



## Voices of the Violet Crown: Moving beyond the interview

By Susan Burneson, Coordinator, Voices of the Violet Crown, Austin, Texas

MY HUSBAND, ROB, and I had just wrapped up a two-hour oral history interview with John and Judy Carlson on a warm fall day in 2009. Now in their 80s, they are among the few remaining original residents of the Crestview neighborhood in Austin, Texas, and they were eager to share their stories through our project, Voices of the Violet Crown. As we packed up our video gear, John asked us a compelling question: “So, what do you plan to do with all of this information?”

The conversation that followed underscored what we have found to be true over the nine years of our project. It is meaningful to videotape interviews and donate copies to participants and to the local history center. It is even more important to continue seeking new ways to share all that we have gathered.

*(continued on page 5)*

## Oral history reveals enriched lives on island in Penobscot Bay

By Nancy Dewey, Deer Isle-Stonington Historical Society

### One Story: Albert Sylvester Jones Talks about Odd-Jobbing

ONE MID-DECEMBER NIGHT after making my way across a glade of ice in the dooryard and stepping over the missing board on the trailer porch, I knocked on Albert Jones’ door. He had spent his life odd-jobbing, and Pete Collin asked me to record this amazing man’s life. It was hours later when I left and much colder; I had to crawl to my car over ice in the dark.

However, Albert, Pete and I were warm and could not hear the wind while we were inside Albert’s stark home. Albert and Pete had met during the 1970s while Albert was the night watchman at Billing’s Shipyard in Stonington, Maine. They had remained friends and evidently spent much time discussing politics, fishing and life during the 1930s up until the present.

Pete and Albert both had twinkles in their eyes. Albert’s skin was worn from weather. His folded hands on the vinyl table were flooded by an amber overhead light. Although Albert was unwilling to share his political views with me, he did tell about his life growing up in Maine and about being in Germany during the war in 1945. “Not much to it. I went as far as 8th grade” then worked on a sardine carrier for three years. He eventually became captain of this boat. He continued, “The other fella catches the fish. We just carried them at night from the

*(continued on page 5)*

### In this issue

From the president . . . . . 2

Nominees announced for  
OHA leadership positions . . . . . 2

New developments at the  
*Oral History Review*. . . . . 3

Sing It Out, Shout It Out,  
Say It Out Loud: Giving Voice  
through Oral History . . . . . 3

Speaking of Music and the  
Counterpoint of Copyright:  
Addressing Legal Concerns in  
Making Oral History Available  
to the Public . . . . . 4

Summer workshops offered . . . 7

News & Notes . . . . . 12

# From the president

By Mary Larson

THE PROPOSALS FOR the Cleveland meeting are in, and there are going to be some wonderful plenaries, papers, roundtables and workshops, along with a lot of local flavor! (Pierogi, anyone?) The Program Committee is under the very capable leadership of Elinor Mazé and Chuck Bolton, and Mark Tebeau is enthusiastically heading up Local Arrangements. Both groups have a number of incredibly dedicated volunteers who have been working hard to ensure that the meeting will be a success, so please plan on attending. For more detailed information, please read the related article in this issue of the newsletter.

Normally at this point I would be able to update everyone on what transpired at Council's mid-winter business meeting, but we are convening later than usual this year so that we can take care of an important piece of association business. As we mentioned in the last newsletter, OHA is in the process of locating a new home for its offices, and the Transition Committee (Rina Benmayor, Linda Shopes, Laurie Mercier and Roger Horowitz) has been hard at work soliciting proposals from potential host institutions. A number of letters were received by the Nov. 1 deadline for initial indications of interest, and full proposals are due as this article is being written (March 1).

As the next step in the process, the committee will review all of the submissions and make a recommendation to Council, but because committee members needed to schedule time for possible follow-up questions with various institutions, they did not feel that they could have a recommendation in place before mid-April. As the transition was Council's major order of business for this year's "mid-winter" meeting, the timing was changed to "mid-spring" instead, and we will be considering the proposal finalists at that time. We are

hoping to have a new contract signed and in place by May or June, and once the selection has been made and the paperwork completed, OHA will make an announcement to the membership via e-mail, the H-Oralist listserv and the *OHA Newsletter*.

In other news that may be of interest to members, Council decided at its October meeting to expand OHA's awards program. Until this year, all of our awards have been offered biennially, so someone whose book was published just after the April deadline would have to wait two years to submit it for possible recognition. The same was true, of course, for most of the categories, including honors given for articles, projects and non-print media.

Council acknowledged that oral history-related products are being generated at an increasing rate and that perhaps our awards system should reflect that and give people more of an opportunity to have their work recognized by their peers. In light of that, the decision was made to present the book, article, non-print and project awards on an annual basis. (Because there are two teacher awards, those will still be given in alternating years.) This year's deadline of April 15th is quickly approaching, so please consider submitting a nomination.

I'm looking forward to seeing everyone in Cleveland! Until then, keep your eyes on the *Newsletter*, the website and the listserv for OHA news. ❖



OHA president, Mary Larson



## Nominees announced for OHA leadership positions

Oral History Association members will vote this summer on the following nominees for first vice president and two OHA Council seats and also will elect three people to serve two-year terms on the Nominating Committee. Members will vote for one person for each of the three committee positions and one person for each of the two council positions.

### THE NOMINEES ARE:

#### FIRST VICE PRESIDENT

**Paul Ortiz**, *University of Florida*

#### COUNCIL SEAT NO. 1

**Dionne Espinoza**, *California State University at Los Angeles*  
**Regennia Williams**, *Cleveland State University*

#### COUNCIL SEAT NO. 2

**Martha Norkunas**, *Middle Tennessee State University*  
**Jeff Friedman**, *Rutgers University*

### NOMINATING COMMITTEE

#### SEAT NO. 1

**Jeff Corrigan**, *The State Historical Society of Missouri*  
**Todd Moye**, *University of North Texas*

#### SEAT NO. 2

**Erin McCarthy**, *Columbia College Chicago*  
**Cyns Nelson**, *Colorado Voice Preserve*

#### SEAT NO. 3

**Sady Sullivan**, *Brooklyn Historical Society*  
**Eric Meringer**, *SUNY Fredonia*

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# New developments at the *Oral History Review*

By *The Editorial Team of the OHR*

ON JAN. 1, the editorship of the *Oral History Review* changed hands. After six years at the University of North Dakota, under Kim Porter, the editorial office—or, more accurately, offices—have moved to the University of San Francisco under editor Kathy Nasstrom and to a new managing editor's office at the University of Wisconsin-Madison under Troy Reeves. Rounding out the new editorial team are Doug Boyd (as the new digital initiatives editor), John Wolford (who is continuing as book review editor), and Jennifer Abraham Cramer (who is continuing as media review editor). The newest member of the editorial team is Glenn Whitman, who will be developing a yearly pedagogy section for the journal (see the related article announcing this section).

The new editorial team seeks, welcomes, and *encourages* your input. Let us know your ideas for the journal and submit your work for publication. Contact information for the editors, as well as submissions guidelines, are available online at the Oral History Association's website (<http://www.oralhistory.org/publications/oral-history-review/>).

In particular, we are most interested in working with authors to develop multimedia articles and reviews. Initially, we expect to work with authors on fairly simple multimedia enhancements, such as embedding or linking out to audio and video excerpts. Ultimately, though, we hope to make the OHR a more fully multimedia journal by encouraging authors to re-envision the totality of multimedia potential as they prepare more integrated works. These types of articles represent the future of online scholarship, and the staff at Oxford Journals, which publishes the OHR, has indicated a willingness to work with us to finesse bridging the gap between print and online presentations. The upcoming Cleveland annual meeting will feature a session on Digital Initiatives at the *Oral History Review* to help prospective authors envision these new multimedia possibilities.

The process of submitting articles to the OHR will soon be streamlined, as the editors have recently contracted to use ScholarOne to manage the journal's workflow. ScholarOne is

*(continued on page 4)*

# Sing It Out, Shout It Out, Say It Out Loud: Giving Voice through Oral History

By *Elinor Mazé, Program Co-Chair*

CLEVELAND, OHIO, WILL host the 2012 meeting of the Oral History Association, Oct. 10-14. On the southern shore of Lake Erie, this culturally diverse, industrialized city with a tumultuous working-class past offers historians opportunities to observe and engage with the challenges of urbanization, civil rights and labor protest, and economic ups and downs expressed in music and performance, film and photography, as well as in speech and struggle.

Conference plans so far include a number of special events. Opening the conference will be Molly Merryman's documentary film *Country Crush*, based on oral history interviews with participants in farm-machinery demolition derbies. Among other events shaping up is a plenary featuring broadcast journalist and oral historian Neenah Ellis. A nationally recognized NPR reporter, interviewer, and author, Ellis is also station manager of the Ohio public radio station WYSO in Yellow Springs.

In another special session, Harold B. Williams, former executive secretary of the Cleveland NAACP, will join Alphine Jefferson of Randolph-Macon College onstage for a live interview. The 1970 shootings of students on the campus of Kent State University will be the topic of a theater piece, *May 4th Voices*, with a script based on the ongoing May 4th Oral History Project at Kent State. Other events featuring musicians, music collections and other performances are in final planning stages.

Workshops play an important role in every OHA meeting, and program planners are finalizing specially focused offerings for oral history beginners, for teachers and for archivists, as well as for oral historians from all disciplines seeking practical information on technical, legal and other aspects of their

craft. An innovative feature of this year's conference will be a Saturday THATCamp, an informal, open-structure, highly participative forum for sharing creative ways to use technology in humanities research, presentation and preservation.

A rich variety of presentation proposals is under review, and the schedule of panels and roundtables promises lively and informative discussion of both new and familiar topics. The intersections of social activism and historiography, the challenges of cross-cultural and cross-class interviewing, techniques for student engagement in oral history projects, the role of music in expressing and shaping culture and its changes, and developments in archival and preservation practice are among the main themes emerging for the conference's session offerings.

The local arrangements committee will present conference-goers many opportunities to engage with our host city. Cleveland offers a mix of cultural and ethnic traditions from the city's diverse neighborhoods as well as from nearby mining communities, farms and mountains, with offerings as varied as Appalachian folk music and eastern European polkas, Severance Hall and the Rock and Roll Hall of Fame, pierogis and pasta. From self-guided tours to organized excursions, local opportunities will provide both diversion and enrichment.

Finally, there are unconfirmed rumors of a comeback performance by the OHA Presidential String Band!

Online registration will be available in June, and the OHA Web site (<http://www.oralhistory.org/>) will provide full details, including housing arrangements, transportation choices and fees for attendance at regular and special events and workshops. ❖

## New developments at the Oral History Review

continued from page 3

a Web-based application that enables journals to manage the submission, peer review, production and publication process within one integrated system. As soon as the system goes online, authors who submit articles will be directed to ScholarOne from both the OHR webpage on the association's website and from the OHR webpage on the Oxford Journals website.

Finally, a new editorial board is in place, to serve from Jan. 1, 2012, to Jan. 1, 2015. Our heartfelt thanks to these oral historians who have agreed to assist the journal in the review process and in the future development of the OHR:

**Lu Ann Jones**, *National Park Service*

**Daniel Kerr**, *American University*

**Tracy K'Meyer**, *University of Louisville*

**Susan McCormick**, *State University of New York, Albany*

**Nancy Mirabal**, *San Francisco State University*

**Kimberly Porter**, *University of North Dakota*

**Thomas Saylor**, *Concordia University, Saint Paul*

**Elly Shodell**, *Port Washington (N.Y.) Public Library*

**Bruce M. Stave**, *University of Connecticut*

**Glenn Whitman**, *Saint Andrew's Episcopal School* ❖

## Oral History Review announces new pedagogy section

*The Oral History Review* dedicated its Winter/Spring 2011 issue to pedagogy, and the editors and editorial board are expanding on that commitment by creating a yearly pedagogy section as a permanent feature of the *Review*, beginning in 2012.

Glenn Whitman, author of *Dialogue with the Past: Engaging Students and Meeting Standards through Oral History* and guest editor of the Winter/Spring 2011 issue, is the newly appointed editor of this section.

The editor seeks article submissions from both the national and international perspective that reflect the experience of educators and the work of students on all levels, from grade school through graduate education. If you are interested in writing on pedagogy, or have a suggestion or interest in a specific type of article, potential author or innovative project that should be highlighted, please submit your ideas to [gwhitman@saes.org](mailto:gwhitman@saes.org).

This is an excellent opportunity to celebrate transformative teaching and learning and the important contributions students can make to the historical record, as well as other uses and applications of oral history, when empowered with the opportunity to be and think like oral historians.

## Speaking of Music and the Counterpoint of Copyright: Addressing Legal Concerns in Making Oral History Available to the Public

By *Jeremy J. Beck* And *Libby Van Cleave*<sup>1</sup>

*(This article was published recently by the Duke Law & Technology Review, which has granted the Oral History Association permission to republish the article. Those who comment on this article's content are required to properly attribute it to its source by citing to 2011 Duke L. & Tech. Rev. 5.)*

### Abstract

ORAL HISTORY PROVIDES society with voices and memories of people and communities experiencing events of the past firsthand. Such history is created through interviews; an interview, however, like any other type of intellectual property—once in a fixed form—is subject to copyright law. In order to make oral history available to the public, it is critically important that individuals generating and acquiring oral history materials clearly understand relevant aspects of copyright law.

The varied nature of how one may create, use, and acquire oral history materials can present new, surprising, and sometimes baffling legal scenarios that challenge the experience of even the most skilled curators.

This iBrief presents and discusses two real-world scenarios that raise various issues related to oral history and copyright law. These scenarios were encountered by curators at Yale University's Oral History of American Music archive (OHAM), the preeminent organization dedicated to the collection and preservation of recorded memoirs of the creative musicians of our time. The legal concerns raised and discussed throughout this iBrief may be familiar to other stewards of oral history materials and will be worthwhile for all archivists and their counsel to consider when reviewing their practices and policies.

### 2011 Duke Law & Technology Review No. 005 Introduction

Oral history may be defined as “a field of study and a method of gathering, preserving and interpreting the voices and memories of people, communities, and participants in past events.”<sup>2</sup> Resources that capture oral history provide extraordinary opportunities for researchers and the general public to gain intimate and specific knowledge about a wide variety of subject areas. However, the use and availability of such materials may be affected by U.S. copyright law.<sup>3</sup> Thus, it is of critical importance that relevant aspects of copyright law be clearly understood by those who generate and acquire oral history materials, in order to best facilitate making those materials available to the public.

This iBrief presents and discusses two real-world scenarios that illustrate the various issues related to oral history and the law, including copyright. Although this iBrief specifically involves the field of music, the sce-

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## Voices of the violet crown

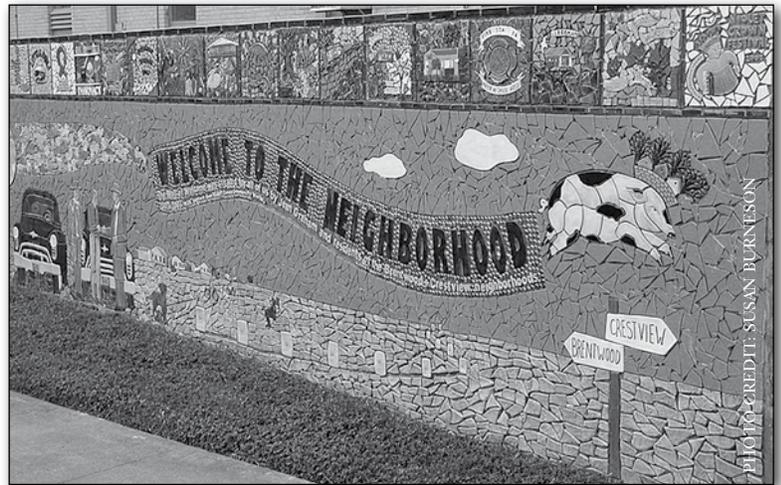
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Voices of the Violet Crown grew out of a five-year volunteer effort to help a local artist build a 120-foot-long mosaic Wall of Welcome in Austin. In 2003, along with other neighbors, we founded the now-annual Violet Crown Festival to raise funds for the project. To help give the festival a unique identity, I created neighborhood history and community exhibits. It was a natural fit with my skills as a journalist, history researcher and designer.

I gathered information for the exhibits by visiting informally with neighbors and doing research online and at the Austin History Center and other repositories. In the process, I also learned that the term “violet crown” has been used for more than 100 years to describe the hills west of our neighborhood at sunset. The name has been used here for a subdivision, businesses, organizations and other projects. Its origins go back centuries earlier to Athens, Greece.

In 2007, my husband, a filmmaker, and I received a small grant to videotape formal oral history interviews and to create a documentary. *A Community Mosaic*, incorporating interview clips and neighborhood history, premiered in Austin at the dedication of the Wall of Welcome in March 2008. We then received another small grant to continue oral history interviews with original residents, now in their 80s, as well as with younger neighbors.

As we moved forward on our project, we joined the Oral History Association and the Texas Oral History Association. I was fortunate to receive a scholarship to attend the 2009 OHA annual meeting in Louisville, with the theme “Moving Beyond the Interview.” My husband and I were inspired learning about innovative projects and visiting with creative and seasoned oral historians. Later that fall, we received the Mary Faye Barnes Award for Excellence in Community History Projects from the Texas Oral History Association. Our experiences that year confirmed for us that our vision for



The Wall of Welcome at 7100 Woodrow Avenue in Austin, Texas.

our project, culminating in a website, was a sound one. We would continue to gather and preserve stories of life here and to explore creative ways to share them more widely.

So, how have we “moved beyond the interview” with our project, Voices of the Violet Crown?

- We have incorporated excerpts from oral history interviews into two short documentaries, *A Community Mosaic* (2008) and *We Planted 115 Trees* (2011); feature articles; history exhibits at the Violet Crown Festival and other events; a neighborhood history book, *From Abercrombie to the Violet Crown*; and a website (more about that below). Sales of the films and history book also have helped sustain our project.
- We have donated copies of our films, history book, oral history interviews, and transcriptions to the Austin History

(continued on page 7)

## Enriched lives on island

continued from page 1

bays and coves...there was no actual ‘job’. Everyone works on deck sorting and shoveling. Then I got tired of doing that and did something else, like harvesting wood.”

During World War II, Albert listened to Radio Free Europe, always read and was an army engineer. He said he was not very good at it because he never did it enough. “Anything you do, you have to do it a lot to get good,” he said. He also guarded a work force of SS soldiers while they built tennis courts and ball fields. During the war, his good friend was an Indian, nicknamed “Cherokee,” from Florida. “We were in trouble all the time. If one of us wasn’t, the other was,” he said with a laugh.

Albert spent his life around boats, working cranes and bulldozers. Pete spurred him on to tell more about what it was like being the night watchman, picking apples, cutting firewood, scalloping, packing mussels and being a cook at Boston College. As Albert narrated his life-story, even Pete learned more about his friend’s odd-jobbing career. Pete became excited that these stories were being recorded and began talking more than Albert, who had evidently offered Pete something akin to a second home.

There was a knock at the door, but never a lull in the conversation, and Charlie Sullivan entered, leaving a gust of wind behind. None of us removed our coats. We four sat at the table, sharing stories. I noticed a feeble cat gradually making her way through kitchen shadows. Charlie is the night watchman at the shipyard now and reported, “Glare ice down there tonight. A really scary, dangerous place with wind in the masts.” There was no idle conversation, ranging from fishing on George’s Bank to when Albert’s mother, born on Crotch Island, moved to Stonington at age nine and waited on tables for stonecutters at Paul Sherwood’s Boarding House.



Albert Jones, who made a career of odd-jobbing, is interviewed for the Deer Isle-Stonington Oral History Project.

(continued on page 9)

# Legal concerns in oral history

continued from page 6

narios should sound familiar to other stewards of oral history materials and their counsel.

Consider this: in a particular piece of music, simply stated, there may be a melody as well as a counterpoint (another musical line) that runs parallel to, yet also works in tandem with, that melody. If one considers oral history as the melody and copyright law as the counterpoint, given this interrelationship, it should be clear that public archives must be engaged with that counterpoint in making the melody of oral history available to the public.

## I. Overview: Oral History and Copyright Law

Oral history is created through interviews. An interview is subject to copyright law at the moment it is recorded, whether by hand or by machine.<sup>4</sup> Once it is so recorded, copyright attaches to the interview.<sup>5</sup> Absent a written agreement otherwise, the interview is likely owned by the interviewer and the interviewee jointly.<sup>6</sup> Thus, any third-party archive wishing to acquire an interview should obtain clear written releases from both the interviewer and the interviewee to clarify the parties' respective relationships and the scope of the archive's ability to make use of any particular interview. Still, it should be noted that where a copyright is jointly-owned, it may be transferred to a third party in writing by either joint owner; the transferor's only duty is to account to the other joint owner for any profits received.<sup>7</sup>

Additionally, when an interviewer is conducting an interview while employed by an archive, this would likely be considered a work-for-hire relationship.<sup>8</sup> In work-for-hire situations, the archive—not the interviewer—holds joint ownership with the interviewee and would therefore be free to use the interview.<sup>9</sup> The archive's sole obligation to the interviewee is to account to the interviewee for any profits obtained through such use.<sup>10</sup>

But when the work-for-hire doctrine does not apply, or when there are no releases on record, it would be necessary for an archive to try to track down the original parties (the interviewer and interviewee) or their heirs, in order to properly secure permission to use an interview. But when the original par-

ties or their heirs cannot be located, or are deceased, how can an archive best fulfill its legal obligations under copyright law? The real-world scenarios in Section III, *infra*, may provide certain guidance in answering this question.

## II. Oral History of American Music

The Oral History of American Music archive is the preeminent organization dedicated to the collection and preservation of recorded memoirs of the creative musicians of our time.<sup>11</sup> The OHAM staff has been collecting and creating oral history interviews related to the field of music since the late 1960s.<sup>12</sup> This unique and valuable collection includes approximately 2,200 audio and video recordings.<sup>13</sup> OHAM's holdings include original interviews conducted by OHAM staff, and acquired interviews donated to, or purchased by, OHAM.<sup>14</sup>

"Major Figures in American Music" is OHAM's core unit. It consists of approximately one thousand interviews with composers, performers, and other significant musicians.<sup>15</sup> In general, these interviews are created, preserved, and accessed in conformance with the guidelines promulgated by the Oral History Association (OHA).<sup>16</sup>

The acquired collections include older formal oral histories obtained by academics, as well as informal oral histories from conference proceedings, radio shows, college seminars and lectures, and journalistic interviews.<sup>17</sup> These older acquired materials number more than 900 audio and video recordings dating back to the 1940s.<sup>18</sup> For a variety of reasons, unlike OHAM's original interviews and current acquisitions, the OHA guidelines were not consistently applied to the materials in this older acquired collection. These reasons include the informal manner in which OHAM sometimes received donated materials and the age of the materials, which were often collected before the guidelines were issued. As a prominent public archive, OHAM is particularly concerned with addressing the legal requirements and ethical considerations with regard to public offerings from its older, general archive collection. As exemplified by the situations below, the varied nature of the creation, acquisition, and use of some of

the archive's materials can present new, surprising, and sometimes baffling legal scenarios that challenge the experience of its curators.

## III. REAL-WORLD SCENARIOS

### A. Older Interviews with No Releases

#### 1. The Duke Ellington Project

Duke Ellington (1899–1974), the renowned pianist, composer, and bandleader, is widely recognized as one of the most important figures in twentieth-century American music.<sup>19</sup> The Duke Ellington Project—comprised of ninety-two interviews with Ellington's friends, family, and colleagues—is particularly important and significant to OHAM's holdings.<sup>20</sup> Ellington Project interviews include those of Alvin Ailey, Dave Brubeck, John Hammond, Max Roach, Billy Taylor, and Mary Lou Williams, among others of note.<sup>21</sup>

A number of the interviews were conducted in the mid-1970s, shortly after Ellington's death, in conjunction with a Duke Ellington Seminar at Yale University.<sup>22</sup> Graduate students and undergraduate students conducted interviews with those who had known or worked with Ellington.<sup>23</sup> These interviews were assessed, and the best ones became part of the Ellington oral history collection.<sup>24</sup>

Because of the informal origin of the interviews gathered by students, no permission forms or releases accompany these materials in the archive. Given the passage of time, it would be difficult, timeconsuming, and expensive to attempt to track down the interviewers and interviewees, or their respective estates and heirs, in order to secure the rights to those interviews so that OHAM may make them more widely available to the general public.

#### 2. Copyright Law and the Duke Ellington Project

If any of the interviewers in the above scenario had been working under the auspices of Yale or OHAM, then the interview would likely be considered a work-for-hire.<sup>25</sup> Therefore, assuming that copyright in an interview is jointly owned, Yale or OHAM would be considered a joint owner with the interviewee, or the interviewee's heirs if deceased.<sup>26</sup> In those circumstances, Yale or OHAM's only obligation to the interviewee would be to account for any

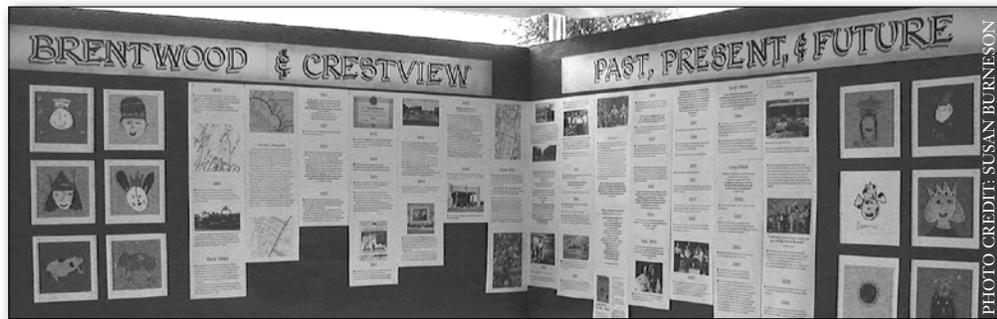
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## Voices of the violet crown

continued from page 5

Center. Each participant has received a DVD copy of his or her interview. We also have archived interview footage and logs for future projects.

- We have screened our film *A Community Mosaic* at neighborhood gatherings since 2008; at the Baylor University Institute for Oral History Future Perfect seminar in 2009; and at the City of Austin Faces of Austin, First Night Austin, and Austin Public Library Lights.Camera.Austin film programs in 2010.
- We have donated copies of *A Community Mosaic* to the Austin Public Library; Baylor University Institute for Oral History; Hot Springs Documentary Film Institute Library; and local elementary, middle and high school libraries. We donated copies of the history book to the Austin History Center, to two groups that provide services to seniors and to local schools. The film and the history book also have been incorporated into the elementary school's third grade social studies curriculum on community.
- We produced our second documentary, *We Planted 115 Trees*, in early 2011, thanks to another small grant. The film, about a historic event in our local park, features clips from oral history interviews we conducted with leaders and key participants in the project. We have held several public screenings, and copies have been donated to the Austin Public Library, Austin Parks and Recreation Department, and Austin Parks Foundation.



Community history display at the Violet Crown Festival in Austin, Texas.

PHOTO CREDIT: SUSAN BURNESON

- Finally, in July 2011, with the help of another small grant, we launched a website, *Voices of the Violet Crown: Neighbors Creating Community in Central Austin, Texas* ([violetcrownvoices.com](http://violetcrownvoices.com)). On the website, we weave together neighborhood history and news through regular blog entries, video clips of oral history interviews, photographs, features and community links. We also include stories of some of the Wall of Welcome mosaics created by individuals and families here. Our aim especially is to foster understanding among people of different ages, since the timeless value of being a good neighbor has been a common theme in all of our interviews.

Through our ongoing project we work to reaffirm the enduring value of people's stories and of history. We believe in a "continuum of community" that can strengthen the connections between past, present, and future, and, most importantly, among the people who live here. ❖

## Summer workshops offered

### Columbia University

THE COLUMBIA CENTER for Oral History is proud to announce its 2012 Summer Institute, "What is Remembered: Life Story Approaches in Human Rights Contexts," to be held June 4-15 at Columbia University in New York City.

Sessions will explore the methodological and theoretical implications of doing life story research with individuals who have suffered human rights abuses and other forms of discrimination. The institute will focus on the role of oral history in documenting such histories, but also interpreting the strategies of resistance and survival of creative individuals and communities that have lived through difficult times.

General themes of the institute will include: the challenges of doing fieldwork in post-conflict societies, including remembrance of personal violence; the uses of oral sources in expressing emotion and facilitating constructive actions; and the uses of informal and official forms of life histories in addressing the tensions between individual and collective remembering.

The institute will also include practical workshops in digital storytelling, interviewing and editing.

Core faculty will include:

- Mary Marshall Clark, director of the Columbia Center for Oral History and co-director of the Oral History



Master of Arts Program at the Institute for Social and Economic Research and Policy of Columbia University;

- Alessandro Portelli, professor of Anglo-American literature at the University of Rome-La Sapienza;
- Julie Norman, Steve High and others from the Centre for Oral History and Digital Storytelling at Concordia University in Montreal, Canada;
- Taylor Krauss, executive director of Voices of Rwanda;
- Douglas Boyd, director of the Louie B. Nunn Center for Oral History at the University of Kentucky Libraries;
- Linda Shopes, former president, OHA; editor
- Ronald J. Grele, director emeritus of the Columbia Center for Oral History.

Low-cost on-campus housing will be available for those outside of the New York City area.

Please visit our website for more and information and to download the application: [http://library.columbia.edu/indiv/ccoh/education/summer\\_institute.html](http://library.columbia.edu/indiv/ccoh/education/summer_institute.html)

(continued on page 11)

## Legal concerns in oral history

continued from page 8

profits from the use of the interview.<sup>27</sup> Notably, courts have held a joint owner cannot sue for copyright infringement against the other joint owner.<sup>28</sup>

To clarify all such legal relationships, it is best to secure these types of agreements in writing from interviewers when applicable. In the case of the Duke Ellington Project, OHAM does not have any express work-for-hire agreements on file. In the absence of such agreements here, and given that the work-for-hire doctrine may not apply to those interviews conducted by students, it would be prudent for OHAM to at least undertake a reasonably diligent effort to secure a transfer of the copyright from either the original interviewer or interviewee (or both), in order to secure the rights needed to make any particular interview available to the public. Without securing these rights, OHAM may be at some risk of liability when using a particular interview.

### 3. *The Safe Harbor of the Proposed Orphan Works Act*

Still, even if OHAM's efforts to obtain such rights are unsuccessful, documentation that OHAM made a reasonably diligent effort to secure those rights may entitle OHAM to the protection provided by the safe harbor provision of the Orphan Works Act, should that Act ever become law.

An "orphan work" is a work that is protected by copyright but whose copyright owner is difficult or impossible to find.<sup>29</sup> In 2006 and 2008, Congress proposed legislation to address the orphan works problem; neither attempt moved beyond committee.<sup>30</sup> The Orphan Works Act would free up for reuse those copyrighted works whose owners could not be found. The Act would limit the amount of damages a copyright owner could collect from an infringer of an orphan work where the infringer is able to show that a reasonably diligent search for the copyright owner was performed before using the owner's copyrighted work.<sup>31</sup> OHAM, however, is without a safe harbor unless some version of the Orphan Works Act becomes law. Thus, if OHAM makes use of an interview for which it does not hold a release or without obtaining the copyright owner's permission, then it may be liable for copyright infringement even if OHAM

made a reasonably diligent effort to contact the copyright owner.<sup>32</sup>

It should be clear that written documentation of copyright ownership is a critical part of an archive's stewardship of oral history. This important aspect of an archive's work is sometimes hampered by the lack of such documentation for older materials. The best that an archive can do in such circumstances is to try to remedy that lack of documentation as thoroughly as possible.<sup>33</sup>

### B. *The Necessity of Protocols: Avoiding Conflicts with Donors of Materials*

In the second scenario, an interviewer ("Smith") donates his interview with a famous composer ("Jones") to OHAM. No documents are signed in conjunction with this donation. Separately from the above, and after Jones dies, her Estate donates all of her various materials to Yale.

A number of years pass, and the interview donated by Smith is accessed by a researcher. The researcher wishes to use part of the interview in a book, and asks an OHAM employee what is required. Having no specific protocols in place at the time, the employee states that the researcher should merely give credit to OHAM for its use. No mention is made of Smith or of securing authorization from the copyright owner.

The researcher publishes the book—and with it, the interview excerpt—properly crediting OHAM, as directed by the employee. Later, a filmmaker chooses to base part of a film on the book, and quotes certain portions of the interview without crediting a source. Smith sees the film, becomes incensed that he was given no credit for the interview, and in a huff, removes the Jones interview from OHAM. What could OHAM have done to forestall such an unfortunate result?

As an initial matter, Smith was not working for Yale and the work-for-hire doctrine is not implicated. He is, at best, an independent contractor.<sup>34</sup> And because there are no signed agreements between Smith and Jones, Smith and Jones would likely own the copyright in the interview jointly.<sup>35</sup>

Copyright, like any other property, passes into one's estate upon death.<sup>36</sup> Thus, after Jones's passing, her Estate will jointly own the copyright in the interview with Smith.

When Smith first gave the interview to OHAM, OHAM should have insisted upon one of the following in writing: an irrevocable Deed of Gift, including a transfer of Smith's interest in the copyright; or, at a minimum, a non-exclusive license for use of the interview.<sup>37</sup>

The Deed of Gift would have addressed the later copyright issues and would have prevented Smith from removing the physical tapes of the interview. Although a license would not have the strength of the Deed of Gift, it would have at least conveyed certain rights to OHAM to let others use the interview.<sup>38</sup>

Even if Smith refused to provide either document to OHAM, as noted above, the Jones Estate would still likely hold a joint copyright with Smith in the interview. Therefore, because the Jones Estate chose Yale as a depository for all of Jones's materials, OHAM should be able to secure, if not a Deed of Gift, then certainly a non-exclusive license for use of the interview from the Jones Estate.<sup>39</sup> Absent a written Deed of Gift, Smith's physical tapes would likely be seen as a loan rather than as a gift.<sup>40</sup> While acknowledging the delicacy of the politics involved, if the license from the Jones Estate had included the right to duplicate the recording for archival purposes, then even if Smith sought a return of his original tapes, OHAM could return the original and still retain a copy on file.

By securing a Deed of Gift or a non-exclusive license from either of the joint owners of the copyright (Smith or the Jones Estate), the researcher might not need to seek permission independently prior to using the interview in a book. Whether the filmmaker would need to come back to OHAM to make use of the interview in the researcher's book or whether the researcher could grant that right will depend on the scope of the right originally given to the researcher by OHAM, which might be limited by the original scope of OHAM's rights in the interview.

This brings us back to the employee who gave informal directions to the researcher. While it may be true that the researcher perhaps should have known permission was needed from the copyright owner to use the interview,

(continued on page 10)

## Enriched lives on island

continued from page 5

The three friends were mulling over the fact that there are “no scallops, no fish. People used to be able to fend for themselves fishing mackerel, picking blueberries or raspberries, but no more.” The two younger men teased Albert because he would have the opportunity to see a second Depression, this time called a Recession. When I began to pack up my equipment, they were fantasizing about gardens. Gardening is how many survived the Depression, and it is evident there are more gardens growing each summer on the island. Winter nights is the time to discuss and compare the past and how best to survive today.

### Community Oral History

“It takes time,” my mentor, Ruth Edmonds Hill told me several years ago. Oral history has been her work for 40 years. I pursued community oral history as a career when our daughters grew up; I wanted to fill that void with something as complex as raising children! Story gathering is intricate in small, remote communities outside of the mainstream. Trust takes time to establish within a relationship among neighbors—and newcomers. The community I refer to is an island, inaccessible except by boat until 1939 when a suspension bridge was built connecting to the mainland.

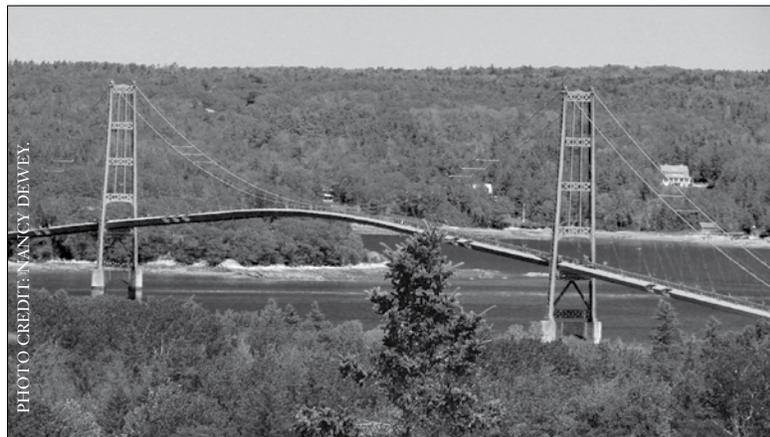
Rural community oral history is delicate work and requires patience and intuition. Within a small community, people know one another and keep track of what happens because we care. For instance, where I live, since fishing is the main income and because it is a dangerous occupation, people look out for each other, even enemies. Generations have grown up together, came home from the war, and catch up at ball games or in the market. How typical is this? Oral history informs future generations about what life was like in the past. Hopefully there is something learned from the stories.

The person able to listen to and document local lore knows this delicate work requires love and conscientiousness. This is the oral historian. The narrator has time to consider what he or she would like to say when more than one visit occurs. In turn, the interviewer must prepare and diligently research events, names and places. I have discovered the island population to be trusting and generous, even to me, an *outsider*, having lived here for more than 30 years. Few have courage to say “no,” when invited to share, thereby becoming aware that what they have to offer has value.

### The Outsider

The *outsider's* observations are different from an individual who spent his whole life in one place. For me, I see how a small community takes care of its people—without question. Tolerance, for example, may be learned in the context of real stories about making a living and getting along. Growing up, going to school together and taking care of family are taken for granted in small communities.

I am honored, as an *outsider* when local people willingly share knowledge, in part because I have much to learn. Sharing oral history is partly based on generosity. One of the few expectations I have is to involve the narrator and family in decisions about how to make their story accessible and editing so that it remains their own. Oral historians cannot be in a hurry when spending time with elders. It is a rare opportunity to be able to listen.



A suspension bridge, built in 1939, links Deer Isle, Maine, with the mainland

### Presentation

Various formats exist for oral history presentation, including: the real voice, the printed word, an audio recording, or a combination. Our local historical society's new display barn is learning the importance of multi-generational, interactive exhibits to attract various interest levels and learning abilities. Audiences like participation.

Oral history is relevant in the sense that we all have a story. This is something we have in common. It may be to the *outsider's* advantage to entice individuals who feign ineptitude when invited to share an experience. Suddenly, nothing comes to mind—at first. But then a topic begins to unravel and gains a life of its own. Sometimes there is no stopping. Everyone has a unique way of telling his or her tale. A community oral history project is as diverse as each person who lives there, especially when that place fosters individuality. The communities where people have remained benefit from local lore as a part of the daily conversation. The idea of collecting a small community's stories and making it available worldwide is a new phenomenon.

### Conclusion

During the next phase of the island oral history project, I would like to pursue the suggestion of Mary McGuire, who died in 2011 at age 104, and learn more from the immigrant stonemasons' lives by continuing to research Italian quarrying communities where they originated. Please visit the Deer Isle-Stonington Historical Society. ❖

**Editor's Note:** Nancy Dewey completed her B.A. in anthropology (2007) and M.A. in archival oral history (2010) from Lesley University and is coordinator of the Deer Isle-Stonington Oral History Project. The volunteer-run project, under the auspices of the Deer Isle-Stonington Historical Society, has completed about four dozen interviews in the past eight years and holds another 60 to 70 audio cassette interviews of community members made by high school students in the mid-1990s and several VHS-filmed interviews. The historical society is seeking grants to digitize and transcribe the collection. The oral history project received grants from Maine Humanities and the Maine Community Foundation during its beginning stages. Current plans include using excerpts from the interviews in signage and in interactive exhibits as the historical society's new display barn evolves.

## Legal concerns in oral history

continued from page 8

it is just this sort of sequence of events that may potentially lead to copyright disputes. The object here is to have protocols in place to avoid such disputes and any possible litigation.

In short, no direction or advice regarding use of materials should ever be given informally, whether in person, over the phone, or even by email. Every archive should have a written policy in place that explains, as fully as possible, and at a minimum, how an archive's materials may be used, the scope of that use, and whether independent permission must be sought.

This written policy or protocol, which need not be extensive, may then be posted on the archive's website and also made part of any agreement signed by a researcher prior to receiving permission from the archive to use its materials. That permission should, among other things, reference the source of the archive's power to give the permis-

sion and require indemnity from the researcher for any claims brought against the archive arising from the researcher's use of the material.<sup>41</sup>

Because OHAM had no release agreements on file, OHAM should have instructed the researcher to obtain permission independently from the Smith and/or Jones Estate. OHAM should have next required that the researcher sign an agreement acknowledging this instruction and indemnifying OHAM for any claims arising from the researcher's use of the interview. Indemnity in such situations is important; without it, archives could potentially be stuck defending hundreds of claims arising from third parties' use of the material in their collections.

### Conclusion

Written documentation of copyright ownership is a critical part of any archive's oral history work. As our times transition into the digital age, it is unfortunately

necessary to play "catch up" with older materials. Thus, archives should engage in a two-pronged approach to (1) address the need for written documentation of copyright ownership for older materials to the best of their ability; and (2) design copyright documentation protocols so that current and future use of materials satisfies the law's requirements. This two-pronged approach may be time-consuming, and archives may prefer to direct their energies more towards the material itself, but by making a focused and consistent effort to bring the written documentation of copyright ownership in line with applicable law, archives can make their material more widely available to the public, which is ultimately the goal of most archives. By taking this proactive approach, the counterpoint of copyright can become less a tangle of unordered notes and more like the harmonious complexity of a Bach fugue. ❖

**Editor's Note:** The OHA Newsletter typically does not include articles from scholarly journals, but we are reprinting this one with permission because the subject is of keen interest to oral historians, many of whom might not encounter a piece published in a law review.

### Footnotes

1 Jeremy J. Beck, Esq., practices entertainment, general business, and intellectual property (copyright and trademark) law with Ackerson & Yann, PLLC, in Louisville, Kentucky; Libby Van Cleve is the Director of the Oral History of American Music (OHAM) at the Yale University Library. This iBrief is based on an October 17, 2009 presentation given jointly by Mr. Beck and Ms. Van Cleve at the Oral History Association Annual Convention in Louisville, Kentucky.

2 *Oral History*, ORAL HISTORY ASSOCIATION, <http://www.oralhistory.org/dooral-history/> (last visited Nov. 19, 2010).

3 See generally JOHN A. NEUENSCHWANDER, A GUIDE TO ORAL HISTORY AND THE LAW (2009) (discussing the impact of U.S. copyright law on oral history materials).

4 See 17 U.S.C. § 102(a) (2006) ("Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.").

5 NEUENSCHWANDER, *supra* note 3, at 64.

6 *Id.* at 65–68. As noted by Neuenschwander, "neither the Copyright Act of 1976 nor a precedential court decision definitively establishes that interviewers have a copyright interest in interviews that they conduct, [but] there is a considerable body of persuasive evidence that suggests

that this is indeed the case." Neuenschwander then goes on to discuss such evidence; analysis in this area is outside the scope of this iBrief.

7 *Davis v. Blige*, 505 F.3d 90, 98 (2d Cir. 2007).

8 See 17 U.S.C. § 201(b) (2006) ("In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.").

9 NEUENSCHWANDER, *supra* note 3, at 68–70.

10 *Davis*, 505 F.3d at 98.

11 *OHAM: About Us*, YALE U. LIBR., <http://www.library.yale.edu/about/departments/oham/> (last visited Nov. 19, 2010).

12 VIVIAN PERLIS & LIBBY VAN CLEVE, COMPOSERS' VOICES FROM IVES TO ELLINGTON: AN ORAL HISTORY OF AMERICAN MUSIC 11 (2005).

13 *OHAM: About Us*, *supra* note 11.

14 *Id.*

15 *Id.*

16 See generally *Principles and Best Practices*, ORAL HIST. ASS'N., <http://www.oralhistory.org/do-oral-history/principles-and-practices/> (last visited Dec. 17, 2010). A complete discussion of the foregoing is outside the scope of this iBrief. For further reading, see

VALERIE RALEIGH YOW, RECORDING ORAL HISTORY: A GUIDE FOR THE HUMANITIES AND SOCIAL SCIENCES (2d ed. 2005).

17 See *OHAM: Acquired Collections*, YALE U. LIBR., <http://www.library.yale.edu/about/departments/oham/acquired.html> (last visited Oct. 13, 2010).

18 Email from Anne Rhodes, Research Archivist, OHAM, to Libby Van Cleve, Director, OHAM (Oct. 12, 2010) (on file with OHAM).

19 See MARK TUCKER, ELLINGTON: THE EARLY YEARS (1991) (discussing the importance and significance of Ellington and his music).

20 See generally *OHAM: Ellington Project*, YALE U. LIBR., <http://www.library.yale.edu/about/departments/oham/ellington.html> (last visited Nov. 19, 2010).

21 See *id.*

22 Email from Vivian Perlis, Founding Director, OHAM, to Libby Van Cleve, Director, OHAM (July 20, 2010) (on file with OHAM).

23 *Id.*

24 *Id.*

25 See 17 U.S.C. § 201(b) (2006); NEUENSCHWANDER, *supra* note 3, at 68–70.

26 NEUENSCHWANDER, *supra* note 3, at 65–68.

(continued on page 11)

## Summer workshops offered

continued from page 7

### Kenyon College, Gambier, Ohio

THE OHIO HUMANITIES Council is sponsoring a three-day Oral History Institute at Kenyon College in Gambier, Ohio. The institute, scheduled for June 5-7, emphasizes hands-on training in oral history, including interviewing techniques, transcribing and archiving, fundraising and using technology.

Journey Stories, the Smithsonian's Museum on Main Street exhibit that will be touring Ohio in 2013, will be the focus of participants' final projects. Volunteers or paid staff from local historical organizations, libraries, schools or colleges and universities are urged to apply.

The institute costs \$300, including two nights' stay, six meals, a textbook and all other workshop materials. Admission is competitive and limited to 30 participants.

For more information, contact Jim Calder at 800-293-9774 or via email at [jimc@ohiohumanities.org](mailto:jimc@ohiohumanities.org).

### University of California, Berkeley

THE REGIONAL ORAL History Office (ROHO) at the University of California, Berkeley, is offering a one-week advanced institute on the methodology, theory and practice of oral/video history Aug. 13-17 at the Bancroft Library on the Berkeley campus. This year's keynote speaker will be Matthew Frye Jacobson, professor of American studies African American studies and history at Yale University.

Designed for graduate students, postdoctoral fellows, college faculty and independent scholars using oral history interviews as part of a research project, the institute is also open to museum and community-based oral historians engaged in oral history work. The goal of the institute is to strengthen the ability of its participants to conduct research-focused interviews and to consider the special characteristics of interviews as historical evidence in a rigorous academic environment.

Institute presentations by ROHO faculty and invited specialists will cover: project planning, preparation for interviewing and interview techniques, engaging oral histories with other kinds of archival documents, interview analysis, legal and ethical responsibilities such as copyright and human subject protection requirements.

Participants also will work throughout the week in small research-interest groups led by faculty with similar interests.

The institute is limited to 40 participants and applications will be accepted until May 1, but we urge you to apply sooner rather than later because the slots have filled quickly in recent years. The cost of the five-day institute is \$950. Housing and most meals must be arranged separately.

Further information and online applications are available at: <http://bancroft.berkeley.edu/ROHO/education/institute>. ❖



## Legal concerns in oral history

continued from page 10

27 Davis v. Blige, 505 F.3d 90, 98 (2d Cir. 2007).

28 See, e.g., Morrill v. Smashing Pumpkins, 157 F. Supp. 2d 1120, 1126 (C.D. Cal. 2001).

29 Steven Hetcher, *Orphan Works and Google's Global Library Project*, 8 WAKE FOREST INTELL. PROP. L.J. 1, 3 (2007).

30 Orphan Works Act of 2008, H.R. 5889, 110th Cong. (2008), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.05889>; Orphan Works Act of 2006, H.R. 5439, 109th Cong. (2006), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.05439>.

31 See, e.g., H.R. 5889.

32 See, e.g., Maxtone-Graham v. Burtchell, 803 F.2d 1253 (2d Cir. 1986). This assumes certain prerequisites are met by a copyright owner before the owner files suit. 17 U.S.C. §§ 411-412 (2006) (requiring copyright registration prior to the initiation of an infringement suit). Whether such a claim would ultimately be successful is outside the scope of this iBrief. A copyright owner would need to prove (1) ownership, (2) of a valid copyright, (3) that was infringed. Even then, a number of defensive

strategies would be available to OHAM, including the affirmative defense of fair use. A review of these strategies and that of fair use would run beyond the scope of the present discussion.

33 Some organizations in this area have focused their efforts specifically on bolstering the defense of fair use to remedy a lack of documentation. See, e.g., DANCE HERITAGE COALITION, STATEMENT OF BEST PRACTICES IN FAIR USE OF DANCE-RELATED MATERIALS 7 (2009), available at [http://www.danceheritage.org/fairuse/DHC\\_fair\\_use\\_statement.pdf](http://www.danceheritage.org/fairuse/DHC_fair_use_statement.pdf) ("Lawyers and judges . . . take into account the professional consensus of the relevant field in determining what uses should be considered fair. The attitudes and customs of the 'practice community' show how the field balances the rights of copyright against that community's need to use copyrighted material for culturally significant purposes.") (emphasis omitted). Although the foregoing is a laudable proposal, there are no reported cases in any jurisdiction that currently support such a position.

34 See, e.g., Cmty. for Creative Non-Violence v. Reid, 846 F.2d 1485, 1494 (D.C. Cir. 1988)

(holding copyrightable work by independent contractor cannot be a work-for-hire absent written agreement and certain other considerations).

35 NEUENSCHWANDER, *supra* note 3, at 65-68.

36 See, e.g., Range Road Music, Inc. v. Music Sales Corp., 472 F. Supp. 2d 558, 560-61 (S.D.N.Y. 2007).

37 NEUENSCHWANDER, *supra* note 3, at 3-17.

38 See Davis v. Blige, 505 F.3d 90, 100 (2d Cir. 2007).

39 See *id.*

40 NEUENSCHWANDER, *supra* note 3, at 7-8; Yale Univ. v. Fisk Univ., 660 F.Supp. 16, 18 (M.D. Tenn. 1985), *aff'd*, 810 F.2d 204 (6th Cir. 1986).

41 "Indemnity" means that the researcher would agree to defend and protect the archive from any such claims. Foley v. Luster, 249 F.3d 1281, 1288-89 (11th Cir. 2001).

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## *News & Notes ...*

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### **House OKs plan to collect civil rights oral histories**

The U.S. House of Representatives gave overwhelming bipartisan approval March 1 to a resolution instructing the House historian to compile oral history interviews with members of Congress who participated in the civil rights movement. The vote was 418 to 0.

House Majority Leader Eric Cantor, R-Va., said in a statement describing the resolution: "On March 7, 1965, Congressman John Lewis led hundreds of marchers in Selma, Alabama, in a pivotal moment that led our nation towards equality for all. This week, the House will recognize every member of Congress who participated in the Selma marches 47 years ago, and the pilgrimages that have followed, by adding their testimonies

to the historic record of the House. Their stories are part of our nation's heritage and serve as a reminder to every American of the determination and sacrifice that shaped the greater democracy we live in today."

Lewis, who leads annual pilgrimages to civil rights sites in Birmingham, Montgomery and Selma, Ala., issued a statement saying: "This is a gracious act on the part of the Majority Leader and the House leadership to help preserve the history of our democracy. Without the brave and courageous souls who shed blood, sweat and tears in Alabama and throughout the South, this would be a very different nation today. It is very important that members of Congress understand and acknowledge the debt we owe to ordinary people with extraordinary vision who, as Dr. King once said, 'injected new meaning into the very veins of our democracy.'"

### **Summer oral history project heading for Egypt**

Heidi Morrison, assistant history professor at the University of Wisconsin, La Crosse, is organizing an oral history summer field school in Egypt from May 15-June 5. Participants will learn about the Egyptian Revolution through hands-on oral history work.

The three week study tour includes daily classes as well as visits to Cairo, Luxor, Alexandria, the western desert and the Red Sea. The trip will cost \$3319 (airfare not included), and students will receive four credits, including one credit of service learning. The deadline to apply is April 15.

If you are interested, contact Morrison at: [hmorrison@uwlax.edu](mailto:hmorrison@uwlax.edu).

**Visit [www.oralhistory.org](http://www.oralhistory.org) for more information**