

Historic Southern Indiana

Interpretation Workshop, March 2-4, 1998

Can We Talk

Presented By Folklorist Jon Kay

In this session folklorist Jon Kay looked at the mechanics and techniques of oral history research. The workshop explored some considerations in implementing an oral history research project. The group discussed the ethics and legalities involved in this type of research. Workshop participants gained an appreciation for the necessity for oral histories in a contemporary local and regional studies.

Oral History and Legal Issues

Copyright

The old copyright law of 1909 dictated that if something were published with a copyright notice placed on the work, the publication was protected under federal copyright law. If it were published without a copyright notice, it was thrown into public domain, and no one, not even the state could bring action against the person who republished it.

The new copyright law, enacted in 1976 to be effective on January 1, 1978, says that the moment a writer lays her/his pencil aside, s/he has a copyright; the moment the tape recorder or video camcorder is turned off following an interview, the speaker has a copyright.* The interviewer owns the physical tape but the narrator owns the tape's contents. and since the interviewer's voice is also on the tape, it may be that both the narrator and interviewer own the tape's contents. Although this has not been tested in court, it seems advisable for both parties to sign the archival donation form.

*Section 102 of the 1976 Copyright Act mandates that "copyright protection subsists...in original works of authorship, fixed in any tangible medium of expression" which can be reproduced "either directly or with the aid of a machine or device."

The 1976 law protects the material for the lifetime of the author/narrator, plus 50 years; or 75 years from the pub. date. The law also says that rights signed away can be reassumed by the author/speaker, especially in matters pertaining to publication.

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Role of the Archive

An archive is not allowed under the law to make a copy of the tape or document in its entirety without a signed donation form. Even then, the release form should specify that copying may be allowed. Otherwise, it is necessary to go back to the narrator and interviewer for special permission.

Libel

By definition, libel is written, printed, or pictorial statement that damages a person by defaming his/her character or exposing them to ridicule.

The message here is: Don't publish anything from an oral history interview that will implicate the narrator in any way, or implicate that person in his/her profession. The good thing here is that a person has to be living in order to be libeled. So, just wait until they are dead and you've got it made! Right? NO! The narrator's descendants can sue you for libel if it can be demonstrated that published statements slander their own names or bring them into disrepute.

Alfred H. Kelly wrote an article on "Constitutional Liberty and the Law of Libel," published in the *American Historical Review* (1968). Although seemingly outdated, certain points made by Kelly seem worth repeating:

1. Only the scholar who is guilty of actual malice (the deliberate propagation of falsehood) is in danger of successful prosecution for defamation of character.
2. To be liable for damages, the scholar would have to be so irresponsible and sloppy in his/her methodology as to fall under on onus of extreme departure from the standards of investigating and reporting ordinarily adhered to be responsible publishers.
3. Probably the largest danger the scholar who publishes faces from libel prosecution is that of harassment, i.e., the filing of irresponsible suits for defamation of character in which there is no great possibility of an award for damages.(e.g. Hollingsworth sisters)

Time Capsules

It is permissible to prohibit public use of tapes and transcripts until the death of the narrator, or for a number of years following the interview, or both. This procedure is often followed when interviewing public officials, or when securing information that could be viewed as invasion of privacy.

Legality of Photography

In photo. jour., the rule of thumb is if something or someone is newsworthy, the topic is public domain. the press is covered under certain shield laws. When in doubt, obtain signature of release/permission, especially when the person is the subject of an oral interview.

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Ethics of Interviewing/Collecting

1. Sometimes it is hard not to be deceitful and use a hidden tape recorder, but an interviewer with solid ethics and good principles will use no hidden machines. There must be no recording without consent, and no wire tapping! This is a betrayal of confidence and an invasion of privacy. Too, it may get the interviewer into hassles over copyright legalities.
2. You should not harm the narrator in any way, not even in intangible ways. Thus, always conduct interviews with respect for human dignity.
3. Always explain the intended use of the taped interview, then obtain permission to quote by having donation form signed. Some future uses of the taped material may require that you reconsult with the narrators. For example, they should not unexpectedly hear their voices on the radio, or as voice-overs at museum exhibits, and so on, if they had been led to believe that their works would appear only in print.
4. Don't promise what you cannot deliver (e.g., a recording contract, publication of book, feature story in local newspaper.)
5. Remember, the narrators are giving you their information--and on their terms. Their decision is final on what to tape-record, what to erase, when to turn the machine off and on, what restrictions are to be placed on the use of the tapes, etc., etc.
6. The question of narrator remuneration often enters the picture. Should we promise the narrator a copy of the book when it is published? Free admission to the museum for a year? Should they be paid cash for the interviews? To compensate or not to compensate depends largely upon the nature of the oral history project and the understanding reached with the narrators as to how the taped interviews will be used. While any and all considerations are important, the nature of funding of the oral history project itself should determine whether or not to offer pay for the interviews. Because of the great amount of personal time contributed by the volunteer interviewer, and personal money spent on travel, the question of remuneration should likely not be discussed unless the narrator brings up the issue.

The Oral Interview

Lynwood Montell, Western Kentucky University, 1997 (class notes)

- A. Pre-interview Preparations
 1. Limit the scope of the topic.
 2. Conduct library/archival research.
 3. Compile a set of core questions.

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4. Decide who will be interviewed.
5. Make initial contact with the interviewee/narrator.
6. Understand his/her subculture.
7. Check recording equipment before leaving home.

B. The Interview

1. Review the purpose of the interview
2. Arrange for an optimal recording situation.
3. Locate tape recording in proper place; run meter forward to 003.
4. Explain the archival donation form.
5. Record proper introduction on tape.
6. Ask one question at a time.
7. Phrase question in an open ended manner.
8. Don't interrupt; don't challenge the information provided.
9. Jot down personal questions while the narrator is talking.
10. Run side one all the way to the end before turning tape
11. Remember, this is an interview not a dialogue
12. Follow through on interesting digressions
13. Hold first interview to an hour
14. Obtain list of suggested interviewees and narrators
15. Inquire about supporting material (photographs, letters)
16. Only one interview per tape

C. Post Interview Procedures

1. Label tape and case properly
2. Send a "thank you" letter
3. Fulfill all promises to the interviewee/narrator
4. Stay and chat for a few minutes following the interview
5. Bring field notes up to date.