

## CASE STUDIES FOR ETHICS 408 SESSION: CASE STUDIES IN PRIVACY AND CONFIDENTIALITY

### 1. THIRD PARTY PRIVACY/CONFIDENTIALITY

You are an archivist for a manuscripts repository. A famous and successful author, Brandt Hellman, has given your institution all of his personal papers and manuscripts upon his death. The donor agreement allows free access to all of the papers once they have been processed. He was a colorful public figure and the media is anxious to see these materials.

The papers are comprised of over 1500 hundred cubic feet of drafts of original manuscripts; personal papers relating to details of the publication and royalties for his works; correspondence; photographs; and personal memorabilia from his travels. There are copies of the outgoing and incoming correspondence with his editor, who also is deceased. He worked with this editor for his entire career. Their correspondence is about 750 cubic feet of the collection. As is often true, Brandt and his editor became very close friends over the years. The editor was a father figure to Hellman. He offered him advice and counseling. Hellman always turned to him during personal crises.

Hellman married his high school sweetheart while he was a graduate student. They divorced soon after he published his first novel. His second marriage was to a popular actress whom he met when she played the lead in a play based on his first novel. A third marriage takes place shortly before his death.

You are processing and creating finding aids for the collection. You discover that Hellman discussed his relationships in detail with his editor. He talks about outgrowing his first wife, whom he characterizes as stupid, and greedy in her demands for clothes and jewelry. He gloats about managing to leave her with almost nothing in the divorce. He marries the actress after a brief courtship. He claims to then discover she is mentally unstable. He colorfully describes her dysfunctional family. Their relationship is publicly a shambles with drunken brawls and accusations of abuse on both sides. After less than two years of marriage, she commits suicide with sleeping pills and alcohol. Hellman confides his growing affection for the actress's sister because she is so kind and understanding of his problems. Although he loves the sister, he resists marrying her because he does not want any further scandal to affect his career. The letters intimately describe their life long affair. He finally and reluctantly agrees to marry her after a stroke leaves him paralyzed and he must depend on her to care for him. He dies a few months later.

How will you handle access to this material? What is your responsibility to protect the privacy of his first and third wives who are still alive?

## 2. DONOR IMPOSED RESTRICTIONS

You are Director of Collections Development for a Historical Society. Your collection policy focuses on early national history and the history of your state (one of the original 13 colonies). An important collection of personal papers and manuscripts that relate to the first Governor of the state have remained in family hands until recently. The family decided to sell the papers rather than donate them to a repository. They place the collection for auction with Sotheby's in New York City. Although you had substantial funds available to bid for the papers at the auction, you were outbid at the last moment by a private collector. It is a blow to your institution and the research community because this collection has enormous research value. Historians, genealogists, the archival profession and other interested parties are able to generate a lot of negative publicity about the private purchase. The collector is chastised for robbing the American people of their historical heritage. The collector comes to you and offers to sell you the collection for your final bid price, plus \$125,000 for damage to his reputation; or he will donate the collection to your institution with the stipulation that he retains the right to control access to the collection for his lifetime.

What do you do and why?

## 3. PRIVACY AFTER DEATH, INCLUDING RIGHTS OF PRIVACY OF SURVIVORS

You are the chief archivist for the State Historical Society. A past-Governor and Senator from your state donates his entire collection of papers, both personal and public, to your State Historical Society. He served eight terms in the U.S. Senate and two terms as Governor. He ran for the Presidential nomination, but was defeated in his party's Presidential primary election due to charges of corruption. He is a colorful and powerful political figure. He now is a Congressional lobbyist, known as a major "wheeler-dealer". He has connections to many special interest groups and corporate leaders. It is a dynamite collection in every sense of the word. It is filled with revelations about how campaign donations lead to personal influence and the general corruption of modern day politics. His wife has worked at his side throughout his political career and he appointed her to numerous paid positions in his Senatorial office. The papers also document her many travel with him on the U.S. payroll and the other lavish perks and benefits she received as his staff member.

The donor agreement states that all of the collection will be available to researchers after his death. He suddenly dies of a heart attack. Your institution receives grant funds to

quickly process the collection. Within one year, the Historical Society is prepared to open the papers to researchers.

The law is that the right to privacy dies with the individual, and in fact, public figures have less right to privacy than private individuals do during their lifetime. The law does not convey any right of privacy from the dead to survivors.

Despite the law, the Senator's widow objects to the immediate opening of the collection. She feels that a "reasonable" time should pass after his death before the contents of the papers are made public. Her attorney asserts that her reputation may be damaged by some of the revelations and that she never gave her permission to make material relating to her and her professional career a part of the public record. She will sue the Historical Society if they proceed to open the collection in full without her permission. She demands the right to review and restrict access to some items until 50 years after her death.

How do you respond to her request? Does her demand have legitimacy?

#### 4. PROTECTION OF CONFIDENTIALITY VS THE PUBLIC'S RIGHT TO KNOW

Your State Historical Society has acquired the records of a large pharmaceutical company (ABC Drugs) located in your city. ABC Drugs was forced to go out of business after a series of ruinous lawsuits. It was claimed that one of their medications contributed to over 200 deaths from massive heart attacks. The FDA had approved the drug five years ago and almost immediately the deaths began to occur. ABC Drugs denied that their pill was responsible and offered evidence of their drug testing and testimonials by doctors who worked on drug testing with the company that the medication was safe. However, the mounting death toll led ABC to withdraw the medication from the market. The company's stock plummeted and ABC went in to bankruptcy to limit its liability. The majority of the victim's families agreed to a relatively small settlement amount rather than go through a prolonged and expensive lawsuit. However, there are holdouts who are suing the company. One family has elected to sue the CEO, President, and Vice President of Research & Development for withholding information about the drugs potential side effects from the FDA.

The Governor and State Legislature reached an agreement with the State Historical Society to accept the records to protect them from potential tampering or destruction as the company was dissolved. They have provided special funding for a project to review the records and identify all material pertinent to the lawsuits.

The volume of records is over 10,000 cubic feet of material from corporate divisions and executives. It includes records on all of the products, and there is material that is marked confidential that relates to patents and testing for other products in addition to the medication involved in the litigation. Lawyers on both sides are clamoring for access to the records to prepare their cases.

It is your job to oversee the project of reviewing these records to prepare them for the lawyers' use. As the senior team member, you are the person responsible for going through the confidential files to find the records pertaining to the lawsuit. The lawyers for the company have gotten a court ruling that privilege information not pertaining to this lawsuit is excluded from the project.

However, you find that the confidential files are in disarray, possibly from the executives and corporate counsel going through them prior to the order for their removal to the Historical Society. Your review necessitates your carefully combing through the documents to determine which ones relate to the case. The more material you look at, the more you find evidence of fudging or suppressing negative information on drug testing, not only for this one medication, but for many others as well. You are no lawyer, but you feel that this is important evidence of a pattern of behavior. You know that you are under order by the court not to review or reveal information that does not pertain to the particular case.

What do you do? Do you have an ethical responsibility to the public? Is there any justification for revealing damaging information that comes to light because someone tampered with the records before you received them?

## 5. PERSONAL PRIVACY IN MEDICAL RECORDS, STUDENT RECORDS, PERSONNEL RECORDS, LAWYER/CLIENT FILES, OR ADOPTION FILES

You are the University Archivist and Records Manager for a large university. The Archives has student records, personnel files for faculty and staff, the legal records of lawsuits involving the University, student medical records from the University Health Service, all of which require you to protect the privacy of the individuals mentioned in the files. In addition, the University is the repository for records of the city and county in which it is located. Therefore, the Archives has the records of foster care and adoptions handled by the city and county social services divisions.

It is your responsibility to handle the accession and deposit of these records. It also is your duty to set rules for access to these different types of records. What kinds of issues must you take into account with each of these record types?

## 6. PROTECTION OF THE PRIVACY RIGHTS OF USERS

A. All users of your collections are required to fill out a registration card when they come to use material in your institution. They also must furnish a photo id for staff to verify their identity. As a security measure against theft, you retain records on all of the materials requested by your patrons. Under the Patriot Act you are required to provide

that information to government investigators if they request it, without notifying the patron that the government is investigating them.

A frequent patron is a well-known popular historian. This historian is an outspoken critic of the current administration. Your archives has extensive collections of material on political action committees and political fund raising activities. The historian has been conducting research in these materials. An FBI agent arrives in your office and says that he wants the records of all of the material that this historian has used from your institution for the past three years. In addition, he wants your to furnish information as far back as your records go on any other researchers that have used these collections.

Up until this request, you are not aware of the Patriot Act being applied to archival researchers and it has not been challenged in court. You are opposed to this invasion of privacy of your users.

You know that these collections do not contain any material relating to terrorism or anything that could compromise national security. The reason for this request is political.

What do you do?

B. You are the head archivist for an art museum that has extensive collections of photographs by modern American photographers. The collections are heavily used by art historians and other writers on photography.

One of the reference archivists comes to you upset about a request from a patron. The patron has spent days in the archives going through different collections and making a list of the photographs that he wants copies of made for him. The reference archivist says that the man made her very uncomfortable during his time there. She says he was “strange” and asked “odd questions about the collections.” He ordered over \$2000.00 worth of photographic copies which he paid for in cash before departing. When she took the list and began pulling the photographs, it turned out that all of the pictures were nudes of young men or boys. The reference archivist has a degree in psychology and she tells you that she is quite convinced that the man is a pedophile. She says that she feels obligated to turn this information over to the police in his home community for them to investigate.

What do you do?