm, etc.), scanning system, and clearly indicate the tracks on which the audio and time code have been recorded?
- d. In the absence of transcripts, are there suitable finding aids to give users access to information on tapes? What form do they take? Is there a record of who prepares these finding aids?
- e. Are researchers permitted to listen to or view the tapes? Are there any restrictions on the use of the tapes?

### **Interview Transcript Information**

- a. Is the transcript an accurate record of the tape? Is a careful record kept of each step of processing the transcript, including who transcribed, audited, edited, retyped, and proofread the transcripts in final copy?
- b. Are the nature and extent of changes in the transcript from the original tape made known to the user?
- c. What finding aids have been prepared for the transcript? Are they suitable and adequate? How could they be improved?
- d. Are there any restrictions on access to or use of the transcripts? Are they clearly noted?

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## From the President

Lila J. Goff

How do independent oral historians and those in small organizations exchange views and enjoy the benefits from membership in an oral history association? The newsletter is one very obvious way. Another can be the state and regional organizations.

The Oral History Association of Minnesota (OHAM) has been holding informal get-togethers in conjunction with their board meetings. Edward Nelson, president of the OHAM and archivist with the Iron Range Research Center in northern Minnesota, is familiar with problems working in small communities distant from the focus of the Twin Cities of Minneapolis and St. Paul. Since the quarterly meetings of the OHAM board are usually held near the Twin Cities metro area, Ed and the board decided that as long as he was in the area, he would try to meet with others interested in oral history. They mailed a one-page flyer to members inviting any OHAM members to join them after the business meeting for "Lunch with the Board" and an informal conversation.

Two of the get-togethers have been held in meeting rooms of suburban county historical societies, the third in the St. Paul home of a board member. Everyone chip-



ped in to pay for the simple buffet provided by the host. The attendance has been fairly small and the discussions informal, preceded by a round of introductions and short descriptions of each one's oral history activities. There has not been a formal agenda.

At the last meeting a new OHAM member, someone new to oral history, was inquiring about whether it is best to have a family member or an outsider conducting an interview. Some thought a family member could best record an intimate conversation, capturing the emotions and essential points of family relationships, aspirations, and life stories. Others felt that an outsider could bring more objectivity. Would someone divulge certain sensitive

information to a younger generation family member? Could an outsider really appreciate the value of all of the information? The discussion resulted in a lively debate, supported with specific examples which really expanded our understanding of the interview process. Although not an empirical study, the discussion was useful in bringing out a variety of ideas and down-to-earth situations.

I recommend this type of informal get-together for local oral history groups. It is especially helpful for people practicing oral history by themselves to have a chance to discuss their work with others, and it is helpful for those of us in the larger institutions to hear of some of the problems and successes of the small programs. My hat is off to Ed and the OHAM board and to the other state and regional associations who are carrying out the spirit of the OHA in small groups.

If you are in an area that does not have a state or regional oral history organization, consider starting one. The current chairman of the OHA State and Regional Committee is Richard Voelkel, also a member of the Southwest Oral History Association.

## State & Regional News

Sherna Berger Gluck is the 1989 recipient of the James Mink Award, presented by the Southwest Oral History Association to an outstanding oral historian. In presenting the award Art Hansen noted that she was being honored "[b]ecause for long she has been a person who truly heard, recorded, transmitted, and interpreted the voices of many different people . . . and because she has also been a voice that has spoken out with force and eloquence on vital public policy issues, and because she has not seen fit to compartmentalize these two roles . . ."

"Idaho Perspectives," a folk-history project, which examined the traditions of resource-based communities to learn how to use those traditions for economic development, was completed this summer. The project consists of around 150 hours of tape, original documents, and photographs collected and deposited in the Shoshone Public Library.



### Oil Spill Documented in Alaska

In Alaska an exciting new project will document the impact of the Exxon Valdez oil spill on nearby native villages. Under a grant from the Alaska Humanities Forum, radio producer Susan Kernes will interview Chugach and Kodiak natives about the spill and cleanup efforts. She hopes to identify any changes in lifestyle and values, comparing her interviews with those conducted following the 1964 earthquake. Homer public radio station KBBI is sponsoring the project and will broadcast the interviews after the project is completed and placed in the Pratt Museum.

UCLA's Oral History Collection is now accessible through OCLC, ORION, and MELVYL cataloging systems. Researchers who have access to those systems will now be able to obtain information about the entire collection of interviews accumulated by the UCLA Oral History Program since 1959. For information about the prototype record used to convert the collection to OCLC, contact Jenifer Abramson, c/o UCLA Oral History Program, 136 Powell Library, Los Angeles, CA 90024-1575.

The Minnesota Farm Advocate Oral History Project — which interviewed farmers, lawyers and government officials who have tried to help during the farm crisis — is nearly completed. Interviews are being transcribed for publication, tentatively titled *Breaking Hard Ground*, and a set of ten-minute radio programs are being developed from the tapes for nationwide distribution.



# Book Notices

Babyak, Jolene. **Eyewitness on Alcatraz**. Ariel Vamp Press, Berkeley, California. 1988. ISBN 0-9618752-0-8. Based on interviews with more than 60 officers, family members, prisoners, and other residents providing insights into escapes, daily life, and the changing system of prison management from the 1930s to 1960s, written by a warden's daughter.

Barlow, William. "Looking Up at Down": **The Emergence of Blues Culture**. Temple Univ. Pr. 1989. c.382p. index. ISBN 0-87722-583-4. \$29.95. A cultural and musical history, based in part on oral history and covering both rural and urban blues.

Beifuss, Joan Turner. **At the River I Stand: Memphis, the 1968 Strike, and Martin Luther King**. Carlson Pub., PO Box 023350, Brooklyn, NY 11202. (Martin Luther King, Jr. & the Civil Rights Movement). 1989. 370p. photogs. bibliog. index. ISBN 0-926019-00-7. \$75. First published locally in 1985, this is first in a new series on King edited by David J. Garrow, and is based on oral history.

Brown, Jeffrey P., Andrew O. Wiget, and Colleen M. O'Neill. **Oral History Collections Catalog for New Mexico**. New Mexico State University. 1989. Catalogs oral history research throughout the state of New Mexico.

Copland, Aaron & Vivian Perlis. **Copland Since 1943**. St. Martin's. 1989. c.448p. photogs. index. ISBN 0-312-03313-3. \$29.95. Second volume of the well-known Perlis-Copland collaboration, chronicles Copland's middle and later years and is interspersed with reminiscences by his associates and background material by Perlis.

Caro, Robert A. **The Years of Lyndon Johnson**. Vol. 2: **All or Nothing**. Knopf. 1990. ISBN 0-394-52835-2. \$24.95. Second volume in the trilogy, **The Years of Lyndon Johnson**. Volume 1 was **The Path to Power**.

Fisher, Jo. **Mothers of the Disappeared**. Southend Press. 1989. 224p. ISBN 0-89608-370-5. paper. \$13. ISBN 089608-371-3. cloth. \$35. Stories in their own words by the mothers of the thousands of "disappeared" in Argentina.

Garcia, Ignacio M. **United We Win: The Rise and Fall of La Raza Unida Party**. University of Arizona Press. 1989. 284p. notes. bibliog. indexes. photogs. ISBN 0939363-01-1. \$18.50. Comprehensive account of La Raza Unida based in part on interviews and on questionnaires.

Hampton, Henry & Steve Fayer. **Voices of Freedom: An Oral History of the Civil Rights Movement**. Bantam. ISBN 0-553-05734-0. \$22.50. Sequel to **Eyes on the Prize: America's Civil Rights Year, 1954-1965** by Juan Williams and published to tie in with the sequel to the PBS series.

Hoffman, Alice & Howard, editors. **The Cruikshank Chronicles: Anecdotes, Stories and Memoirs of a New Deal Liberal**. Shoe String Press, P.O. Box 4327, Hamden, Connecticut 06514. 1989. 193p. illus. ISBN 0-208-02250-3. \$22.50. Oral history of a government bureaucrat and labor leader, with forward by Rosalynn and Jimmy Carter.

Illick, Joseph E. **At Liberty: The Story of a Community and a Generation**. University of Tennessee Press. 1989. 352p. illus. ISBN 0-87049-610-7. \$38.95. What happened to the author's high school class of 1952, Bethlehem, Pennsylvania, based on intensive interviews and other data.

Kuhn, Clifford M., Harlon E. Joye, and E. Bernard West. **Living Atlanta: An Oral History of the City, 1914-1948**. University of Georgia Press. 1990. 384p. 80 illus. \$35. Based on nearly 200 interviews with Atlan-

ta residents first collected for the public radio series of the same name.

Lewin, Rhoda. **Witnesses to the Holocaust: An Oral History**. Twayne/G.K. Hall. 1989. \$19.95. Oral histories of 44 survivors from almost every German-occupied country during WWII, including a Norwegian Lutheran and two Polish Catholics, plus accounts by 14 American liberators of concentration camps. The first in Twayne's new oral history series, with an introduction by Donald Ritchie. Includes guide for classroom use.

Logan, Onnie Lee. **Motherwit: An Alabama Midwife's Story**. Dutton. 1989. 177p. \$16.95. Memoirs of a midwife as told to Katherine Clark.

MacKinnon, Douglas & Joseph Balanza. **Footprints: The 12 Men Who Walked on the Moon Reflect on Their Flights, Their Lives, and the Future**. Acropolis. 1989. c.212p. photogs. ISBN 0-87491-921-5. \$19.95. Verbatim texts of interviews, including questions, with the astronauts.

Morris, Roger. **Richard Milhous Nixon: The Rise of an American Politician**. Holt. 1989. c.866p. bibliog. index. ISBN 0-8050-1121-8. \$27.50. Nixon's youth and career to 1952 written by a journalist and former National Security Council staffer under Johnson and Nixon.

**Out of the Inferno: Poles Remember the Holocaust**. Univ. Pr. of Kentucky. 1989. c.224p. ed. by Richard C. Lukas. illus. bibliog. index ISBN 0-8131-1692-9. \$23. Memoirs of Poles who lived through the German occupation of WWII.

Parmet, Herbert S. **Richard Nixon and His America**. Little. 1990. c.768p. illus. bibliog. index. ISBN 0-316-69232-8. \$22.95. Based on recent interviews with Nixon and Nixon intimates and enemies.

Powell, Allan Kent. **Splinters of a Nation: German Prisoners of War in Utah**. University of Utah Press. 1989. 352p. 25 illus. notes. bibliog. index. ISBN 0-87480-330-6. \$25. Examines the experience of German POWs in Utah and explores the interactions of prisoners with locals.

Wicks, Ben. **No Time To Wave Goodbye**. St. Martin's. 1989. c.240p. photogs. ISBN 0-312-03407-5. \$15.95. Recollections by urban British evacuees of WWII.

## Video Productions

**The Day the War Came Home**. color & b&w. 21 min. Tony Kahn, dist. by Cinema Guild, 1697 Broadway, New York, NY 10019. 1988. \$250. (Rental: \$50). Preview avail. The story of Gordon Kahn, victim of McCarthyism, as told by his son who recalls the social ostracism and pain the family endured.

**How Hitler Lost the War**. color. 68 min. Varied Directions, 69 Elm St., Camden, ME 04843; 207-236-8506. 1988. U-matic \$139.95, VHS/Beta \$79.95. Includes interviews with Axis and Allied military personnel analyzing how Hitler lost the war, from specific battles to politics.

**Number 181970**. 10 min. **Prisoner 94287**. 15 min. ea. vol: color. Polish w/English subtitles. Alden Films, PO Box 449, Clarksburg, NJ 08510. 1989. \$50 (Rental: \$20). Preview avail. Two former inmates of Auschwitz recount daily life in the camp.

*No scholar nowadays would argue that we can pursue serious, credible studies of the civil rights or antiwar movements without thorough oral history interviewing of the participants, and we need to set that same standard for scholarly studies of the FBI. Difficulties in obtaining desired interviews occur to varying extents in all fields of recent history, but failure to pursue and conduct them is not an acceptable excuse. Until we start making far greater use of oral history with both headquarters executives and former FBI field agents, FBI historiography in general and our understanding of the informant industry in particular will continue to be seriously deficient.*

— David J. Garrow, "FBI Political Harassment and FBI Historiography: Analyzing Informants and Measuring the Effects," *The Public Historian*, Fall 1988.

## Civil Right Oral Histories Published

To accompany the second part of the PBS series, "Eyes on the Prize," which has been showing this February, *Voices of Freedom: An Oral History of the Civil Rights Movement From the 1950s Through the 1980s*, has been published. Written by series executive producer Henry Hampton and by Steve Fayer, with Sarah Flynn, the book is based on nearly one thousand interviews with civil rights workers from the 1955 Montgomery bus boycott to the Miami riots of the 1980s.

Also out now is *At the River I Stand*:

*Memphis, the 1968 Strike, and MLK* by Joan Turner Beifuss. Based on an oral history project begun in the wake of the King assassination, this book (first published locally in 1985) is the first in a series edited by David J. Garrow. Garrow won the Pulitzer Prize for *Bearing the Cross: Martin Luther King and the Southern Christian Leadership Conference*. The new series promises to be an 18-volume research collection of published and unpublished materials about King and civil rights.



## **Tape/Transcript Processing Guidelines, *continued***

- e. Are there any photo materials or other supporting documents for the interview? Do they enhance and supplement the text?
- f. If videotaped, does the transcript contain time references and annotation describing the complementary visuals on the videotape?

## **Interview Content Guidelines**

**Does the content of each interview and the cumulative content of the whole collection contribute to accomplishing the objectives of the project/program?**

- a. In what particulars does each interview or the whole collection succeed or fall short?
- b. Do audio and visual tapes in the collection avoid redundancy and supplement one another in interview content and focus?

**In what ways does the program/project contribute to historical understanding?**

- a. In what particulars does each interview or the whole collection succeed or fall short of such contribution?
- b. To what extent does the material add fresh information, fill gaps in the existing record, and/or provide fresh insights and perspectives?
- c. To what extent is the information reliable and valid? Is it eyewitness or hearsay evidence? How well and in what manner does it meet internal and external tests of corroboration, consistency, and explication of contradictions?
- d. What is the relationship of the interview information to ex-

isting documentation and historiography?

- e. How does the texture of the interview impart detail, richness and flavor to the historical record?
- f. What is the basic nature of the information contributed? Is it facts, perceptions, interpretations, judgments, or attitudes, and how does each contribute to understanding?
- g. Are the scope and volume, and where appropriate the representativeness of the population interviewed appropriate and sufficient to the purpose? Is there enough testimony to validate the evidence without passing the point of diminishing returns? How appropriate is the quantity to the purposes of the study? Is there a good representative sample of the population reflected in the interviews?
- h. How do the form and structure of the interviews contribute to make the content information understandable?
- i. If videotaped, does the interview capture unique "visual information"?
- j. Does the visual element complement and/or supplement the verbal information? Has the interview captured interaction with the visual environment, processes, objects, or group interaction?

## **Interview Conduct Guidelines**

### **Use of Other Sources**

- a. Is the oral history technique the best means of acquiring the information? If not, what other sources exist? Has the interviewer used them, and has he/she sought to preserve them if necessary?
- b. Has the interviewer made an effort to consult other relevant oral histories?
- c. Is the interview technique of value in supplementing existing sources?
- d. Do videotaped interviews complement, not duplicate, existing stills or moving visual images?

### **Historical Contribution**

- a. Does the interviewer pursue the inquiry with historical integrity?
- b. Do other purposes being served by the interview enrich or diminish quality?
- c. What does the interview contribute to the larger context of historical knowledge and understanding?

### **Interviewer Preparation**

- a. Is the interviewer well-informed about the subjects under discussion?
- b. Are the primary and secondary sources used in preparation for the interview adequate?

### **Interviewee Selection and Orientation**

- a. Does the interviewee seem appropriate to the subjects discussed?
- b. Does the interviewee understand and respond to the interview purposes?
- c. Has the interviewee prepared for the interview and assisted in the process?
- d. If a group interview, have composition and group dynamics been considered in selecting participants?

### **Interviewer-Interviewee Relations**

- a. Do interviewer and interviewee motivate each other toward interview objectives?
- b. Is there a balance between empathy and analytical judgment in the interview?
- c. If videotaped, was the interviewer/interviewee relationship maintained despite the presence of a technical crew? Did the technical personnel understand the nature of a videotaped oral history interview, as opposed to a scripted production?

### **Adaptive Skills**

- a. In what ways does the interview show that the interviewer has used skills appropriate to . . .

*Continued*



## **Interview Conduct Guidelines, *continued***

- the interviewee's condition (health, memory, mental alertness, ability to communicate, time schedule, etc.)?
- the interview conditions (disruptions and interruptions, equipment problems, extraneous participants, etc.)?

### **Technique**

- a. What evidence is there that the interviewer has . . .
  - thoroughly explored pertinent lines of thought?
  - followed up on significant clues?
  - made an effort to identify sources of information?
  - employed critical challenges when needed?
  - thoroughly explored the potential of the visual environment, if videotaped?
- b. Has the program/project used recording equipment and tapes which are appropriate to the purposes of the work

and use of the material? Are the recordings of good quality? How could they be improved?

- c. If videotaped, are lighting, composition, camera work and sound of good quality?
- d. In the balance between content and technical quality, is the technical quality good without subordinating the interview process?

### **Perspective**

- a. Do the biases of the interviewer interfere with or influence the responses of the interviewee?
- b. What information is available that may inform the users of any prior or separate relationship of the interviewer to the interviewee?

## **Independent/Unaffiliated Researcher Guidelines**

### **Creation and Use of Interviews**

- a. Has the independent/unaffiliated researcher followed the guidelines for obtaining interviews as suggested in the Program/Project Guideline section?
- b. Have proper citation and documentation been provided in works created (books, articles, audio-visual productions or other public presentations) to inform users of the work as to interviews used and permanent location of the interviews?
- c. Do works created include an explanation of the interview project, including editorial procedures?
- d. Has the independent/unaffiliated researcher provided for the deposit of the works created in an appropriate repository?

### **Transfer of Interviews to Archival Repository**

- a. Has the independent/unaffiliated researcher properly obtained the agreement of the repository prior to making such representation?
- b. Is the transfer consistent with agreements or understandings with interviewers? Were legal agreements obtained from interviewees?
- c. Has the researcher provided the repository with adequate description of the creation of the interviews and the project?
- d. What is the technical quality of the recorded interviews? Are the interviews transcribed, abstracted or indexed, and, if so, what is the quality?

## **Educator and Student Guidelines**

### **Has the educator:**

- a. become familiar with the "Oral History Evaluation Guidelines" and conveyed their substance to the student?
- b. ensured that each student is properly prepared before going into the community to conduct oral history interviews?
- c. become knowledgeable of the literature, techniques and processes of oral history, so that the best possible instruction can be presented to the student?
- d. worked with other professionals and organizations to provide the best oral history experience for the student?
- e. considered that the project may merit preservation and worked with other professionals and repositories to preserve and disseminate these collected materials?
- f. shown willingness to share her/his expertise with other educators, associations and organizations?

### **Has the student:**

- a. become thoroughly familiar with the techniques and processes of oral history interviewing and the development of research using oral history interviews?
- b. explained to the interviewee the purpose of the interview and how it will be used?
- c. treated the interviewee with respect?
- d. signed a receipt for and returned any materials borrowed from the interviewee?
- e. obtained a signed legal release for the interview?
- f. kept her/his word about oral or written promises made the interviewees?
- g. given proper credit (verbal or written) when using oral testimony, and used material in context?★



## Independent Contractors Win . . .

Continued from page 1

Marshall's opinion focused on the single issue of whether Reid was an "employee" for purposes of the first of the "work for hire" exceptions; namely, "a work prepared by an employee within the scope of his or her employment;" Section 101(1). Clearly, the second exception, Section 101(2), had no applicability because a sculpture does not fit into any of the nine categories of "specially ordered or commissioned" works and there was no written agreement between the parties designating "Third World America" as a work for hire.

Essentially what Marshall did in his decision was to strengthen the meaning of the word "employee" in Section 101(1), so that courts could no longer casually characterize the works of independent contractors as "works for hire." This was accomplished by requiring that courts routinely utilize the common law of agency when attempting to distinguish an independent contractor from an employee under Section 101(1) and (2) of the Copyright Act. Henceforth, courts must expand their inquiry to such factors as the skill required for the task, the source of the materials and tools necessary for the project, where the work is performed, the length of relationship between the parties, whether the hiring party has the right to assign additional projects to the hired party, the degree of discretion the hired party has over when and how long to work, how payment is made, the role of the hired party in hiring and paying assistants, whether the work is part of the regular business of the hiring party, whether the hiring party is in business, the existence of employee benefits, if any, and the tax treatment of the hired party.

In the case at hand, Justice Marshall agreed that CCNV directed most of Reid's work. This alone, however, did not make Reid an "employee." For as Justice Marshall noted, "all the circumstances weigh heavily against finding an employment relationship."

As a result, the copyright for "Third World America" will belong solely to James Earl Reid, unless the lower court to which the case was remanded determines that the statue was a joint work, and freelance artists are delighted with the overall impact of the decision.

The decision in *CCNV v. Reid* no longer allows commissioning parties to simply claim that an independent contractor was really an "employee" and, thus, gain ownership of disputed copyrights. The

case does not, however, prevent a commissioning party either from requiring that an independent contractor sign a work for hire agreement if the work specifically fits into one of the nine categories in Section 101(2) or a transfer of copyright interest agreement prior to the commencement of any work. While the legal effect of both types of agreements is largely the same in terms of control over an exercise of the five exclusive rights that make up copyright ownership; the duration, renewal and termination rights do vary somewhat depending on who the initial owner was.

Some readers may, at this point, be ready to jump to the erroneous conclusion that if a freelance interviewer was to claim copyright ownership in an interview or series of interviews and no written transfer of his or her copyright interest was ever made, based on the holding in *CCNV v. Reid*, he or she could well prevail. This might well be true but for the universal presumption that the interviewee is the sole owner of the copyright in any interview he or she provides. Thus, it would appear that oral history interviewers, whether bona fide employees or freelancers, have no copyright interests whatsoever.

But, and this is a very important conjunctive, the Copyright Act also recognizes that a work can be the product of joint

authors. Section 101 defines a joint work as "... a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." Several courts have construed this definition to mean that respective contributions of several authors to a single work need not be equal, either qualitatively or quantitatively. While no court, to this writer's knowledge, has ever been called upon to determine whether an interviewer and interviewee are joint authors of an oral history interview for copyright ownership purposes, the possibility of such a ruling some day cannot be completely discounted.

The regular utilization by oral history programs and projects of copyright transfer agreements with all freelance interviewers is, thus, even more important in the wake of *CCNV v. Reid*. This is so even though the likelihood of any copyright ownership dispute ever arising over an oral history interview may be remote and the joint authorship of an interviewer remains purely speculative. Routine execution of simple copyright transfer agreements with all freelance interviewers prior to any interviews being conducted is the simple, prophylactic message to be garnered from the case under review. ★



**"They Were There."** Veterans of the 1910-17 Mexican Revolution were sought out, reunited, and interviewed in a project recently conducted by Manuel Urbina II, history professor at College of the Mainland in Texas City, Texas. This photo, taken at the National Reunion of Veterans of the Mexican Revolution in 1988, features Pancho Villa's soldiers (from left to right) Corporal Miguel Contreras, Captain Leo Reynoso, General Villa's youngest daughter Alicia, Major Rafael Lorenzana Reyna, and Urbina. The recollections of Pancho Villa collected in this project diminish his image as a brutal bandito while raising his reputation for romantic exploits to mythic proportions.



# Upcoming Events

**March 29-April 1 - International Oral History Conference** in Essen, West Germany.

**April 7 - Oral History Association of Minnesota** will hold its annual meeting at the Dakota County Historical Society in South St. Paul. Features sessions on church and community history and dynamics of interviewing.

**April 19-21 - Northwest Oral History Association** will meet with the Pacific Northwest historians and archivists for an annual conference coinciding with the Idaho state centennial celebration. Contact Judith Austin, Idaho State Historical Society, 610 N. Julia Davis Dr., Boise, Idaho 83702-7695; 208/334-3428.

**April 27-28 - Oral History in Ohio** and the Greater Cleveland Oral History and Community Studies Center will sponsor Oral History Day at Cuyahoga Community College, Eastern Campus in Cleveland. "Work, Community and Ethnic Identity" is a free public program which will include an address by Al Santoli on immigration history, songs and slides on the Great Depression, a play based on oral history, walking tours, and workshops. Contact David Mould at 614/593-4873 or OHIO, c/o Ohio Historical Society, Youngstown Historical Center of Industry and Labor, Box 533, Youngstown, Ohio 44501, 216/743-5934.

**May 3-5 - Afro-American Historical and Genealogical Society** will meet in Washington, D.C., with sessions exploring ancient African civilizations, family reunions, collecting memorabilia and genealogical sources in the Caribbean, and a genealogy workshop led by James Dent Walker and Charles Blockson. Contact the society at P.O. Box 73086, Washington, D.C. 20056-3086.

**May 7-10 - Association for Recorded Sound Collections Annual Conference**, in conjunction with the International Association of Sound Archives, in Ottawa, Canada at the new Canadian Museum of Civilization.

**May 22 - Rutgers University Institute for Research on Women** will hold a Celebration of Our Work Conference on the Douglass College campus in New Brunswick, New Jersey. The theme will be "Women's Lives in a Changing World." Contact Celebration of Our Work Conference, IRW, Voorhees Chapel, Douglass College, P.O. Box 270, New Brunswick, NJ 08903-0270.



**June 11-22 - Georgia Archives Institute's Introduction to Archives Administration** will offer a course for beginners on basic concepts and practices of archival management. Contact Patrice McDermott, School of Library and Information Services, Clark Atlanta University, Atlanta, Georgia 30314.

**July 2-August 10 - Summer School at Portland State University** June 25-July 6 - "Life, Memory and Oral History" taught by Charles Morrissey, well-known raconteur and oral historian at the Baylor College of Medicine. July 23-27 - "One Moment in Time," Haystack Program by Judith Fife in which participants

will learn to "see with the ear" by using a tape recorder the way a photographer uses a camera, held at Cannon Beach. Contact Portland State University Summer Session, P.O. Box 751, Portland, Oregon 97207, 1-800-547-8887.

**July 9-20 - Oral History Course taught by Charles Morrissey** at Wayne State University, Detroit, college credit available. Contact Philip Mason at Wayne State, 313/577-4003.

**August 6-10 - Oral History Course taught by Charles Morrissey** in Vermont (Coast-to-Coast with Morrissey!), intensive but non-credit seminar for oral history practitioners with specific projects in mind or under way. Contact Division of Continuing Education, Vermont College, 802/223-8800.

## Requests for . . .

Material which would be useful in developing a college psychology course which will use oral histories gathered by students to examine the psychological principles regarding the influence of early childhood experience, cultural background, historical events, etc., to understand the scope of individual lives in light of historical events, rather than vice versa. Contact Andy Neher, Cabrillo College, Aptos, California 408/475-8137.

Information on **Rear Admiral Ellis Mark Zacharias**, U.S. Navy, 1890-1961, particularly aspects of his career and command of the *USS Salt Lake City* 1940-42 and the *USS New Mexico* 1943-45. Contact J. Wandres, 624 Randall Way, Matawan, New Jersey 07747-1962.

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