

## Perspective

# Freeing the Dead Sea Scrolls: A Question of Access

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**Abstract:** The announcement by the Huntington Library in September 1991 of its decision to open for unrestricted research its photographs of the Dead Sea Scrolls touched off a battle of wills between the library and the official team of scrolls editors, as well as a blitz of media publicity. The action was based on a commitment to the principle of intellectual freedom, but it must also be considered in light of the ethics of donor agreements and of access restrictions. The author relates the story of the events leading to the Huntington's move and its aftermath, and she analyzes the issues involved.

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ON 22 SEPTEMBER 1991, THE HUNTINGTON LIBRARY set off a media bomb of cataclysmic proportions when it announced that it would make available for unrestricted scholarly research its complete set of photographs of the Dead Sea Scrolls. The resulting shock waves brought forth unholy wars of words from Biblical scholars and inspired flights of journalistic hyperbole from editorial writers the world over. Onto the public stage burst the saga not only of the scrolls themselves but also of the more arcane world encompassing the practices of scholarly editing. Why did this seemingly simple act by the Huntington arouse such a tumultuous storm of controversy? And what lessons can the Dead Sea squabble hold for all of us in the library, archives, and scholarly communities concerning the issues of access and intellectual freedom and the ethics of restrictions?

### The History of the Scrolls

The story of the initial discovery of the Dead Sea Scrolls strikes a reasonably familiar chord for most people, in general terms if not in detail. In 1947 a Bedouin shepherd discovered the first seven scrolls, along with fragments of other scrolls, in a cave near Qumran on the northwest shore of the Dead Sea. These texts, together with scrolls found in ten other caves between 1952 and 1956, numbered more than eight hundred manuscripts containing Biblical and other texts that deal with the period more than two thousand years ago from which emerged both Christianity and modern (or rabbinic) Judaism.<sup>1</sup> The importance of the

scrolls for historical scholarship lies in their status as sources contemporary with the time they illuminate. Very little direct evidence had previously been available about the period before 70 A.D., the year the Romans destroyed Jerusalem and its temple. Prior to the discovery of the scrolls, the earliest post-70 document of rabbinic Judaism dated to about 200 A.D. The paucity of pre-70 texts means that the Dead Sea Scrolls, written between about 250 B.C. and 68 A.D., potentially present to modern scholars a unique and crucial opportunity to shed some light on the emergence of rabbinic Judaism from the complex varieties of pre-70 Judaism.

Far less familiar than the tale of the scrolls' discovery, at least until the autumn of 1991, is the history of the scrolls in the years since their discovery. During the 1950s the Jordanian government granted a group of scholars exclusive publishing rights to the scrolls. In the ensuing forty years only a portion of the scrolls have been published. The exact number depends on who

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of the scrolls, as well as analyses and descriptions of several key documents and of the scrolls' relationship to the Bible, Christianity, and Judaism. Another excellent source is Shanks's "Publisher's Foreword" (pp. xii–xxii) to Robert H. Eisenman and James M. Robinson's *A Facsimile Edition of the Dead Sea Scrolls* (Washington, D.C.: Biblical Archaeology Society, 1991); in it Shanks recounts the events surrounding the opening of the scrolls and prints facsimiles of some twenty-two letters and articles central to those events.

Other books and articles include those by Geza Vermes, *The Dead Sea Scrolls in English* (New York: Penguin, 1987), an excellent historical account and translation of the scrolls intended for the nonscholar, revised from the 1962 edition; "New Life for the Dead Sea Scrolls," *Times Literary Supplement*, 20 December 1991, 5–6; and "Brother James's Heirs?" *Times Literary Supplement*, 4 December 1992, 6–7. And see Joseph A. Fitzmyer, S.J., *The Dead Sea Scrolls: Major Publications and Tools for Study* (Atlanta: Scholars Press, 1990), a bibliography of most benefit to scholars; it includes editions and translations of the scrolls and works on specific scrolls, as well as on such special topics as the paleography and archaeology of the scrolls. See also the additional works mentioned elsewhere in the text and notes of this article.

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<sup>1</sup>Hershel Shanks, ed., *Understanding the Dead Sea Scrolls* (New York: Random House, 1992), xv–xvi. Shanks's volume is one of the best sources on the scrolls for the nonscholar. It contains articles written by leading scrolls authorities, drawn from the *Biblical Archaeology Review* and *Bible Review*. He provides a very helpful overview, followed by sections containing essays on the discovery, origins, and freeing

is doing the telling, but it appears that 20 percent or more of the texts had not yet been published by fall 1991. In the 1967 war, Israel captured the scrolls along with the territory where they were housed, and research on the scrolls was overseen thereafter by the Israeli Antiquities Authority. Although the Antiquities Authority eventually expanded the editorial team to include as many as forty scholars, their study of the texts continued to be on a basis of exclusivity; other scholars' requests to see the scrolls were denied. And the team of editors was unwilling to allow publication of the original texts until their own "authoritative" treatment appeared.

### The Huntington Copies

How the Huntington Library, internationally known for its rare collections of English and American history and literature, came to hold a complete set of negatives of the Dead Sea Scrolls is a story in itself. Elizabeth Hay Bechtel, a California philanthropist, had long held a keen interest in the scrolls and their significance as not only one of the most important archeological finds of this century but also the central documents underlying the Judeo-Christian traditions. Following the 1967 war between Jordan and Israel, Bechtel became concerned with the safety of these precious documents, which remained housed in the volatile Middle East. She embarked on a program to obtain permission from the Israeli authorities for the scrolls to be photographed and the images to be stored in a secure environment. Her efforts continued until permission was granted in the early 1980s. Bechtel hired, on a freelance basis, Robert Schlosser, the Huntington's principal photographer, who had been recommended as the best document photographer in the Los Angeles area. Under Bechtel's sponsorship and direction, Schlosser made three trips to Jerusalem and shot a complete

set of photographs of the original scrolls. Of the two sets of negatives he created, one—containing unrestricted, previously published material—was earmarked for the Ancient Biblical Manuscripts Center at the Claremont School of Theology, where Bechtel served as president of the board. A second and complete set of negatives was to be placed in secure storage. However, during this time period, a disagreement between Bechtel and the Ancient Biblical Manuscripts Center forced her from the board, and she ultimately negotiated an agreement to place the master set of negatives in the Huntington Library in a specially built vault. In accordance with the agreement, the master negatives became the property of the Huntington, where they remained ensconced in peaceful, unused anonymity until the autumn of 1991.

### The 1991 Controversy

Both the disposition of scroll photographs and the existence of the group of editors holding exclusive publication rights had been little known outside the circles of Biblical scholarship or, indeed, by staff members of the Huntington. But several events that unfolded in the spring and summer of 1991 brought the situation to public light and set the stage for the Huntington's action.

The first was the spring publication of *The Dead Sea Scrolls Deception* by Michael Baigent and Richard Leigh. Among other charges, they accused the official editors of delaying publication in order to cover up a conspiracy that the authors claimed was masterminded by the Vatican.<sup>2</sup> The appearance of conspiracy was, of course, inevitable given the potential import of the

<sup>2</sup>Michael Baigent and Richard Leigh, *The Dead Sea Scrolls Deception* (London: Jonathan Cape, 1991). For a lively review of this volume, see John Ray, "Re-covering the Texts," *Times Literary Supplement* 4599, 24 May 1991, 27.

scrolls' contents, the restrictive behavior of the official editors, and their very slow publication pace.

The second occurrence was a July announcement in the *London Times* of the anticipated opening of the Oxford Centre for Postgraduate Hebrew Studies, intended to be a center for international research on the scrolls. The center billed its photographic archives as perhaps the only place in the world to hold copies of all the scrolls, but its director, Geza Vermes, emphasized that "academic protocol" would be followed and access to the material would be only "by permission of its designated editor."<sup>3</sup> The announcement of the new center prompted the next event in the sequence leading up to the Huntington's action. Norman Golb, professor of Jewish history at the University of Chicago, responded to the opening of the Oxford Centre in a letter to the *London Times* in which he argued eloquently for the principle of intellectual freedom:

This marks a surprising departure from standard academic practice in Britain, where scholars have traditionally enjoyed free and liberal access to ancient manuscripts for research purposes. Such access alone guarantees the open interplay of ideas and prevents a monopoly on them by any one group of researchers. . . . Well over three decades have gone by since the original hand-picked editors first agreed to take on their task; those who did not make good on the agreement are now assigning texts to their own selected students; and meanwhile in many countries highly competent scholars both young and old cannot as much as see them. It is particularly unfortunate that here in

the UK, with its notable record of openness in scholarship and debate, this deleterious policy in the realm of knowledge and opinion should be assented to in the manner described in your articles.<sup>4</sup>

Simultaneously with the emerging dispute, the third event leading to the Huntington's decision quietly took place behind the scenes. In July 1991, Eugene Ulrich, a Notre Dame University theologian and an official chief editor of part of the scrolls project, wrote to the Huntington Library requesting that the entire collection of negatives be turned over to the Ancient Biblical Manuscripts Center in Claremont and demanding that "the library retain no further copies."<sup>5</sup>

With the backdrop of public discussion that played out over the summer, and with the receipt of Ulrich's letter, the need for a decision confronted William A. Moffett, who, after becoming the Huntington's director barely a year before, had been astonished to learn of the presence of the scroll negatives at the library. Moffett was fully aware of the *London Times* stories and letters and the muddled history of the ownership of the original scrolls, and he recognized the central question to be the principle of intellectual freedom. As the Dead Sea Scrolls situation grew increasingly urgent throughout the summer, Moffett knew what the Huntington's action would have to be. He broached the matter to Robert A. Skotheim, the Huntington's president, and to Robert Erburu, the president of the board of trustees. With their full support, and in keeping with the Huntington's policy of open access, which rejects the notion of exclusive rights for any scholars, on 22 September 1991 Moffett announced his decision

<sup>3</sup>George Hill, "Unwrapping the Scrolls," *London Times*, 24 June 1991.

<sup>4</sup>Norman Golb, letter to the editor, *London Times*, 10 July 1991.

<sup>5</sup>Letter from Eugene Ulrich to the Huntington Library, 23 July 1991.

in newspaper editions nationwide. The scrolls would be opened for research. Beneath banner headlines appeared stories like the one on the front page of the *New York Times*, which began, "In a move expected to shatter the wall of secrecy surrounding much research on the Dead Sea Scrolls, a major library in California has disclosed that it has a virtually complete set of photographs of the rare documents from Biblical time and has decided to make them available immediately and without restriction to all researchers."<sup>6</sup>

The timing of the autumn announcement was determined by one final factor in the summer's scrolls flurry. On 5 September, two scholars, Ben-Zion Wacholder and Martin Abegg, both at Hebrew Union College in Cincinnati, released a volume entitled *A Preliminary Edition of the Unpublished Dead Sea Scrolls*. Published by the Biblical Archaeology Society, this bootleg edition was prepared by a computer collation of a secret concordance that had been made decades before for the official team of scrolls editors in Israel and given to Wacholder only for his scholarly use. Not unexpectedly, this publication was denounced by a former chief editor of the scrolls team, John Strugnell of Harvard Divinity School, who called it stealing and asserted that about 20 percent of the edition is wrong. In response to such criticism, however, Hershel Shanks, president of the Biblical Archaeology Society, roundly defended the edition, declaring that "we are taking only what is rightfully ours." In a piece for the op-ed pages of the *New York Times*, Shanks echoed Norman Golb's letter to the *London Times* with its call for free access to the scrolls:

The men who were entrusted with

these documents were not given title to them, although they act as if they own them. In fact, several of them have died and bequeathed their "publication rights" to faithful colleagues. . . . I believe that under international law these editors are trustees, fiduciaries. The real beneficiaries of this trust are all people whose heritage is illuminated by these precious texts—not an elite group of scholars or even a single country, culture or religion.<sup>7</sup>

The Biblical Archaeology Society's move set the stage for the Huntington's media bomb.

### Debate About the Huntington's Decision

In discussing the Huntington's action with journalists over the next days and weeks, Moffett confirmed that the scrolls cartel's obstructing access for more than four decades, coupled with its demand that the Huntington's negatives be surrendered, had led to the decision to open and publicize the photographs. It was clear that a snarl of obsolete agreements was harming even the scholars who were members of the cartel. As Moffett wrote in a letter to Eugene Ulrich, one of the official scrolls editors, "We could not help being aware of the bad press you and other scholars have been getting as a result of agreements made many years ago. Because I know you have been among those calling for greater openness in Scrolls research, I am predisposed to thinking of you and your colleagues at the Center as 'victims' of those agreements as well as beneficiaries."<sup>8</sup> His chief argu-

<sup>6</sup>John Noble Wilford, "Monopoly Over Dead Sea Scrolls Is Ended," *New York Times*, 22 September 1991, p. A1.

<sup>7</sup>Hershel Shanks, "Scholars, Scrolls, Secrets and 'Crimes,'" *New York Times*, 7 September 1991, p. I 23.

<sup>8</sup>Letter from William A. Moffett, 16 September 1991.

ment, as he told the *Washington Post*, was the principle of freedom of access to information,<sup>9</sup> and, as he told a *New York Times* reporter, “when you free the scrolls, you free the scholars.”<sup>10</sup>

Moffett placed pressure directly on the scrolls cartel, saying “We are calling on the Israeli Department of Antiquities to join with us in the spirit of intellectual freedom and not to impose further barriers to scholarship.”<sup>11</sup> Predictably, the scrolls cartel, individually and collectively, cried foul. John Strugnell, the former chief editor, declared, “I don’t know if it’s a case of piracy, unscholarly behavior, theft, or what, but it’s certainly contrary to the agreement” in which Israel allowed the scrolls to be photographed.<sup>12</sup> The current chief editor, Emanuel Tov, said that “for all intents and purposes, the Huntington Library has illegal copies. . . . It’s all quite shocking. . . . We don’t need prodding like this to speed up our work. We are ourselves encouraging our scholars to speed up their work and we are reassigning work that has been with certain scholars too long.”<sup>13</sup>

A major factor in the cartel’s objections centered around the question of whether the Huntington had the legal right to open the scrolls or even the right to hold a set of negatives. James A. Sanders of Claremont’s Ancient Biblical Manuscripts Center, which had signed a contract with the cartel of editors not to make their set of scrolls photos available, was quoted as asserting that “it’s not at all clear by what

authority [the Huntington] came by the copies they have.”<sup>14</sup> Amir Drori, director of the Israeli Antiquities Authority, said the Huntington’s decision was “both a breach of contract and of ethics” and hinted at possible legal action.<sup>15</sup> (Jordan also briefly jumped into the controversy by claiming ownership of the scrolls, and the deputy director of the Jordanian antiquities department said, “No museum in the world has the right to put them on show without our authorization.”<sup>16</sup>)

Although Moffett felt himself to be on firm legal and ethical ground in opening the scrolls for research, library officials knew that a war of wills was at hand and that it would be won over the airwaves and in editorials and front-page headlines. Moffett revealed the strategy in an interview several months later, saying that he knew the action might have been stopped by a legal injunction, and that the Huntington therefore had elected to take its case to the court of public opinion, where Moffett knew he could win. He joked that it was the “Jericho plan.” We would drop such a large media bomb “that the [proprietary] wall surrounding the Dead Sea Scrolls would be knocked down permanently.”<sup>17</sup> And a bomb it was—one whose detonation in turn set off round after round of mortar and small arms fire from regiments of journalists and media mavens. Indeed, the media response was overwhelming, as scores of film crews flocked to the Huntington for “exclusive” interviews.

The resulting media circus not only served to support the library’s action but also pro-

<sup>9</sup>Michael Specter, “Library to Release Dead Sea Scrolls,” *Washington Post*, 22 September 1991, p. A1.

<sup>10</sup>“Library Opens Collection,” *New York Times*, 23 September 1991, p. A8.

<sup>11</sup>Russell Chandler, “Copies of Scrolls Will Be Made Available to Libraries,” *Los Angeles Times*, 24 September 1991, p. A3.

<sup>12</sup>“Calif. Library Will Release Dead Sea Scroll Photos,” *Boston Globe*, 22 September 1991, p. 9.

<sup>13</sup>Russell Chandler, “Library Lifts the Veil from Dead Sea Scrolls,” *Los Angeles Times*, 22 September 1991: p. A30.

<sup>14</sup>Chandler, “Library Lifts the Veil,” p. A31.

<sup>15</sup>Ashley Dunn, “Israel Warns Library, Hints at Suit Over Scrolls,” *Los Angeles Times*, 23 September 1991, p. A1.

<sup>16</sup>“Jordan Claims Scrolls,” *London Times*, 2 October 1991, p. 10.

<sup>17</sup>Quoted in “The Huntington Library’s Bold Act—Opening the Dead Sea Scrolls,” in California Institute of Technology, *On Campus* 8 (June 1992): 3; subsequently corrected by Moffett.



vided its share of amusing moments. One local news anchor arrived, plainly confused about why she was at the Huntington Library; when she had leaped into the news van, she confessed, she thought she was going to Huntington Beach to report on dead sea snails! For the library staff, the general public's feelings of kinship for the scrolls was a revelation. People jammed the phone lines with requests to read the scrolls, even though they could not read Hebrew. Many people tried to leap that hurdle by asking for a copy, preferably in the King James version. And inevitably, there were the people who came forward with papers they had found in their attics, wondering if they, too, might have Dead Sea Scrolls.

The breadth of media coverage proved astonishing, ranging from the nation's most prestigious publications to local papers that either picked up the story from the wire services or produced their own stories, each with a unique spin. The *San Diego Union*, for example, opted for the latter approach, producing a rather imaginative journalistic effort that begins "You'd have thought the Second Coming was under way. The staid, scholarly environs of the Huntington Library . . . had taken on the surreal ambience of a Fellini flick. A disheveled evangelist prowled the quiet hallways, muttering lines from Genesis and waving a tattered Bible. Throngs of tourists stood outside in a courtyard in anticipation. A parade of camera crews and newsmen tramped in and out, effectively extinguishing the museum's rarefied air of quaint gentility."<sup>18</sup> However, the staff knew the Huntington had made it to the big time when the scrolls appeared on the front pages of the tabloids. The *Sun's* headlines trumpeted, "Revealed: World's Most Amazing Predictions. Secrets of the Dead Sea

Scrolls." The promised secrets were rather predictable—AIDS and its cure, the end of the world, proof of reincarnation—save for this stunning revelation: "One of the fragments found in the caves spells out the name Elvis. . . . It says he will be a beloved prophet who will retire to the Holy Land when his mission in other countries is finished, and his prophecies will be fabled in song and story. It's common knowledge that Elvis had a deep-seated religious belief and a love of gospel music."<sup>19</sup>

Apart from such journalistic sideshows, however, the scrolls controversy received full and serious coverage in numerous narrative accounts and editorials. As the Huntington had hoped, the cause of intellectual freedom was ringingly endorsed by such luminaries as Edwin M. Yoder, who asserted that the scrolls are part of the common property of mankind and who supported openness as a central ethic of all scholarship,<sup>20</sup> and William Safire, who wrote of "the winds of freedom that must one day rock the cradle of civilization."<sup>21</sup> The widespread media support was generating increased public and scholarly approbation of the Huntington's action and disapproval of the Israeli Antiquities Authority's threat of legal action and of its efforts to sway scholars around the world to its cause.

Additional pressure was brought to bear on the Antiquities Authority by Robert Eisenman, head of religious studies at California State University, Long Beach, and the first scholar to use the scrolls photos at the Huntington. Eisenman joined with Norman Golb and other scholars in writing to the Israeli minister of education urging Israel to open the scrolls to all scholars. A response from the minister of science agreed that every scholar should be granted free

<sup>19</sup>*The Sun*, 5 November 1991, pp. 6–7.

<sup>20</sup>Edwin M. Yoder, "Dead Sea Scrolls Rebellion Inevitable," *Tulsa World*, 26 September 1991, p. A15.

<sup>21</sup>William Safire, "Breaking the Cartel," *New York Times*, 26 September 1991, p. A27.

<sup>18</sup>Frank Green, "Dead Set: The Scrolls Spark Rush to Library," *San Diego Union*, 1 October 1991, pp. D1, 3.

access to examine the scrolls and asserted that he would do his best to urge the Antiquities Authority not to interfere.<sup>22</sup>

The open and vocal support, from both the scholarly and the public communities, of the Huntington's release of the scrolls placed so much pressure on the Antiquities Authority that it quickly retreated from its former position on restricted access. By 26 September 1991, just four days after the Huntington's initial announcement, the Antiquities Authority seemed to reverse its stance altogether, announcing that it agreed "in principle" to an open-access policy. In October, the Ancient Biblical Manuscripts Center in Claremont announced that it too would open access to its scrolls photographs. However, the case was not concluded yet, for in late October, the Antiquities Authority clarified its previous announcement, stipulating that the liberalized access rules did not include permission to use the photos to publish a complete text. In other words, scholars outside the cartel of official editors would be allowed only brief quotations but not full publication of the scroll texts. The Huntington responded with the declaration that scholars "will not tolerate" anything less than "the unequivocal, fundamental principle of intellectual freedom," adding "I expect the [antiquities] team will have to make further concessions."<sup>23</sup> News reports also revealed that Library Director Moffett had written to Israeli Prime Minister Yitzhak Shamir to urge the government to press the Antiquities Authority to open access. He had received a personal letter from Shamir saying that Israel did not want to block intellectual freedom and that they would ensure that the

Antiquities Authority would take the proper steps.<sup>24</sup> A subsequent hearing by a Knesset subcommittee led to official criticism of the Antiquities Authority's position.<sup>25</sup>

By late November 1991, a further announcement served to exert additional pressure on the Antiquities Authority: Robert Eisenman and James M. Robinson, of the Claremont Graduate School, revealed plans of the Biblical Archaeology Society to publish two volumes containing 1,750 photographic plates of the scrolls. Within a few days, the Israeli Antiquities Authority announced that it had dropped its last restriction: It lifted the ban on publishing full scroll texts. Thus, with the help of the public media, the combined efforts of the Huntington and scholars who had been denied access to the scrolls for forty years had prevailed over the restrictions of the official scrolls editors.

### Lessons Implied and Learned

The Huntington Library carried its position forward under the banner of intellectual freedom, but other issues also impinged on this case. The Huntington's action must also be considered in light of the frequently linked issues of access, restrictions, and the ethics of the donor relationship. The first question a collecting institution asks is whether a donor holds clear title to the material being transferred.<sup>26</sup> As is evident in the foregoing account, the question of ownership of the scrolls was clouded by political turbulence in the Middle East and by

<sup>22</sup>Russell Chandler, "Professor First in Line for Scroll Copies," *Los Angeles Times*, 26 September 1991, p. A36.

<sup>23</sup>William A. Moffett, quoted in Daniel Williams and Russell Chandler, "Israelis Grant Wider Access to Dead Sea Scrolls," *Los Angeles Times*, 28 October 1991, p. A13.

<sup>24</sup>Annette Kondo, "Moffett Says Israeli Move Didn't Come as Surprise," *Pasadena Star News*, 28 October 1991, p. A2.

<sup>25</sup>Abraham Rabinovich, "MKs Consider Making Scrolls Available to All Researchers," *Jerusalem Post International Edition*, 26 October 1991, p. 6.

<sup>26</sup>Trudy Huskamp Peterson, "The Gift and the Deed," in *A Modern Archives Reader*, edited by Maygene F. Daniels and Timothy Walch (Washington, D.C.: National Archives and Records Service, 1984), 139.



the existence both of the original scrolls and of more than one set of photographs in more than one pair of hands. Current ownership of the originals resides in the state of Israel, which acquired them from Jordan in 1967 by an act of war, but it must be recalled that it was Jordan, not Israel, that originally set up the team of editors and granted them exclusive access. What ownership rights should be applied in the case of 2,000-year-old documents whose ownership has changed several times and whose current owner obtained them as spoils of war?

Jordan appointed the first chief editor (Father Roland de Vaux in 1953–54), but it was an Israeli agency that confirmed the second and subsequent editors (Father Pierre Benoit in 1971, John Strugnell in 1987, and Emanuel Tov in 1990) and now governs those editors. It was the Israeli Antiquities Authority that granted Elizabeth Hay Bechtel permission to have all the scrolls photographed. It should also be pointed out that, under the Israeli Antiquities Authority, efforts had been initiated to liberalize access. On his appointment as chief editor in 1990, Emanuel Tov attempted to improve the access policies but was unable to achieve the fundamental changes necessary. As Geza Vermes has said of his efforts, "This was too little too late."<sup>27</sup>

The question of donor rights is equally murky because it is unclear whether Bechtel had signed a binding agreement when she obtained the photographs. She exacted no such agreement from the Huntington; so in the narrowest sense, the library was not obligated to accede to restrictions imposed on the originals by the team of editors.

Faced with the murky status of scrolls ownership, and given the pressures being exerted on the institution, what actions could

the Huntington consider? The library could not simply avoid the conflict by surrendering its set of photographs to the editors, for it was required by its agreement with Bechtel to keep the photographs. The library could have tucked the photos away and agreed either to restrict them to all researchers or to make them available according to the cartel's restrictive policies. However, on ethical principle, Moffett rejected both of these possibilities as being contrary to the Huntington's own policies. The only course and, in the view of the Huntington, the proper course was to follow a higher ethic than the cloudy owner and donor rights that applied in this case—it would open the scroll photographs for free, unrestricted access.

However one answers the difficult questions outlined above, it must also be recognized that, at the time of acquisition, the Huntington had no intention of doing anything more than providing a safe home for a set of negatives, given the perilous and turbulent environment in which the originals are housed. Only when the access restrictions were made known to the Huntington and when great pressure was brought to bear on the library to surrender the negatives, was the Huntington confronted with its ethical dilemma. Only then, perceiving this case to be extremely unusual and probably unique in the life of a research library, did the library elect to follow the path of free access.

It is plain that in such complex situations it is not always clear which of the sometimes-conflicting ethical principles an archivist should follow. The Society of American Archivists' Code of Ethics, adopted in 1992, articulates the responsibilities of an archivist with regard to making research material available while at the same time honoring demands from often-competing principles and ethics. "Archivists . . . encourage use of [their holdings] to the greatest extent compatible with institutional policies, preservation of hold-

<sup>27</sup>Geza Vermes, "Seeing Is Believing," *Times Higher Education Supplement*, 8 November 1991, p. 19.

ings, legal considerations, individual rights, donor agreements, and judicious use of archival resources. They explain pertinent restrictions to potential users, and apply them equitably."<sup>28</sup> This last phrase, exhorting archivists to apply restrictions equitably, bears the most direct influence on the Huntington Library's decision to lift the restrictions on the scrolls. In the absence of clear title and rights for the original scrolls, with the knowledge that access was being controlled not by actual owners of the scrolls but by a small group of self-selecting scholar-editors, and with no donor-imposed restrictions on the library's copies of the photographs, the Huntington felt ethically bound to refuse to perpetuate inequitable restrictions and instead to open the photographs to free access. As Moffett summed up the situation, "Basically what we have is a conflict between the sanctity of [dubious] agreements made by these scholars years ago among themselves, and the higher principle of freedom of access to information in the public domain. . . . Exclusivity of access [to information] has no place in modern scholarship."<sup>29</sup>

The principle of open, nonexclusive access has been tested by a number of cases. Two examples may serve to elucidate and place in context the issues in the Dead Sea Scrolls case. Those examples involve the archives of Sigmund Freud and of Carl and Anne Braden.

First, the case of the Sigmund Freud archives exemplifies the problems that inevitably arise when access is controlled in order to protect the memory and legacy of a famous individual.<sup>30</sup> In this instance, a dou-

ble set of restrictions applied: Freud's daughter and heir Anna allowed access to papers in her possession only to individuals she trusted, and Kurt Eissler, a psychoanalyst and Freud collector, similarly restricted access to the papers he acquired and deposited at the Library of Congress. Eissler's protege Jeffrey Masson, who was allowed access to restricted papers, was dismissed when he published findings that Eissler considered negative to Freud's memory. Meanwhile, Anna Freud denied copies of correspondence to researcher Peter Swales, who simply asked a more respected scholar to request them on his behalf. His ploy was successful, and he obtained his copies. The story ends in 1986, when Harold Blum, Eissler's successor as head of the Freud Archives, announced that all Freud papers already published or in the process of being published would be open to all scholars and that restricted materials would be opened as soon as legally and ethically possible.

The success with which Peter Swales obtained copies of correspondence in an unauthorized manner points up one of the biggest problems with the imposition of selective restrictions on access. When a donor or other holder of the keys to the doors of access allows photocopies of material to be made for only approved, authorized researchers, those copies may fall into unauthorized hands. Once the person overseeing access loses control over the photocopies, the continued imposition of selective restrictions becomes pointless. As in the case of the Freud correspondence, the Dead Sea Scrolls photographs began to be more widely dispersed, both overseas and in the United States, resulting in their

<sup>28</sup>Society of American Archivists, *Code of Ethics for Archivists* (Chicago: Society of American Archivists, 1992).

<sup>29</sup>William A. Moffett, quoted in Russell Chandler and Patt Morrison, "Controversy Shatters a Librarian's Quiet," *Los Angeles Times*, 24 September 1991, p. A3; subsequently corrected by Moffett.

<sup>30</sup>For accounts of the Freud case, see Janet Malcolm, *In the Freud Archives* (New York: Knopf, 1984),

originally published as "Annals of Scholarship: Trouble in the Archives," *New Yorker* 59 (5 December 1983): 59-152, and 59 (12 December 1983): 60-119; and Jeffrey Moussaieff Masson, *The Assault on Truth: Freud's Suppression of the Seduction Theory* (New York: Farrar, 1984).

eventual escape from the control of the scrolls editors who had so zealously guarded the access restrictions.

The second case concerns the papers of Carl and Anne Braden housed in the State Historical Society of Wisconsin.<sup>31</sup> The papers had been donated with a restriction allowing access only with the Bradens's permission. The Bradens were long-time civil rights activists and had been members of the National Committee Against Repressive Legislation (NCARL). NCARL sued the Federal Bureau of Investigation (FBI) in 1980, alleging that the FBI had undertaken an illegal investigation in order to harass the group's members and deny them free speech. The FBI obtained a subpoena to see papers, including restricted materials, in the Braden collection. After much legal maneuvering, the two parties reached a settlement in 1987 without the FBI's achieving access to restricted materials, but a judge had ruled in 1986 that the collection would have to be opened to the FBI.

The cautionary message here, one that has been much discussed in the archives profession since the conclusion of the Braden case, is that restrictions established by a donor in agreement with an institution may not hold up in the face of subpoenas and judicial orders. Another issue, however, can be identified in the Braden case, namely the application of selective restriction on access to the collection. Harold L. Miller, in writing his account of the case, notes the inconsistency in Anne Braden's professing a belief in the free flow of information while at the same time setting up

exclusionary access restrictions to her papers. Nevertheless, he records her response without critical comment: "Allowing selected scholarly researchers access to the collection represented the proper balance between the right to privacy and the equally important principle of the free flow of information and academic inquiry."<sup>32</sup>

Two thoughts may occur to the thoughtful reader. First, what is to prevent donors such as Braden from selectively denying access, not to protect privacy but to ensure that only individuals sympathetic to their beliefs can gain access to their papers? And second, surely Braden's case against the FBI would have been strengthened had she *completely* restricted only those papers that were private and allowed all researchers free and open access to the rest of the collection. By allowing access only to approved researchers, Braden fostered a climate that could have implied exclusion of parties (like the FBI) of whom she did not approve. For the Braden case, as for the Freud case, the inescapable conclusion is that the application of selective restrictions to access inevitably leads to inequity and misunderstanding.

Standing in opposition to the restrictive conditions imposed on the Freud and Braden archives and employed by the cartel of Dead Sea Scrolls editors is the ethical principle of free access embraced by the library and archival professions. In a joint statement on access, the American Library Association and the Society of American Archivists state, "It is the responsibility of a library, archives, or manuscript repository to make available original research materials in its possession on equal terms of access. . . . A repository should not deny access to any person or persons, nor grant privileged or exclusive use of materials to any person or persons, nor conceal the ex-

<sup>31</sup>For accounts of the case, see Harold L. Miller, "Will Access Restrictions Hold Up in Court? The FBI's Attempt to Use the Braden Papers at the State Historical Society of Wisconsin," *American Archivist* 52 (Spring 1989): 180-90; and John A. Neuenschwander, "Federal Judge Grants FBI Access to Sealed Papers," *Oral History Association Newsletter* 21 (Spring 1987): 1, 6-7.

<sup>32</sup>Miller, "Will Access Restrictions Hold Up in Court?" 184.

istence of any body of material from any researcher, unless required to do so by law, donor, or purchase stipulations."<sup>33</sup>

The final quoted phrase, allowing certain exemptions from the prohibition on privileged or exclusive access, gives institutions the option of accepting material with the kinds of strings that were attached to the Freud and Braden collections. Yet these exemptions must be weighed in the balance, not only against the practical problems that arose with the Freud, Braden, and scrolls cases but also against the fundamental inequity inherent in any situation in which certain individuals are denied access to research materials that are open to other individuals. Indeed, in her study of the fundamental ethics and issues surrounding gifts, Trudy Peterson places a stricter construction on the exemption allowed by the Joint Statement on Access. "Some donors want to be able to authorize select researchers to use restricted materials if the researchers obtain the permission of the donor or the donor's designee. Because this results in unequal access, archivists are usually reluctant to accept such conditions unless there is no other way to obtain the materials."<sup>34</sup> The addition of the phrase "unless there is no other way to obtain the materials" clearly places an additional stricture on the archivist and conveys the message that, while archivists may feel they have to accept selective restrictions, they should do so very reluctantly. In other words, it is essentially undesirable to accept conditions that grant privileged or selective access.

At the Huntington, the manuscripts curators feel strongly that there can be little

or no justification for exclusive or selective access. Indeed, the library has only two manuscript collections burdened by selective restrictions, and both were acquired before 1950. One collection was originally restricted to all but authorized researchers for reasons of privacy and copyright enforcement, but with the library's encouragement the estate has significantly relaxed its administration over the years. The restriction on the second collection arose in a dispute over ownership. The Huntington housed, and believed itself to own, the papers beginning in the 1940s, but, lacking a written deed of gift, the library was powerless when the donor claimed ownership and later invoked the right of control over access. Today, as has been the case for many years, the Huntington would be extremely reluctant to accept a collection carrying any strings of donor-controlled, selective access.

The SAA-ALA joint statement's injunction against granting privileged or exclusive access speaks directly, albeit in different ways, to the Freud, Braden, and Dead Sea Scrolls situations. Whereas the Freud and Braden materials were restricted to protect privacy, access to the scrolls was controlled to ensure that only top-qualified scholars would publish the texts. Until about thirty years ago, research libraries, including the Huntington, often granted exclusive permission to one scholar to edit or publish original materials; the intent was to avoid unnecessary duplication of effort and to ensure that only qualified people undertook editorial projects. Such a set of regulations was articulated in 1938 by the president and fellows of Harvard College and for a long time was the model for other repositories' policies. By the 1960s, however, American research libraries, including the Huntington, began to adopt far more open access policies. The trustees of the Folger Shakespeare Library, for example, passed a resolution declaring all its holdings to be

<sup>33</sup>"ALA-SAA Joint Statement on Access to Original Research Materials in Libraries, Archives, and Manuscript Repositories," in *Archives & Manuscripts: Law*, edited by Gary M. Peterson and Trudy Huskamp Peterson (Chicago: Society of American Archivists, 1985), 98.

<sup>34</sup>Peterson and Peterson, *Law*, 143.

in the public domain and freely available to any scholar. Louis B. Wright, then director of the Folger, wrote the following in 1967, in a letter to Herbert C. Schulz, then curator of manuscripts at the Huntington: "We make no effort to protect anybody's [exclusive] right to edit a document. In my opinion that is the way it ought to be. I have never believed that a research library should undertake to police its documents. Any such effort leads inevitably to trouble. . . . I advise complete freedom of access."<sup>35</sup>

The principle of open, nonexclusive access is reiterated by Elena Danielson in her thoughtful and eloquent analysis of the ethical issues surrounding access. She cautions that "once a value judgment [about the merits of various scholars] is made, such as mentally labelling a researcher as a hack and thus less deserving of potentially invaluable assistance, the system is open to flagrant abuse."<sup>36</sup>

William A. Moffett's position in opening the Dead Sea Scrolls to nonexclusive research reflected Danielson's caution about judging the merits of scholars, and in doing so he upheld the principle that free and open access outweighed other considerations that might apply. What has been the aftermath of the Huntington's action and the scrolls editors' capitulation? As soon as the last obstacle was lifted, the scrolls editors themselves finally began to move toward publication of the scrolls. The Israeli Antiquities Authority announced that the Dutch scholarly publisher E.J. Brill would issue a microfiche facsimile edition of the complete scrolls in the summer or autumn of 1992, in order to satisfy "the demand from scholars for quick accessibility" of the texts. It should be noted that this announcement

was spurred by the publication by the Biblical Archaeology Society in 1991 of an extensive set of previously unpublished photographs.<sup>37</sup> It appears that the Brill edition has not yet been published, and the scrolls editors have promised to issue the remaining unpublished texts by the end of the decade. Meanwhile, the Huntington has made microfilm of its scroll negatives freely available to interested libraries through interlibrary loans for a renewable period of six months. (Along with the microfilm, researchers also need the index, which is in the form of twelve fascicles, available for \$10 each from the Ancient Biblical Manuscripts Center.) Thus far, more than one hundred sets of microfilm have been sent out from the library.

The freeing of the scrolls unleashed a flood of scholarly activity, with scores of articles and books appearing, among them a 1992 volume by Robert H. Eisenman and Michael Wise entitled *The Dead Sea Scrolls Uncovered: The First Complete Translation and Interpretation of Fifty Key Documents Withheld for Over Thirty-five Years*. The newly published editions, the commentaries and analyses in such publications as the *Biblical Archaeology Review*, and even the letters to the editor in the *Times Literary Supplement*, are stimulating scholarly dialogue, which had been stifled for decades. That dialogue is now flourishing and proliferating.

The Huntington's action, widely hailed as a bold stroke on behalf of intellectual freedom and in opposition to inequitable restrictions, was not the simple and clearly defined step portrayed in the general media. Instead, it resulted from serious consideration of the sometimes-conflicting issues at play, as well as from analysis of the facts surrounding the case of the scrolls. The Dead Sea Scrolls affair constituted a

<sup>35</sup>Quoted in William A. Moffett, "Widening Access to the Dead Sea Scrolls," *College & Research Libraries News* 52 (November 1991): 632.

<sup>36</sup>Elena S. Danielson, "The Ethics of Access," *American Archivist* 52 (Winter 1989): 61.

<sup>37</sup>Eisenman and Robinson, *A Facsimile Edition of the Dead Sea Scrolls*.



most unusual and probably unique series of events in the life of a research library. In view of the original scrolls' murky ownership history, the dubious status of the scrolls editors as guardians of the texts, and the absence of donor-imposed restrictions

on the photographs placed at the library, the Huntington followed what it believed to be its proper course—upholding the principle of free and open access by toppling the wall of restrictions shielding the Dead Sea Scrolls.