

Case Study

The Stanley Milgram Papers: A Case Study on Appraisal of and Access to Confidential Data Files

DIANE E. KAPLAN

Abstract: Decisions regarding the appraisal of confidential records, as well as the establishment of access policies for researchers, are difficult questions that archives must occasionally confront. In such situations, it is necessary to balance the confidentiality and privacy rights of the subjects of the records with the needs of serious researchers. This case study describes one institution's attempt to appraise the confidential data files from a landmark experiment in social psychology. The article further considers ways to protect the privacy of the experiment's subjects while still making the information in the data files available for research.

About the author: Diane E. Kaplan has been an archivist in Manuscripts and Archives in the Yale University Library since 1971. She received a B.A. from the University of Wisconsin and an M.A. in history from the University of Michigan.

IN THE EARLY 1960s, Linsly-Chittenden Hall on the Yale University campus housed the laboratory of Stanley Milgram, a young assistant professor of psychology. In a series of innovative yet deeply disturbing experiments on obedience to authority, Milgram demonstrated that most human beings will follow the commands of an authority, even when knowingly inflicting pain on another human being. The results of these experiments, Milgram came to believe, led to an understanding of specific instances of inhumanity, including genocide under fascist regimes during World War II, the subjugation of American Indians, the enslavement of blacks, and the actions of American troops at My Lai. Milgram's work is of such significance that thirty years later introductory psychology courses and seminars on the Holocaust include discussions of the obedience experiments and viewings of Milgram's film *Obedience*. His book *Obedience to Authority: An Experimental View* has been translated into eleven languages.

The controversial experiments also stimulated a debate on the use of human subjects in social science research.¹ Within the discipline of psychology, the publication of a report on Milgram's obedience experiments evoked the same kind of outrage that the public now expresses over experiments in which individuals have been subjected to risk without their informed consent. In recent years, the news media have focused attention on shocking experiments such as the one in Tuskegee, Alabama, in which individuals suffering from syphilis were deprived of accepted medical treatment so that the course of the disease could be studied. In another instance, retarded children in a state school were given food laced with radioactive isotopes for a nutrition study. Our current anger over the lack of protection for these human subjects stems from an assumption that there must be rules for experimentation and that in these cases the rules were violated.

In fact, no such formal guidelines existed for social scientists when Milgram's obedience experiment was conducted. Today psychologists and other investigators experimenting on humans routinely submit their research proposals to the examination of review committees. Experimenters must assure committees that subjects will receive a fair explanation of the procedures to be followed and a description of the attendant discomforts and risks as well as the benefits to be expected. Investigators must justify any exposure of research subjects to possible physical, psychological, or social injury, and may withhold information from or give incomplete or erroneous information to research subjects only when this is clearly required by the research and the subjects will not be placed at risk. In such cases, the subjects are to be informed of the actual purpose of the research at the earliest possible moment and steps taken to relieve any distress encountered. Had these guidelines been in place in 1961, it is highly improbable that any review committee would have allowed Stanley Milgram's obedience study, or some of his other experiments, to proceed. Yet, Milgram's work did proceed, and, after his death in 1984, his wife donated his professional papers, documenting more than twenty years of creative experiments in

¹Like their biomedical counterparts, researchers employing scientific methodology to study human nature and behavior face ethical concerns centering around the issues of harm and benefit, informed consent and deception, and privacy and confidentiality. Archivists will find an excellent discussion of the subject in *Ethical Issues in Social Science Research*, edited by Tom L. Beauchamp, Ruth R. Faden, R. Jay Wallace, Jr., and LeRoy Walters (Baltimore: Johns Hopkins University Press, 1982). The essays contained here include numerous references to the issues raised by the Milgram obedience experiments.

social psychology, to Yale University.² Before making these papers available for research, archivists in the Manuscripts and Archives department faced challenging appraisal and access problems.

The Manuscripts and Archives department has responsibility for both the archival records of the university and a sizeable manuscript collection of personal papers. It has established guidelines on access to university records, but it does not consider papers of former faculty members to be university records. Following the completion of an instrument of gift by the donor, it adds faculty papers to the manuscript collection. The donor may stipulate reasonable restrictions on access.³

When Mrs. Milgram signed a gift agreement in October 1985, she agreed to permit access once the papers were arranged and cataloged, but she stipulated that all papers of a confidential nature be sealed for seventy-five years. Her gift agreement did not specify which papers were considered confidential; the archives staff, therefore, had to make this determination. As with all new collections, we created a preliminary box listing for the papers. The department entered a brief descriptive record for the Stanley Milgram Papers in the RLIN database, giving physical extent of the material and noting that all the papers were unavailable for research until processed.

We assumed that researcher demand would be greatest for the records of the obedience study. What actually happened in Milgram's laboratory to arouse such interest? Between 1961 and 1963, through advertisements in local newspapers, Milgram recruited more than eight hundred subjects from the greater New Haven and Bridgeport area. The subjects came from various occupations, religious affiliations, ethnic backgrounds, and age groups. Forty of the subjects were women. On arrival at the lab, each subject was introduced to another individual, whom the subject believed to be a participant. In fact, this person was really an actor, who had been trained in his role by Milgram.

A laboratory technician, clad in a lab coat, explained to the pair that this experiment was designed to test the effect of punishment on learning. To do this, one subject would be a teacher and the other a learner. The teacher would read a simple word-pair list and then test the learner's memory of the pairs. The teacher would punish incorrect answers by administering an electric shock. According to plan, the actor appeared to select the role of learner, and the innocent subject became the teacher. Before the word-pair testing began, the teacher was given an electric shock, which he was told measured 45 volts. Teachers thus experienced the kind of punishment that they were to give to the learner.

During the experiment the teacher was not actually administering electric shocks, but the actor produced convincing expressions of discomfort after the teacher gave a simulated shock. After each successive mistake, the teacher increased the voltage of the shock, and the actor likewise escalated his complaints, expressing his concerns for his

²At the completion of his obedience experiments, Milgram left Yale, spending a few years at Harvard University before settling in New York City, where he taught at the Graduate Center of the City University of New York (CUNY). In addition to obedience, Milgram's social psychology experiments included studies of conformity, crowds, human communications, the effects of television violence on behavior, and the concept of sensory overload as a response to urban life.

Mrs. Milgram's gift of her husband's papers included professional correspondence, manuscripts for his numerous articles and speeches, production files for several documentary films, and course outlines and lecture notes from his years of teaching. A thorough and highly organized researcher, Milgram had also maintained files for eleven experimental studies, including protocols, data files, and data analyses.

³This is in accordance with the "ALA-SAA Joint Statement on Access: Guidelines for Access to Original Materials" as published in *Archival Outlook*, September 1994.

heart condition, eventually screaming in pain, and at the higher shock levels ceasing to respond at all. When the voltage of the shocks reached a high level, the needle on the shock generator's gauge pointed to a danger zone. If the teacher looked to the technician for direction, the technician instructed the subject to disregard the learner's complaints and to continue to administer the shocks. At one point the technician even told the subject that although the shocks were painful they were not dangerous and that the experiment required that the subject continue.

At the conclusion of the experiment, the teacher and learner were reconciled. The subject left the lab with the false impression that, although he had not harmed the other person, he had inflicted pain. Moreover, the subject was ignorant of the true objective of the experiment. Milgram constructed twenty-five variations, or conditions, on this basic scenario. Averaged over all conditions, more than 60 percent of subjects followed the technician's directions and continued to administer shocks, up to levels of over 300 volts. Less than 40 percent of the subjects were "defiant" and broke off before this point.

The Manuscripts and Archives staff initially questioned the need to preserve any of the raw data files. Since Milgram based his conclusions on his statistical analyses of the data, why would anyone need to see the raw data? Not all of Milgram's experiments were as significant as the obedience study, and would anyone ever want to review voluminous data files from these? Some data were recorded in formats that would be costly to preserve. The files included approximately six hundred hours of poorly recorded audio tapes made while obedience subjects administered shocks. There were also unidentified videotapes created in formats for which playback equipment was no longer readily available. Should the department allocate scarce financial resources to identify and preserve data files of unknown value?

If the archives did retain data files, under what circumstances could it make these records available to research?⁴ Current human investigations guidelines explicitly require the investigator to respect the subject's right to privacy and to safeguard the anonymity of the subject in every feasible way. The identities of research subjects are to be considered confidential and must not be revealed without their explicit permission. Subjects are asked to sign releases allowing scholarly use of data collected in the experiment.

We were dealing with records created without any of these contemporary precautions in place. Milgram did not receive consent from his subjects for the scholarly use of his data. When receiving payment of \$4.50 for participating in the obedience experiments, each subject signed a receipt which read, "In participating in this experimental research of my own free will, I release Yale University and its employees from any legal claim arising from my participation." Subjects may have been waiving certain rights, but they did not give their consent to general scholarly use of the data collected in the experiment.⁵ Nor had Milgram designed his data collection apparatus to eliminate the potential for

⁴For discussions of how other archivists have struggled with the sometimes competing imperatives incorporated in professional standards for fair access and respect for the individual's right to privacy, see Elena Danielson's "The Ethics of Access," *American Archivist* 52 (Winter 1989): 52–62, and Mark A. Greene's "Moderation in Everything, Access in Nothing?: Opinions about Access Restrictions on Private Papers," *Archival Issues* 18 (1993): 31–41.

⁵Of all the subjects in the obedience study, only fifteen signed releases in which they gave consent for the disclosure of their participation in the experiment. These subjects participated in the variation of the basic scenario which involved the filming of the actual experiment. Milgram was already planning an educational film about obedience and needed the signed releases in order to be able to distribute it.

identifying individual subjects; the Milgram data files include numerous forms labeled with the subject's name.

As word circulated in the academic community that the Milgram papers had come to Yale, the department began receiving requests for access to information in these study data files. In an early request, a researcher contacted the department to gain access to the data files of Milgram's defiant subjects in order to find these subjects and interview them. If access were allowed in this instance, the researcher would violate the individual subject's rights to privacy.⁶

In general, we assumed that subjects of past experiments should be given the same protection that current subjects receive. If, under current guidelines, subjects sign consent forms with the understanding that specific information about them will be disclosed only to the investigator or the investigator's collaborators, then we would also consider the records of Milgram's subjects confidential and not make them available to researchers.

Consultation with the chairman of the Yale Faculty of Arts and Sciences Human Investigations Committee confirmed our initial assumptions about the confidential nature of subject names. We therefore decided to close all experimental data for seventy-five years from the date of a specific experiment. The duration of this restriction matched that stipulated by Mrs. Milgram in the gift agreement and conformed to Yale's guidelines governing the closure of confidential records such as personnel and student files.

This decision applied not only to the obedience data, but to all subject files in all experiments. In Milgram's studies of TV violence and its correlation with antisocial behavior, subjects were invited to watch one of three versions of a television program. The subjects were told that, for their participation, they would receive a prize which could be picked up at an appointed time. The subjects were instructed to come to an unattended office where a charity donation box containing money was clearly visible on the counter. The subjects did not know that they were being observed, and some subjects stole the money from the box. Milgram then computed how many individuals viewing the antisocial, prosocial, or neutral version of the television program exhibited such antisocial behavior. His raw data from this experiment can link the name of a subject to a criminal act.

The department even closed data for experiments that did not place subjects in uncomfortable positions. In an exploration of urban life in the 1970s, Milgram sought to discover the image of a city that each inhabitant had in his head. Milgram asked subjects to draw a map of their neighborhood (he called these drawings "mental maps") and analyzed what details were the most prominent or frequent in them. The subjects did not experience an experimental situation that could be labeled stressful or embarrassing. Nevertheless, access to the raw data from this experiment has been restricted, since the maps bear individual names and the files do not contain releases from the subjects.

The "Commentary" section of "A Code of Ethics for Archivists" states that archivists "determine whether the release of records or information from records would constitute an invasion of privacy."⁷ In no case did we make a subjective decision as to

⁶It is no simple matter to define privacy and what constitutes an invasion of privacy. Privacy is linked to "being let alone." An invasion of privacy may take the form of intrusion into someone's private space, as could happen in this case. It can also include the exposure of damaging information or embarrassing facts which might place an individual in a false light and harm a reputation. Invasion of privacy can also diminish a person's control and liberty. The potential for invasion of privacy in all of these senses was of concern as we attempted to establish policies for access to Milgram's data files.

⁷*Code of Ethics for Archivists* (Chicago: Society of American Archivists, 1992).

whether the content of the experiment required restriction. We adopted the principle that all personally identifiable data were closed.

Are some research topics of such importance that we should make data files available to researchers? We do not wish to deny access to scholars who have no interest in the identities of the subjects, and university human investigation committees do allow the use of stored data, where written permission of the research subjects cannot be obtained. In these cases, when the investigator submits a research proposal to a committee, the proposal must include assurances of anonymity for the persons whose records are being used or investigated. The committee then makes the determination that the research is significant and that the safeguards are adequate.

In examining options for access that prevented unwarranted invasion of privacy, we considered the use of a waiver: a written promise by the researcher not to identify subjects, such as review committees employ. In the review committee model, however, the committee also determines that the value of a research project outweighs the subject's right to have his participation in the project kept in confidence.⁸

We did not believe that the archives staff alone could serve as a review committee. With scholars coming to us with research projects in fields as diverse as social psychology, contemporary journalism, women's studies, and biography, we were not knowledgeable enough to judge the merits of individual research proposals, and, without a committee's rigorous oversight, we were not satisfied that waivers would provide adequate protection of subjects' identities.⁹ What sanctions could the violation of our waiver agreement carry

⁸Though guidelines for both biomedical and social science research allow the use of collected data even if permission of the subjects cannot be obtained, the issues of "privacy" and "confidentiality" figure more prominently in debates over such usage among social scientists. While many would argue that benefits of medical research outweigh the risks of possible invasion of privacy, such may not be the case for those studying human behavior. Social scientists study a range of subjects, including sexual activity, family interaction, and drug use, which most of us consider more private or confidential than our medical history or response to a given therapeutic agent.

⁹As part of the research for this article, the author sent a query to the Archives and Archivists listserv (Archives@Miamiu.mu.ohio.edu).

We know that archives generally restrict access to case files, hospital records, and the like, in order to protect the identity of patients or clients. These restrictions are often enforced for a period approximating the lifetime of an individual. Some archives grant access to the records sooner but only after sanitizing these records of names and other identifying information.

What are the experiences of those archives which grant access to such otherwise confidential records contingent upon the researcher signing a waiver or release by which he or she agrees not to divulge the names of patients or clients? We would like to see copies of these waiver agreements and to learn how the wording was developed. We would also be interested in knowing how these agreements are working. Do researchers ever object to signing such a document? Have there been any incidents involving non-compliance with the terms of the agreement?

There were many general comments on the list about restrictions and access, but no one responded specifically to the request for information on waivers.

The archival literature does contain some examples of institutions that have made use of a waiver form. For example, Virginia Stewart, in her article "Problems of Confidentiality in the Administration of Personal Case Records," *American Archivist* 37 (July 1974): 387-98, includes the text of the application form used at the University of Illinois, Chicago Circle. This includes language prohibiting the researcher from using subject names for teaching purposes or in any publication. Before signing such a form, the archivist is to tell the researcher of possible financial liability in the event of a lawsuit arising from the use of confidential material.

Roland Baumann's "The Administration of Access to Confidential Records in State Archives: Common Practices and the Need for a Model Law," *American Archivist* 49 (Fall 1986): 349-69, describes attempts by

for an unscrupulous researcher? If a researcher were to identify an individual as a subject, that subject would have legal recourse to sue both the researcher and the archives; invasion of privacy is a civil wrong.¹⁰ But once a subject brings a suit, damage has already occurred.

We felt that we could, and indeed should, prevent the harm to an individual caused by such an invasion, and the damaging publicity and legal costs to which the archives might be subjected. By sanitizing files, that is by blocking out subjects' names, we could protect the privacy of Milgram's subjects and provide access to otherwise restricted files. But the data files comprised thirty-four linear feet of the Milgram papers, and we were not willing to commit valuable resources of staff time and money to sanitize records that might not be requested in the next seventy-five years.

We chose, instead, to let research demand regulate the production of sanitized copies of documents. We now inform researchers that, if they need access to data before the date on which the data files are to be opened, they may ask to have the relevant materials sanitized and copied at their own expense. Sanitized data will be maintained as part of the collection until the restriction is lifted on the original files. Both the MARC record in RLIN and the public copy of the finding aid now contain an explanation of this option for research use.¹¹

As is true for all materials in our holdings that require special handling to meet research demands, our policy puts the cost of sanitizing on the first researcher to request material. Subsequent researchers, if any, incur no additional cost for their research. This policy is parallel to our charges for producing copies of photographs. The first researcher to order a photograph pays for the cost of the copy negative and the print. Subsequent users who want a copy of the photograph pay only the cost of making the print.

This cost burden does not seem onerous for researchers requesting paper files. Obtaining sanitized copies of these files is more expensive than the mere photocopying of documents, but the costs are not prohibitively high. The original paper files are physically

state archives to legally bind the researcher to accept conditions for legitimate use of confidential health records.

In "The Other Side of the Human Experience: Providing Access to Social Service Case Files," *American Archivist* 53 (Winter 1990): 122-29, David Weinberg notes that Temple University's agreement states that "no one will be allowed to research such files without the prior approval of the Depositor or the representative of the Depositor." Such approval then shifts the burden of determining whether the release of records constitutes an invasion of privacy from the archivist to the depositor.

¹⁰Menzi Behrnd-Klodt has outlined what claims must be proven for a court to find for an invasion of privacy. If an archives has clearly stated access policies, the archives would probably not be found at fault should a researcher violate a waiver agreement by divulging a subject's name. The researcher, but probably not the institution, might be found guilty of invasion of privacy. In this litigious age, though, an individual might well attempt to sue a repository, thus at the least causing the institution the time and expense of preparing its defense. Behrnd-Klodt's presentation was given at *Without Consent: The Question of Third Party Privacy Rights in Collections of Personal Papers*, Session 58, taped at the Society of American Archivists 1994 Annual Meeting by Convention Recordings International, Inc., St. Petersburg, Florida.

¹¹In the finding aid, the first paragraph of the page titled "Note on Access and Citation" reads

Materials in Series V, Data Files, are restricted for seventy-five years from the date of the conclusion of the experiment in order to protect the identity of the subjects. The date when the data for any experiment will open to research is noted on the listing for that experiment in Series V. Researchers needing access to data before this date may ask to have the relevant materials copied and sanitized at their own expense. Sanitized data will remain the property of the Yale University Library and will be maintained at the end of the papers until the restriction is lifted on the original files, at which point the sanitized copies will be destroyed.

An abbreviated form of this text appears in the 540 field of the MARC record in the RLIN database.

strong and not difficult to handle. The places where subject names appear in the files are fairly standard, and students have been trained to remove them. We have calculated the average number of sheets in a data file and the average amount of time it takes to copy sheets, remove the names, and make the use copies. We charge a per subject fee based on these calculations.

We assume that research demand for access will also help us with an appraisal of the paper-based data files. After seventy-five years we will have a fairly clear idea which data files are of interest to scholars. Experimental data files for which there have been no requests during that period may well be reappraised.

The data files collected as audio recordings are much more troublesome. Recorded on an acetate base at a speed of 1 7/8 inches per second (ips), the brittle tape breaks easily and the sound quality is poor. Preservation of these data requires a trained sound engineer, who must review and monitor each tape before it can be copied onto preservation-quality Mylar-based tape at a speed of 7 1/2 ips. The preservation master is then copied to a duplicate audio cassette. This cassette is then sanitized by a staff member who must listen to each subject's hour in the laboratory and record blank sound each time a subject's name is mentioned. These sanitized audio cassettes are then copied to make a user copy. Should the user copy be damaged, we will still have a sanitized copy from which to produce another user copy. Currently, the cost for sanitizing and duplicating each subject's tape is close to one hundred dollars.

We were concerned that these costs would deter researchers from seeking access to the materials they needed. On the other hand, Milgram had transcribed many of the experimental sessions and had recorded significant data measurements in other ways. Since we could not be sure that readers actually needed the tapes, we were not prepared to spend the thousands of dollars to preserve and sanitize such a resource.

There is certainly a risk implied in our "wait and see" policy. Given the fragile nature of the recordings, it is possible that in twenty-five years a researcher may need and be willing to pay to preserve an audio tape only to learn that the recording has deteriorated beyond salvage. Moreover, the equipment to transfer the recordings may no longer be available. We have stored the tapes in a stable environment, positioned according to current guidelines for correct storage, and hope that this will extend their lifetimes.

Since the policy has been instituted, ninety-five tapes have been preserved at the request of a researcher who needed to study not only what words were spoken, but how they were spoken as well. This research analyzed the tone of speech, the pauses in response, and other measures that could not be conveyed by the typed transcripts. The research involved one particular variation of the experiment's structure, which Milgram had not reported in the literature on the obedience experiments. This researcher was fortunate in securing grant funding to pay for the costs of the copying. We were then able to make these tapes available for use in another Research Library Group member library, thus saving the researcher the expense of travel costs.

We have not examined the need to sanitize the visual image of a subject. The fifteen subjects who appear in Milgram's film *Obedience* signed a form before the experiment began, stating, "Any aspect of my performance in this experiment may be used freely for purposes of scientific communication, whether in the form of articles, books, films, or other documents without further consent on my part." We felt that this statement allowed us to give access to the outtakes from the film.

For another experiment which he called the cyranic studies, Milgram obtained consent forms from his subjects, as required by CUNY's Committee on Protection of Human

Subjects. Milgram used the term “cyranoid” to describe a person who, like Edmond Rostand’s fictional character Cyrano de Bergerac, “does not speak thoughts originating in his own central nervous system.” He designed an experiment in which an eleven-year-old male, the cyranoid, received, by means of a radio transmitter and an inconspicuous ear-phone, the words of a fifty-year-old man, who supplied him with answers to interviewers’ questions. The interviewers never imagined that the cyranoid was only repeating thoughts of another person and did not suspect that their responses to the cyranoid were the real object of study.

Employing the technology available to him in the early 1980s, Milgram recorded these cyranic interviews on videotape, though it is not clear if he intended to use these tapes as more than data once he completed the study. It seems unlikely that he was thinking of making another film, because in the consent forms for the experiments he did not include a release such as that signed by the subjects filmed for *Obedience*.

So far no one has asked for access to these tapes. If they do, we will again have to struggle with how best to protect the subjects’ identities. Will the deletion of the subjects’ names be enough, or will we have to black out the faces of subjects? We have discovered that there is no equipment on campus to play these tapes, and we will again have to locate a vendor and develop a price schedule to cover the cost of converting the videotapes to a VHS cassette.

When the department opened the Milgram Papers, a staff member from the *Yale Weekly Bulletin and Calendar*, a newspaper produced by the Office of Public Affairs, prepared a story that was released to the wire services. Local newspapers carried the story, and information on the Milgram Papers reached numerous professional journals. This publicity has resulted in varied uses of the papers. The son of the actor in the obedience experiment had been very young when his father died. When he learned of our holdings, he came to the department to see the outtakes and hear his father on tape. The story also reached an Austrian documentary film producer who was working on a program on obedience and the Milgram experiments for Austrian television. Eventually, a film crew spent almost a full day in the archives videotaping an interview with the project archivist and documents from the papers. These examples illustrate the continuing interest that Milgram’s work holds and show the importance of Yale’s initial decision to accept the Milgram Papers and its attempts to make them available for study.

We know that sanitizing will not always be a feasible solution to the problems posed by confidential files. As part of her thorough review of the ethical dilemmas posed by confidential records, Heather MacNeil has suggested an ethical review board for access to public archives.¹² Most universities have a committee to approve research involving the use of human subjects, and it might be possible to utilize it as a review committee for projects involving the use of collected confidential data now stored in archival repositories. Such a committee has the power to enforce compliance with the terms of waiver agreements, at least on the faculty of its university or members of a given discipline. What sanctions it could hold over researchers from the non-scholarly community is not clear. Nor is it obvious how its biases toward scholarly research would affect access decisions for requests from members of the public or even from another scholarly institution. But

¹²Heather MacNeil, *Without Consent: The Ethics of Disclosing Personal Information in Public Archives* (Metuchen, N.J.: Society of American Archivists and the Scarecrow Press, 1992), 185–92.

as we continue to receive experimental raw data, we will need to investigate alternative solutions to the problems posed when researchers request access to confidential information in data files.