

Forms, Formations, and Reforms

The Development of the Oral History Release Form and Implications for Collection Management

David Amel Olson, September 26, 2024

About the Paper

- Citation: David Amel Olson, “Forms, Formations, and Reforms,” *American Archivist* 87, no. 1 (2024): 70-106.
- Draws on archival and oral history literature: 1950s-present
- Parts written 2014-2024

Objective (from the abstract)

Oral history release forms are critical for documenting narrator intentions around access to and use of interviews, a key component of ethically managing this document type. Unfortunately, repositories are full of interviews with missing or problematic releases. To explain this phenomenon, the author reviews historical archival and oral history literature to trace the development of release form conventions and the historical trends in practice that explain the current state of documentation in archives the author also assesses current positive professional trends to prevent future release form problems and analyzes release form scenarios that may remain stubbornly at the discretion of archivists’ professional judgment or values.

Paper's Objectives

What the Paper Does

- Traces development of oral history release form from late 1940s to present
- Identifies contexts of problematic legacy release form scenarios
- Provides some analysis on the legacy release form situation in 2024
- Encourages archivists to gain confidence on assessing legacy releases and gray areas, so they can take action

What the Paper Does not Do

- Prescribe how you should manage your release form situation. *There is too much variation for “one size fits all” directives!*

“Release Form” Defined

- Many names: “release form,” “narrator agreement,” “interview agreement,” “formal agreement,” “consent form,” “legal release,” and others. Also can be referenced by legal mechanism, such as “deed of gift,” “contract,” or “license agreement.”
- Goal is to represent agreement between narrator and interviewer/repository regarding access and use and document it, so it can be honored over time
- Also addresses dimensions of ownership: Physical property, intellectual property, and “narrator’s irreplicable relationship to their story” (definitions from Oral History Association’s *Archiving Oral History: Manual of Best Practices*, 2019)

****Note: I am not a lawyer. Pursue proper legal advice as appropriate**

Legacy Releases: Potential Problems

- No release form
- Ambiguous language
- Person or family needed for permissions cannot be located
- Terms contingent on event that cannot be verified (e.g. person's death)
- References to corporate body that no longer exists
- References to technology that no longer exists
- Terms conflict with modern archival/oral history ethics
- Terms no longer legal
- Terms violate ethics of modern society
- Terms demand onerous amount of archival resources
- Terms are not realistic

Some of these have historical roots, others are a reflection of temporal dimension of stewardship, others are errors of predecessors — How to proceed???

Looking at Historical Roots:

Eras and Themes for Release Form Development

- **1940s-1960s:** Striving for standardization: narrator approval = legitimacy
- **1970s:** Oral history is established... and popular!
- **1970s-1980s:** Copyright law changes; legal advice standardizes
- **1980s-1990s:** OH theory, IRB's - ethics and impacts
- **1990s-present:** Adapting to the web, critical mass of legacy issues, looking for pathways forward

** Note: paper focuses on “academic” thread of oral history

Building Trust for a New Methodology

- Oral historians of the 1950s-early 1960s faced skepticism about the new methodology - saw standardization as a means to build trust.

“We are fortunate to have standard gages for railroads, standard typewriter keyboards, standard reinforcing steel bars, and, since 1941, standard screw threads in England and America. Oral-history reminiscence manufacturing has now reached the point where it too should standardize.”

-Vaughn Davis Bernet, “Oral History Can Be Worthwhile,” *American Archivist* 18 (1955)

- Process was seen as a means to differentiate oral history from “idle gossip.”
- For elite subjects, ensured that oral histories would not compete with official biographies.

Characteristics of the Early Years

- Release forms developed organically... early interviews may have correspondence in lieu of a standardized form. **Trust** is primary objective.

“Most important is the kind of relationship that the interviewer establishes with the interviewee before the recording begins. Tell the interviewee in advance, and preferably in writing exactly what the procedure is and what will be expected of him. Give him the right to edit all material and to stipulate in writing the uses to which it will be put, and follow scrupulously all terms of the agreement.”

-Corinne Gilb, “Tape-Recorded Interviewing: Some Thoughts from California,” *American Archivist* 20, no. 4

“[Agree upon] the number and disposition of typed transcripts, the disposition of the tapes, the rights of the interviewee’s heirs, publication rights, and any special restrictions on the use of the interview or parts of it.”...“Formal statements of agreement, if considered necessary, are drawn up and signed after the approved transcripts are finally completed.”

-Helen White, “Thoughts on Oral History,” *American Archivist* 20, no. 1

- Columbia OHRO “standard preface” morphed into signed release in 1960s

A Popular History

- By late 1960s oral historians confident that oral history had “arrived”
- Affordable tape recorders, Studs Terkel emulators, and the Bicentennial

“Shortly after that came the Bicentennial. The effect of the Bicentennial on oral history was like a forest fire. Every town and village in the country thought, ‘Ah! That’s what we’ll do for the Bicentennial. We’ll interview the older residents.’ And every oral history [project]—or an awful lot of them—wrote, called, came to Columbia and said, ‘We have the most wonderful idea. The way to celebrate the Bicentennial is to do an oral history of our town.’” - Elizabeth Mason, Columbia OHRO

-Richard Polsky, “An Interview with Elizabeth Mason,” *Oral History Review* 27, no. 2 (2000)

- ***Were all of these newcomers aware of best practices?***

Oral History and Archives

- By 1973, 73% of archivists in an SAA poll felt oral history belonged in the archives, but problems were brewing....

“Of course, oral history will go on no matter how much we archivists try to rationalize or order the process. At least I hope it will. Much of it will be done outside any formal project organization. It will often come to an archives after the fact, as the result of some historian’s research project. This is fine, and at this point the material should be evaluated like any other accession, with an eye towards its relative importance and its fit in the archival program. More often than not it will come without any releases or conditions. This, of course, poses problems, but none that we are not used to. After all, our archives are full of material accumulated over the years with unknown literary rights, provenance, etc.”

-Ronald Filippelli, “Oral History and the Archives,” *American Archivist* 39, no. 4 (1976)

- By 1989, AHA had enough citation issues with oral histories that they stipulated donation to archives — more interviews without public-facing plans...

1980s - 1990s: Standardization and Introspection

Standardization of Legal Advice

- Legal issues formally addressed at Second National Colloquium on Oral History (1968) and Fourth National Colloquium (1969).
- Copyright Law of 1976 standardized requirements re: transferring copyright
- Publication of first edition of John Neuenschwander's *Oral History and the Law* in 1985 (grew from 24 pages in 1985 to 167 pages in 2009)

Ethics under Scrutiny

- Increased theorization and care about narrator/interviewer relationship, power dynamics in oral history
- Institutional Review Boards (1995-)

The Internet, 1990s - present

- Conversations about putting interviews online are about three decades old.
- Has underscored the importance of future use clauses in release and acceptance of unforeseen technological developments

From the paper:

“In the context of researcher behavior, the Internet has redefined the popular concept of ‘access,’ as it lowered financial, geographical, and physical barriers. At the same time, oral history’s traditional ethics sit at odds with the surveillance capitalism business model and disdain for privacy that have come to characterize many platforms and online communities.”

How to balance benefits and harms is an ongoing conversation...

2010s-2020s: A Profession Acknowledges and Responds

- Recent edition of OHA's *Principles and Best Practices* (2018) thoroughly incorporates directives on documenting narrator intent.
- OHA's *Archiving Oral History: Manual of Best Practices* (2019) thoroughly addresses the temporal nature of managing oral history collections:

“There is a temporal aspect to caring for collections. Paradigms shift, and institutional missions may necessitate re-evaluations of collection ownership. If and when this happens, documentation about decisions must be cumulative and transparent.”

“Aspects that could impact ownership include changes in administrative best practice, in legislation, in societal understanding of ownership, and in technology.”

Revisiting Problem Release Scenarios

- No release form
- Ambiguous language
- Person or family needed for permissions cannot be located
- References to corporate body that no longer exists
- References to technology that no longer exists
- Terms conflict with modern archival/oral history ethics
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The history of the release form may have explained some of these scenarios and clarified the path forward... If not, we are entering the territory of the archivist's judgment call...

Analysis: Due Diligence and Ethics

Common questions: “Can I open this interview without a release?” “Can I break the unreasonable terms of this release?” “Can I put this interview online without a release?”

What the OHA says about missing releases: “Evaluate documentation, such as consent and/or release forms, and if they do not exist, make a good faith effort to obtain them” (*Oral History Best Practices*, 2018)

But maybe this is not possible—

Around the issue of problematic release forms, we get into ethical gray areas that you the archivist must work through and determine how to proceed...

A Question of Balancing Values

- OH ethics' prioritization of intent of narrator
- Library/archival ethics about free and equal access to information
- Privacy of individuals or communities
- Considerations of repository resource allocation

Example to the right is Columbia University Oral History Research Office standard release of 1960s-1980s. The type of gatekeeping promised to this era's narrators is not aligned with our current, more democratic views on who qualifies as a "scholar."

From the Office files of the Oral History Archives at Columbia University

RESTRICTIONS:

PERMISSION REQUIRED TO CITE OR QUOTE

I desire to place the following restrictions on this memoir:

That this memoir may be read only by serious scholars accredited for purposes of research by Columbia University; and further, that this memoir must be read in such place as is made available for purposes of research by Columbia University.

That no quotation or citation of this memoir may be made during my lifetime except with my written permission.

That no reproduction of this memoir, either in whole or in part, may be made by microphoto, typewriter, photostat, or any other device, except by me, my heirs, legal representatives, or assigns.

(signed) _____

(date) _____

November 3rd 1981

Some Clarifying Questions to Weigh...

- Can the narrator or family (if applicable) be reached to clarify intent?
- Can intent be inferred from the tone/contents of the interview?
- How much time has elapsed since the interview was taken?
- Is the narrator still alive?
- Has it been a long time since the narrator died?
- Was the narrator a powerful figure with accountability to the public or a private individual?
- Was the narrator part of an identity or political group facing oppression?
- Could the content of the interview harm third parties?
- Is there a community that might have cause to speak on behalf of the individual?
- Were the interviewer and narrator even aware of oral history best practices for release forms?
- What is my institutions risk tolerance with copyright law? (esp. re: internet)

Some Assorted Editorializing...

- “How can I stay out of trouble legally?” is limiting and reactive
- Better to think, “How can I best balance needs of narrators, archives, and patrons within this environment?”
- Copyright law is tool that can hinder or advance narrator & archival interests, not a proxy for ethics. Decide objectives, then think through transfers, licenses, risk-tolerance, etc.
- The limits of what you can do re: copyright may also depend on your institution’s risk tolerance as much as anything...
- Behaving ethically and respectfully can preempt legal problems
- Diligent record-keeping re: provenance is critical. *This is the part archivists are supposed to be good at!*
- Passage of time complicates and simplifies administration

- ✓ Get context about history of release forms
- ✓ Consider “gray areas” that require defining your values and ethical priorities
- Work through problem release forms at your repository

Thank you!

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