

THE SCIENCE FICTION



THE LOVECRAFT SCHOLAR

featuring

THE PSEUDONYMOUS LOVECRAFT

LOVECRAFT'S LITERARY EXECUTOR

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by

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LOVECRAFT'S LITERARY EXECUTOR

Who was Lovecraft's literary executor? Without question Robert H. Barlow during his lifetime was considered to be by those involved with Lovecraft's writings, by the general public, and even after his death by present day Lovecraft scholars. But how did Barlow become nominated to this position?

A few months before Lovecraft's death his aunt, Mrs. Annie E.P. Gamwell, by chance saw him write a document consisting of two leaves of notes; these he placed in a used envelope labelled "Instructions in Case of Decease," which he then set among personal papers he kept in a cabinet in his room.¹

When Barlow arrived in Providence shortly after Lovecraft's funeral, she showed Barlow this document, which included directions for him to attend to certain matters. Mrs. Gamwell copied it in longhand, saying "she wished the original as a sad memento," and gave Barlow the facsimile and the original envelope.

The text of the original document can be established only from this purported true facsimile. What does it say? The first page begins, "All files of weird magazines, scrapbooks not wanted by A.E.P.G., all original mss. to R.H. Barlow, my literary executive." (Lovecraft obviously meant "executor.")

Before we go further, we should inquire exactly what a literary executor is. De Camp states that "While common in the literary world, the office of literary executor has no legal standing. The literary executor is merely someone whom the testator recommends as qualified to tidy up his writings: to sell rights yet unsold, to arrange for completion and publication of works in progress, and so on. The executor may take this person's advice but is not bound by it."²

Another authority states that the function of a literary executive is to handle an author's unpublished manuscripts after his death, offering the example of Ernest Hemingway, who empowered one for such a purpose.³

Jones' Legal Forms includes this example: "As I have various and sundry mss. which have not yet been published, I appoint _____ as my literary executor and bequeath to him as such all my mss., papers, and letters, and desire him to have such of them published as it is practicable..."⁴

Did Lovecraft's "Instructions..." follow the unanimous canons

of these authorities? Decidedly not. In fact, what wishes the document does contain are not specified that Barlow perform, an oversight from which it might be argued that they pertained to someone else as their performer. When you think about it, the functions of a literary executor follow closely those of a literary agent, the difference being that the author is dead in the first case and living in the second. All the document says about manuscripts is that they are "original," not that Barlow was to publish them or have them published. Nor does it designate him to make testamentary disposition of magazines and books; that chore is only inferential.

Because of these irregularities, it is appropriate to deliberate if the document is legally valid in its other features. We are struck immediately with the realization that it lacked the formal construction required in a will (it is neither dated nor signed by witnesses). There is no record that the original holographic document was ever submitted for probate. And the surviving facsimile is not in itself prima facia evidence that its contents are a letter perfect facsimile of the original.

But what of the remainder of its contents? In addition to the distribution already spoken of, there was the statement that "Mrs. D.W. Bishop, 5001 Sunset Drive, Kansas City, Mo., owes H.P. Lovecraft \$26 for revision work." It seems obvious that Lovecraft was using a literary executor to collect debts for literary revisions as well as for disposing of his literary possessions.

What the executor of Lovecraft's will, Albert Baker, thought of the document seems certain (as will be later shown): he would have preferred to ignore it, since it infringed on his own duties.

On the back of page two of the "Instructions..." facsimile is penciled an undated note from "Bob" to "August" inquiring if two excerpts were from completed scripts or were plans for contemplated stories. We may assume these two persons were Barlow and Derleth, and the two excerpts probably the mss. fragments mentioned in an exchange of letters between Baker and Barlow which I shall cite later in this article. The point is that Derleth may actually have read this facsimile of the "Instructions..."⁵

Several days after his arrival in Providence, Mrs. Gamwell signed a contract with Barlow. This contract unquestionably made him Lovecraft's literary executor, where the "Instructions..." could be only surmised to do so. The latter merely bequeathed the manuscripts to Barlow; however, the contract did not only this, but also stated that Lovecraft had "expressed a wish and desire" that Barlow handle "publishing and republishing the said mss., published or unpublished." Lovecraft may have communicated this to Barlow verbally, but such understandings are hard to authenticate if one of the parties is dead. The final clause in the contract obligates Barlow to pay Mrs. Gamwell all receipts less a three percent commission of the gross amount received.⁶

The ink was hardly dry on the contract before August Derleth began attempts to impress Barlow that the contract was void. Derleth began with the claim that he held releases for almost everything Lovecraft had had printed. This was probably based on an authorization that Lovecraft had given Derleth in 1936 to market a book

collection of his stories.⁷

Next he warned Barlow that since the latter was a minor the contract might be invalid under Rhode Island Law.⁸ He followed this with the reminder that Lovecraft had appointed Julius Schwartz as his agent in 1936,⁹ implying that this took precedence over any posthumous appointments made by heirs. (Here Derleth contradicted his own claim cited in the previous page.)

Derleth's final argument was that Mrs. Gamwell lacked legal title to contract out the Lovecraft manuscripts. Only Sonia Davis, his widow, could do so, he implied.¹⁰ But Rhode Island is one of the few states where marriage does not automatically revoke a spouse's prior will made previous to marriage.¹¹

Were Derleth's admonitions to Barlow self-serving harassment or merely friendly advice? Whatever the psychology behind them, their effect was apparently to dissuade Barlow from *actively* agenting Lovecraft's manuscripts. Sometime between April 5, 1937 and June 23, 1938, he voluntarily relinquished his role in favour of Derleth.¹²

If the reader finds this conclusion unacceptable, there is Barlow's own explanation: he told Baker that he stood aside voluntarily in favour of Derleth's superior opportunities in the market place, and that he was recuperating from an illness of long duration.¹³ In slightly different phrasing he reiterated almost the same story to Robert A. Lowndes six months later.¹⁴

It is important to ask if this meant that Barlow terminated his contract. I would say that he never did. Here is the evidence: First of all, during June, 1938 he proceeded unilaterally to publish and copyright in his own name Lovecraft's Commonplace Book, and confided to Claire Beck, its printer, that Derleth had "no power to interfere."¹⁵ Second, Baker, in October, 1938, complimented Barlow for giving Derleth a free hand in marketing Lovecraft material, and not invoking his agreement with Mrs. Gamwell.¹³ Third, in December, 1938 Barlow published and copyrighted in his own name Leaves II, containing three unpublished story fragments by Lovecraft.¹⁶ I believe two of these are the same ones referred to on the back of page two of the "Instructions..." Fourth, in 1940 and again in 1943 Barlow contributed to Golden Atom five Lovecraft items; four of these were in the public domain, but the fifth was theretofore unpublished.¹⁷ Last of all, he contributed to The Acolyte in 1942 and 1943 six Lovecraft pieces; three were in the public domain, two were unpublished, and one comprises excerpts from a letter whose copyright status I do not know.¹⁸ Had Barlow terminated his contract, he would scarcely have done these things with impunity.

We should also remember that this contract obligated Barlow to pay Mrs. Gamwell a commission for any publication sales made. After The Commonplace Book appeared she received ten dollars. This seems to be the sole cash disbursement made.¹² The periodicals cited above were products of amateur journalists, who traditionally pay for submissions with copies of their publications rather than in cash. Whether Mrs. Gamwell received these, or whether Barlow notified her of their appearance, we do not know. Gratis printing of such Lovecraft items would not necessarily amount to a breach of contract, for Barlow could argue that they were unsaleable elsewhere.

Mrs. Gamwell's letters to Barlow, though diffident to an extreme, occasionally reveal vexatious feelings. Whether these result from importunities she may have received from Derleth to remove Barlow as literary executor is hard to say. But there is an alternative explanation for his growing disillusionment with Barlow. After he left Providence, says De Camp, "he answered letters vaguely, late, or not at all."¹⁹

When Barlow did write, the effect was obstructive. For example, he attempted to discourage Derleth from including "Through the Gates of the Silver Key" in The Outsider and Others, saying that Lovecraft had told him he was dissatisfied with it. Barlow even attempted to enlist Mrs. Gamwell's aid, but she agreed with Derleth, who argued that a writer is not always the best judge of his own work.²⁰ Barlow was within his rights in taking this stand, yet seemed unwilling to act in more than a purely advisory capacity. But by declining to oppose the combined Derleth-Gamwell "majority" he seriously weakened the authority of his literary executorship.

A year later more of Mrs. Gamwell's doubts bubbled to the surface: "I am so glad you have told me how affairs stand concerning my Howard's work and your great work with the mss. You see I know *nothing* except that Derleth was doing so much and I have hesitated to ask either of you for I feared mixing things up."²¹

Whatever her suspicions and dissatisfactions were, Mrs. Gamwell eventually confided them to the family lawyer, who on October 7, 1938 sent the following letter to Barlow at his Kansas City address:

"Dear Sir:

I as Executor of the Will of Howard P. Lovecraft, have recently been informed of the Agreement between you and Mrs. Annie E.P. Gamwell, dated March 26, 1937, relative to the Manuscripts of Mr. Lovecraft and the publication, typed or in longhand, of the same, and to pay her all receipts from such publications less a 3 per cent commission to you.

Also, I am informed that she permitted you to take Mr. Lovecraft's Manuscripts, file of Weird Tales and weird magazines, and the books of Dunsany, Clark Ashton Smith, Sam Loveman, and Frank Belknap Long Jr., and many other books and magazines. This was done without my knowledge or consent as his Executor. I am informed that said Manuscripts, Weird Tales and weird magazines, and said authors' books are of substantial value; and Mrs. Gamwell's financial affairs are so poor that she will need all that can be derived from his Estate.

Mrs. Gamwell has informed me that she was rushed by you the day after the funeral and when she was in no proper condition to act to do what she did. Mr. Lovecraft's Estate is so small and in such a state that even his funeral expenses have not been paid in full. She and I are willing that you have the other books and magazines of a general and not a weird nature as they do not have substantial money value.

I understand that you have passed on some of the manuscripts to Messrs. August Derleth and Donald Wandrei with a view that they edit the same and secure their publication in some magazine or magazines which they are willing to do without charge so that Mrs. Gamwell will

receive the entire sums obtained, without any commission deduction. This would be beneficial to her, and as you are a friend of hers, I infer that you will be disposed to do what will be for her benefit. Mrs. Gamwell recently received from Claire Beck \$10 for a published Commonplace small pamphlet of an amateur nature, and this is the only amount received from you by her after the year and a half that has lapsed since you got the manuscripts.

I understand that you are in Mexico or perhaps now in California, and not in a position to accomplish the publication of his writings, and furthur that you are a minor of the age of eighteen years, and so could not make a valid contract.

Therefore under all the circumstances I must request and demand that you return to me as Executor all said manuscripts, file of Weird Tales, weird magazines, and said authors' books now in your possession or under your control, and keeping only such books as of a general and not a weird nature.

I hear that you are or have been ill, but let me hear from you as soon as you are able to do so. If not at this time convenient for you to pay the cost of the return, I will pay the same. I am mailing a copy of this letter to Claire Beck at 27 P.O. Box, Lakeport, California."

Barlow's reply to Albert Baker's letter was dated October 12, 1938 and is as follows:

"Dear Sir:

Your letter of October 7th has reached me here in carbon copy. I am recuperating from a long and dangerous illness, but will endeavor to answer it, beginning with a recapitulation of certain events. When Howard Lovecraft died, he left a manuscript memorandum (prepared in the autumn of 1936)--doubtless still in the possession of Mrs. Gamwell--regarding the disposition of his library and literary works which he did not consider of sufficient importance to incorporate in the formal will. This specified "all my manuscripts to go to R.H. Barlow, my literary executive", and, furthur, "first choice of weird books and magazines to R.H. Barlow." I have a copy of this which Mrs. Gamwell wrote out for me, but wishing also to have her legal confirmation, had the contract of March 26, 1937 drawn up. Now as to matters covered by this contract:

(1.) Manuscripts (holograph): were involved only in the case of two or three weird fragments of a few pages each, written circa 1922; and also in the case of non-weird productions done on commission as ghost-writing. Of the extant weird holograph Ms. from his pen, all but four had been given me during his lifetime, accompanied by letters of presentation. (These four are in the possession of Messrs. Samuel Loveman, Duane Rimel, and a party unknown to me.) I have deposited the majority of those I have in a public collection for preservation, but since they are personal gifts of a date previous to his death, they do not concern us here. The typescripts and carbon copies I took charge of in March 1937 are only of textual value, rather than bibliographic.

(2.) Books from his library: I selected two cartons of these with

the permission of Mrs. Gamwell, and added them to my private library which is now temporarily in storage. You will recall it was his wish that I have these, as he said in life and recorded in his Instructions in Case of Decease. There was also a file of Weird Tales and a few issues of another magazine I had bound and given him...all of which returned to me under these sad circumstances. Other books which I had given to him I did not take, though Mrs. Gamwell offered me them; though I did take two small still-life paintings she gave to me. As recently as a month ago she authorized the sending of these magazines (previously stored for me in her home) to me; an operation performed by Claire Beck.

(3.) My position as agent for the Ms.: In March of 1937 there appeared no other person to act in this capacity. With Mr. Derleth's later offer to do so I have cooperated fully, at no time invoking the contract despite labour and expense which I have incidentally contributed. This has been explained to Mrs. Gamwell. I would not, however, as you assume, be unable to accomplish publication myself if such action were desirable. It is merely that I stand aside voluntarily in favour of Mr. Derleth's superior opportunities. As for delay in publication, if Mr. Derleth has accomplished the sale of a collection or anything aside from pulp publication, he has not troubled to inform me. The Commonplace Book was taken from a manuscript given me in 1934, as you may observe from the text, and the payment sent her was less obligatory than a token of sincerity.

I am sorry that Mrs. Gamwell believes--as you state--that I "rushed her" in fulfilling Howard's instructions. It had been my hope to reach Providence before his death--when I could not, I went to give what small aid I could. As she will tell you, I knew his literary affairs better than anyone else, and it is not without significance that he wished me, and not Mr. Derleth, or Mr. Wandrei, or some other person, to take care of them.

A copy of this letter will reach Mrs. Gamwell--I am moved by the keenest desire to cooperate with her; but in view of the above-mentioned circumstances, not, perhaps, fully known to you, cannot feel obliged to comply with your demands. It is immeasurably depressing to be confronted with such an attitude over the gifts and will of my dead friends."

Baker replied promptly as follows on October 19, 1938:

"Dear Sir:

Your letter of the 12inst. received and contents noted, particularly information as to some matters not previously known to me and especially your statement under 3 of your letter...

Here Baker quotes the first two sentences from this part of Barlow's letter.

Understanding that you have and will cooperate with Mr. Derleth, irrespective of Mrs. Gamwell's agreement with you, Mr. Derleth as I understand not asking for any commission on any publication of the Lovecraft Ms., I do not see why I as Executor am further interested, as my desire was to avoid possible conflict between two or more persons exercising literary executorship and to preserve any sub-

stantial rights of the Estate for the benefit of Mrs. Gamwell. All appears to be very friendly to Mrs. Gamwell, and she merits and needs help of good friends.

Relying on your cooperation with August Derleth, and with Donald Wandrei to any extent the latter can aid Derleth, and giving them a free hand in editing and securing the publication of the of the Howard P. Lovecraft writings without regard to your agreement with Mrs. Gamwell, I withdraw my demand as his Executor contained in my letter to you of October 7th.

I think that there has been some misunderstanding which could have been avoided if you and I had been so situated that we could have had a personal interview and discussed the matter."

A number of interesting things become clarified by this exchange of letters. Besides faulting Barlow for carting off sundry personal possessions of the deceased, Baker raised the issue (quite possibly as a bluff) that Barlow's minority impeded him from making a valid contract.

Barlow's defense for removing the possessions was to cite Lovecraft's "Instructions..."; the issue of his minority he ignored. Barlow may well have known that a minor is not forbidden by law from entering into contractual arrangements, and that although such a contract is binding on both parties, only the minor has the option to break it with legal impunity.²² His designating as merely "a token of sincerity" the ten dollars sent Mrs. Gamwell after publication of the Commonplace Book may indicate that the latter was but marginally-- if at all--profitable.

Baker's second letter refers to matters he had "not previously known." One wonders if he had actually seen the "Instructions..." document. In any event, his handling of the issues raised by Mrs. Gamwell was hardly satisfactory to her, in the light of her subsequent letters. When Barlow sent her his correspondence with Baker, she responded: "I know that legally I was too hasty...and let you have the items Howard suggested, not waiting for legal authority...I *must* go see Mr. Baker--I want to know what he thinks of your letter."²³ And a second month later she wrote Barlow: "I simply *must* not worry any more over the books and magazines I let you have--I *must* have peace! Legally I had no right to give anything away and some have been very jealously looking into my rights--but I am not able to stand any more nervous strain."²⁴ This leads us to the conviction that not all of the agitation this lady felt was due to any peccadillos of Barlow, for the "some" can refer only to other interested parties.

By September, 1938, then, it is apparent that Lovecraft's literary executor--de facto--changed from Barlow alone to a combination of Barlow and Derleth.

Between then and January, 1941--the exact date is unknown--this strange dual entity evolved into an even more unprecedented quartet consisting of Derleth, Wandrei, Barlow, and the "estate of Lovecraft" that "worked in concert." After Mrs. Gamwell died in 1941, Derleth stated that her estate filled the vacancy formerly occupied by the Lovecraft estate.²⁵ In the sparse statements about this quadripartite

body's policy deliberations I have never seen either the Gamwell estate or its executor, Ralph Greenlaw, mentioned as actually participating in any way.

The next account of this composite group appeared in August, 1950, when it had inexplicably mutated into the triumvirate of Derleth, Wandrei, and Barlow. Elimination of the Gamwell estate's representatives and heirs was never explained. We know of the mutation because of its reaction to a request of James W. Thomas.

Thomas was a student at Brown University when he selected Lovecraft as the subject for his Master's thesis. He wrote Barlow for permission to view the Lovecraft letters and manuscripts in the John Hay Library.²⁶ When the thesis was finished, he offered to send Barlow a copy to read, but never received any answer.²⁷ This, as we have seen, was not uncharacteristic of Barlow.¹⁹

Thomas' faculty advisor liked the thesis well enough to recommend its publication. Thomas felt that since Derleth and/or Arkham House apparently owned the Lovecraft literary rights, he would have to approach Derleth for permission, and...well, Derleth had a reputation for being difficult, didn't he?²⁸

Winfield Townly Scott, a poet and journalist on the staff of the Providence Journal, was approached as a middleman to smooth the way. Scott had written a number of essays on Lovecraft and his works, and had contributed to the Arkham House book Marginalia. Thereafter, Thomas sent a copy of his thesis to Derleth shortly after mid-June, 1950.²⁸

Soon after receiving the thesis, Derleth read it and wrote Thomas that he was against publication because it was biased in favor of Sonis Greene, and also because it did not present the whole man. But he would refer it to Barlow and Wandrei, and abide by the result of a three way vote. When Thomas informed Scott of Derleth's reaction, Scott replied candidly, "Of course the reasonable response to August Derleth is balls. If only, unfortunately, it were not *he* who has *you* by them."²⁹

Before any vote could take place, Thomas elected to refute Derleth's criticism. He wrote him that his thesis made no pretense of presenting the whole man. He denied any bias in favor of Sonia Greene. If the thesis supported Sonia's account of their married life, the evidence was drawn from Lovecraft's own letters, not from any fabrications of Thomas.

Derleth now wrote Barlow that his personal decision was negative, but that he would be guided by Barlow's reaction. (This careful approach, and its appeal to Barlow's vanity, contrasts sharply with his handling of the earlier dispute over reprinting "The Gates of the Silver Key.") He also told Barlow that Thomas had seen only the letters Lovecraft had written his aunts; that Thomas' portrayal of Lovecraft paralleled Sonia Grenne's--in Thomas' words as 'sexless, sapless, supine, selfish, a sissy, a Mama's boy"; that Thomas could not portray the whole man, which only the letters to others would disclose; and that Thomas had diligently chosen passages to show Lovecraft's racial prejudices.²⁸

Thomas was never informed on the result of the vote. In fact,

he doubted one ever took place until I assured him that a letter on the subject (but not the vote's result) exists in the microfilmed record of Barlow's papers.

The result of all this is that Thomas' thesis has never been published in its entirety. An abridged version has appeared³⁰, which Thomas agrees is 'horribly butchered.' Neither have the letters quoted in the thesis been included in Lovecraft's Selected Letters--or, if they have been, the passages supporting Thomas and offensive to Derleth have been expunged.

Thomas goes on to say, "Encouraged I suppose by the fact that Derleth had permitted publication of the bowdlerized version, I wrote him again about permission to bring it out intact as a book... He replied with an offer to read the mss. once more. Sending Eisner a full mss. for Fresco had left me with only one copy of my own, so I wrote Steve, suggesting that he send the Fresco copy on to Derleth. I never heard further from either Derleth or Eisner."³¹

The reason for presenting the Thomas incident in such detail is to show the tremendous influence that Derleth had over control of Lovecraft material.

Derleth later stated that the "obligation that Barlow had as literary executor of the HPL work came to Arkham House after Barlow's death in 1951."³² His use of the word 'obligation' is interesting, for no legal succession could in any way be based on any of Lovecraft's "Instructions..." The contract between Barlow and Gamwell might be transferred or assigned to another person, since it involves money and property.³³ But would not the death of both parties effectively terminate it?

There are other possibilities. Barlow could have conferred this 'obligation' (empty as I believe it is) by some written instrument. He could, for instance, bequeath it in his will. But did he leave a will? His brother, Wayne Barlow, did not know. On the other hand, the interstate distribution of Barlow's estate proves that either no will existed or none was found.³⁴ And none of this explains Derleth's claim that Arkham House became Lovecraft's literary executor.

Not only is this succession shrouded in mystery, but also the non-performance of certain duties associated with the office. I sought in vain for copyright renewals of some twenty Lovecraft stories published in Weird Tales. Later I hired the Copyright Office to certify if one of them, "The Rats in the Walls," had ever had its copyright renewed. They reported that it had not been. As Barlow died in the first year that copyright renewals should have begun, he can be absolved of any blame. That must fall on August Derleth as director of Arkham House, if indeed he/it became literary executor.

The Lovecraft family lawyer, Albert Baker, is on record in 1938 as recognizing the existence of a literary executor--not so much because of the "Instructions..." document (which clearly conferred the office on Barlow) as the controversy which had arisen between him and Derleth. It is here that obscuratation first begins, and as a layman I fault Baker greatly for not resolving this conflict in definitive terms. As it is, we are left with ambiguity: did he accept the precatory "Instructions..." or simply decide, not wishing to spend more time on the case, to recognize what was occurring and allow it to con-

tinue? Baker's second letter to Barlow nowhere states just whom he considers Lovecraft's literary executor to be, and one tends to sympathize with Mrs. Gamwell, who remained puzzled and irritated after the exchange of letters. The main thing determined was that Barlow voluntarily was allowing Derleth to act for the literary portion of the estate, and this had already been operationally decided before Baker intervened.

The second obscuring factor is Barlow's continued passivity. From what evidence we have, I should judge that he gradually lost interest in Lovecraft as his attention centered on his own developing career from the early 1940's on.³⁵ Perhaps he also lacked the will to do more.

Whatever his faults, Derleth was vitally interested in Lovecraft. He had been characterized as a "doer", an active, hard-working person not likely to allow trivial niceties to stand in the way of an important goal.³⁶ Why, then, would he neglect to renew the Lovecraft copyrights? The answer is, he *could not*. According to copyright law, only certain persons may renew copyright: the author, his widow, his children, or the executor of his will (and, by extension, the literary executor if appointed and recognized by the executor of the will).³⁷ To renew, Derleth would have to show the Register of Copyrights unequivocal evidence that he or Arkham House had become Lovecraft's literary executor. And this, without a relinquishing statement from Barlow, he could not do.

We have no knowledge of any attempt that Albert Baker--if he was still living--may have made to renew these copyrights; as executor of Lovecraft's will, he was eligible to do so. And although divorced from Lovecraft, his widow may also have been eligible, but here again we have no evidence that she ever tried. One is entitled to doubt if Derleth would have enlisted the help of either; this would not only have reduced his control, but invited legal complications as well. Finally, Derleth himself died in 1971.

Who is Lovecraft's literary executor at present? Unless some interested party is willing to undertake a complicated, time-consuming and expensive litigation to establish himself, it is this layman's opinion that there is none. In any event, virtually all of the important Lovecraft works, save his letters, are now in the public domain. There is little left to fight about.³⁸

¹ H.P. Lovecraft, Marginalia (1944), p. 348.

² L. Sprague de Camp, Lovecraft: A Biography (1975), p. 430.

³ Samuel Kling, Your Will and What to Do About It (1971), p. 141.

⁴ Jones' Legal Forms, vol. 3 (1962), p. 1027.

⁵ H.P. Lovecraft, "Instructions in Case of Decease," p. 2: a facsimile, purportedly in Mrs. Gamwell's hand (in the John Hay Library).

⁶ George Smisor: contract between Robert Barlow and Mrs. Gamwell, signed March 26, 1937. This was found among the Barlow papers micro-filmed by Smisor after Barlow's death. This and other Barlow papers were supplied to me courtesy of Kenneth W. Faig, Jr., who is not responsible for opinions expressed herein.

⁷ De Camp, ibid, p. 421.

⁸ Smisor: letter, Baker to Barlow, Oct. 7, 1938.

⁹ De Camp, ibid, pp. 420 and 430; Willis Conover, Lovecraft at Last (1975), p. 226.

¹⁰ De Camp, ibid, p. 430.

¹¹ Robert A. Farmer, How to Avoid Problems with Your Will (1938), pp. 58-60.

¹² Smisor: letter, Barlow to Baker, October 12, 1938.

¹³ Smisor: letter, Baker to Barlow, October 7, 1938.

¹⁴ Robert A. Lowndes, Le Vombiteur (II, 8), April 1, 1939.

¹⁵ Smisor: letter, Barlow to Beck, July 2, 1938.

¹⁶ Redd Boggs, "Leaves: A Botanical Rarity," Fantasy Commentator (III, 1), Winter 1948-49, pp. 14-19.

¹⁷ Golden Atom, Winter 1943: "Notes for 'The Round Tower'," review of Ebony and Crystal, "Phaeton"; March 1940: "Astrophobus"; Dec. 1940: "Ad Criticos."

¹⁸ The Acolyte, Fall 1942: Excerpts from letters; Spring 1943: "Poetry and the Artistic Ideal"; Summer 1943: "Continuity", "Some notes on Interplanetary Fiction"; Fall 1943: "The Beast in the Cave"; Spring 1944: a rejected draft of "The Shadow over Innsmouth."

¹⁹ De Camp, ibid, p. 430.

²⁰ Smisor: letter, Gamwell to Barlow, July 27, 1937.

²¹ Smisor: letter, Gamwell to Barlow, July 8, 1938.

²² Robert A. Farmer, What You Should Know About Contracts (1969)p.18.

²³ Smisor: letter, Gamwell to Barlow, Nov. 13, 1938.

²⁴ Smisor: letter, Gamwell to Barlow, Dec. 30, 1938.

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- 25 August Derleth, letter in "Open House," Fantasy Commentator (II, 4), Fall 1947, p. 146.
- 26 Smisor: letter, Thomas to Barlow, Nov. 18, 1949.
- 27 Smisor: letter, Thomas to Barlow, March 24, 1950.
- 28 Letter, Thomas to Wetzel, Nov. 18, 1972.
- 29 Letter, Scott to Thomas, Sept. 12, 1950.
- 30 Fresco, Fall 1958.
- 31 Letter, Thomas to Wetzel, Nov. 18, 1972.
- 32 Derleth, Thirty Years of Arkham House (1970), p. 3.
- 33 Amuel Kling, The Complete Guide to Everyday Law (1970), p. 113.
- 34 Letter, E. Wayne Barlow to George T. Wetzel, Nov. 16, 1972.
- 35 De Camp, ibid, pp. 431-432.
- 36 A.L. Searles, personal communication.
- 37 Stanley Rothenburg, Legal Protection of Literature, Art, and Music (1960), pp. 126-127.
- 38 These last two paragraphs have been appended. In slightly different form this article appeared originally in the privately distributed journal Continuity (III, 1), October, 1976, pp 30-41. The author wishes to acknowledge helpful additions by Continuity's editor, Scott Connors.
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THE PSEUDONYMOUS LOVECRAFT

Willametta Keffer in 1958¹ gave HPL's name as Howard P(seudonym) Lovecraft, a facetious reference to his penchant for a multitude of pen names he once used on his published work in the amateur press. Though his middle name really was Phillips, not Pseudonym, there is something to be said for her humorous suggestion of what his middle initial "P" stood for.

Aside from that, the study of his pseudonyms herein is both a bibliographic inquiry and an annotative one: bibliographic in the ascertaining of all the different names used; annotative in asking various questions such as why they were used, where they were derived from, etc.

Upon what documentary evidence can we state that Lovecraft used pseudonyms at all and what they were?

Lovecraft himself wrote a correspondent in 1936² that years before he had written voluminously for the amateur press under a dozen or more different aliases. In a letter written in 1918³ he listed his verse published from 1914 to 1918 in the amateur press and gave three pseudonyms he had used: Lewis Theobald, Jr., Ward Phillips, and Ames Dorrance Rersley (this last given name being spelt in the A.J. as "Rowley," suggesting an erroneous reading of the original holographic letter spelling by the editor).

Laney and Evans published their Lovecraft bibliography in 1943⁴ in which they stated: "We were fortunate in being able to consult a story-list made in 1935 by Lovecraft himself." Only two Lovecraft pseudonyms were listed: Albert Frederick Willie and Lewis Theobald, Jr.

In an issue of The Acolyte (circa 1943)⁵ R.H. Barlow wrote:

"Lovecraft gave me this partial list of his pseudonyms about 1934. Most of these were used exclusively in amateur journals of the UAPA and NAPA, and many were used only once. This list may enable the industrious to track down items in the Fossil Library of Amateur Journalism, Benjamin Franklin Memorial, Philadelphia --where his own collection reposes. (I sent it there after his death, in fulfillment of his instructions.) Actually, the partial surviving copy--not original--of Lovecraft's "Instructions in Case of Decease" requested HPL's AJ collection to be forwarded to Edwin Hadly Smith, in whose honor the AJ collection in Philadelphia was named after. (Note by George Wetzel) 7 :--H. Little-

wit, Edward Softly, H. Paget-Lowe, Lawrence Appleton, John J. Jones, Archibald XXXX (surname forgotten by HPL), Lewis Theobald, Jr., Ward Phillips (from Howard Phillips Lovecraft).

Ray Zorn, in 1949,⁶ under "Pseudonyms of HPL" listed Humphrey Littlewit, Gent., Ward Phillips, Lewis Theobald, Jr., Augustus T. Swift, and Albert Frederick Willie. Zorn gave no source authority, but as Derleth contributed an article in a later issue, presumably he was the informant.

Of the two HPL bibliographies compiled and published by Joseph Payne Brennan (both in 1952)⁷, one had the following "Pseudonyms Used by Lovecraft": Humphrey Littlewit, Ward Phillips, Richard Raleigh, Edgar Softly, Augustus T. Swift, Lewis Theobald, Jr., and Albert Frederick Willie. Brennan acknowledged receiving assistance from Derleth in the preparation of his bibliography, so possibly Derleth again was the source authority.

How much credence can we give to Derleth as a source authority? In as much as he edited numerous letters of Lovecraft's for publication and knew from the Lovecraft correspondents that letters signed with certain pseudonyms (some of which were duplicated in all the foregoing listings) were Lovecraft's, he was certain at least of the number that later appeared in the three volumes of Selected Letters.

Is it possible that there are other Lovecraft pseudonyms, not given in the foregoing? I would say yes, and offer the following to support my contention:--

Researching the HPL material at Brown University in 1958 I wrote the following note along with others: "'Medusa: A Portrait' (poem) written or dated Nov. 29, 1921 by Theobaldus Senectissimus, Gent." (I believe it was a holographic MS.)

Some years later I purchased a December 1921 issue of The Tryout containing a poem, remarkably of the same name but by a "Jeremy Bishop". Eventually, in 1975, I got around to having the librarian at the John Hay compare the first four lines of both to see if they were identical poems.⁸ They were. He added that the poem also appeared in "The Gallomo," Nov. 29, 1921. This is the same poem published by Tom Collins as Medusa: A Portrait in Oct. 1975, a privately printed limited edition booklet. (Note by DWM)⁷

Then there is the pseudonym "Archibald XXXX (surname forgotten by Lovecraft)." While researching old AJs (amateur journals) in 1951-52 I found an Archibald Maynwarding, and published two poems of his in the Lovecraft Collectors Library.⁹ When Selected Letters appeared in 1965 my guess was vindicated on page 108 by a Lovecraft letter signed with that full name.

Other Lovecraft pseudonyms signed to letters are: L.P. Drawoh (a mirror-reversal of Howard P.L.), Timon Coriolanus, Epicurus Lackbrain, H. von Liebkraft, Lothario Honeycomb, and Horace Philter Moecraft.¹⁰ Some of these just might have been appended to some previously undetected AJ items. An ambitious researcher might well retrace my entire steps by looking for these names of which I was not aware when I initially delved into the amateur press collections of others.

DeCamp wrote me in 1975 that "I believe (without spending

a day digging out my original outlines and notes) that the attribution of 'Zoilus' to HPL was on the basis of internal evidence --his distinctive attitudes and the style in which they were set forth. I don't know of anybody else writing at that time who exhibited these characteristics."¹¹ He was referring to my questioning of his listing of "The Vivisector" columns by Zoilus in his HPL biography.¹² Of course I agree with him in his hypothetical conclusion. Remarkably enough, when I initially perused these Zoilus columns in 1952 I had a nagging sense of familiarity of having read the style somewhere before. The phrase "mechanistic universe" in one of them caught my eye and conjured up a vague suspicion from my subconscious that I felt was a jumping at conclusions. (For only Lovecraft in his articles in the amateur press appeared to be the sole user of that expression.) Now that deCamp went out on a limb (which I forbore to do) I think I see internal evidence which deCamp did not point to himself.

Zoilus states he is continuing "in the old private-critic rut so well ploughed...by Mr. Lovecraft," indicating both authors used the same analytical approach. There also is effusive laudation of Galpin and several other Lovecraft friends in the columns. Zoilus also exaggerately praises HPL as a genius, as a writer whose stories surpass Dunsany's in one breath; then in the next column, he belittles HPL by faulting the latter's plot in "Arthur Jermyn" as too obvious and the main characters as wooden.

These two clashes of viewpoint suggest a deliberate tongue in cheek attitude, perhaps even caricaturization. In "The Dead Bookworm" Lovecraft derides Bookworm's idiosyncrasies of temperance advocacy, bibliomania, and pedantry. In "On the Death of a Rhyming Critic," Lovecraft derides Macer for being an opinionated egotist and a classical pedant. As all these traits in both poems were to an extent possessed by Lovecraft himself, we can witness in them a rare example of a man both laughing at himself and admitting his own foibles. In the "Vivisector" columns, Zoilus's blunt criticism of HPL's fictional technique is a self-acknowledgement of weaknesses that later commentators have pointed out. But Zoilus's praise of HPL as a genius may or may not be taken as a piece of unblushing conceit.../—There is another likely explanation for the apparent clashes in the "Vivisector" columns, namely that "Zoilus" was a pen-name used not only by HPL but by others, in other words, a house name--a careful examination of the columns reveals changes in style consonant with the hypothesis of two or more authors sharing the "Zoilus" byline. Probably the passages praising HPL's works were written by one of his friends, while typically HPL took the pen to modestly berate his own writings --as usual, HPL was his harshest critic. (Note by DWM) 7

In 1958 Willametta Keffer advanced the hypothesis that the name "El Imparcial" was a Lovecraft pseudonym.¹² On what argument or what written item she based her assumption is not known to me as I have not been able to obtain a copy of her article. Someone still may turn up an item by El Imparcial and reprint it so that we may be able to make a tentative evaluation.

In 1956 Mrs. Keffer expressed her suspicion that James Lawrence Crowley was another HPL pseudonym, basing her contention on

its phonetic similarity to Ames Dorrance Rowley (or Rersley), a known HPL pseudonym. However, in 1972 she withdrew this highly possible name, informing me that James Laurence Crowley was a real person and one with whom she had been in correspondence before his death (and indicated that Crowley knew Lovecraft).¹³ All of which is included here to spare someone from following an unproductive false trail. /Apparently HPL's works appearing under the "Ames Dorrance Rowley" nom de plume were parodies of poems by Crowley. (Note by DWM) /

/Still another pseudonym of HPL was pointed out to me by Mr. John Stanley, Asst. John Hay Librarian, during a visit to Providence in October 1975: "Hammond Eggleston," a joint pen-name that HPL and Robert H. Barlow appended to the MS. of "Collapsing Cosmosea," published in Leaves II and in The Miskatonic 13. Nevertheless, it should be pointed out that Kenneth W. Faig had already identified this pseudonym in his listing of Lovecraft MSS. appearing in Nyctalops 6, in 1972. (Note by DWM) /

Why did Lovecraft employ any pseudonyms? He stated himself that "for my part I have always used my own name as a matter of course...except for hackwork too poor to be acknowledged."¹⁴ He was answering a question about professional markets.

What is strange is that despite this statement Lovecraft never used a pseudonym on any of his professionally published stories, not even on his "Herbert West: Reanimator," which he often referred to in his letters as "hackwork."¹⁵

On the other hand, a certain amount of his poetry published in the amateur press under various pseudonyms is surprisingly good and should have been nothing to be ashamed of. One has only to mention "A Cycle of Verse," "The House," and "Sir Thomas Tryout's Lament for the Vanished Spider," for example.

If the bulk of his poetry, several prose-poems, and story collaborations were pseudonymously authored because they were considered "hackwork", what conclusion might be drawn when we consult compilations of his AJ appearances and discover (with two known exceptions) that all his articles therein were signed with his real name? Would it imply that Lovecraft evaluated his articles as serious work, work more than a cut above hackwork? The depth of thought manifested in his philosophical articles obviously does stand up even now, yet those articles pertaining to the esoterica of amateur journalism are dated and hard to understand out of their milieu.

There is evidence of other amateur press contributors indulging in the use of pseudonyms during the same time Lovecraft did, which raises the question: was the usage a current fad? And if so, did Lovecraft merely engage in his own pseudonyms as he was caught up in that aspect of amateur journalism, as a sort of conformity, fad, joke, or whatever the motivation to imitate?

Among the pseudonyms used by AJers were "Lester Kirk" and "Dame Gossip," by C.W. Smith in The Tryout; "Elizabeth Berkeley," used on prose and poems by Winifred Virginia Jackson (née Jordan); "Consul Hastings," under which Alfred Galpin wrote; and "Randolph St. John," used by Reinhart Kleiner.¹⁶

Despite the vogue of using pseudonyms among certain of the amateur press fraternity (of which persons significantly enough all were close friends of Lovecraft's--did he perhaps start the fad with his epistolar nomen de plume?), Lovecraft suddenly stopped using them almost entirely after 1921. At least that is the conclusion that can be drawn from available bibliographic listings of his AJ work.

But why? I think a conjecture might be formed after an examination of the following quotations.

Helene Hoffman Cole wrote in 1919 that--

"H.P. Lovecraft, Edward Softly and Ward Phillips suffered a nervous collapse early in the year. It will take considerably more than that to incapacitate *one* of the purest of amateurs."¹⁷ (George Wetzel's italics.)

Then George Houtain wrote of a trip to an amusement park with Lovecraft in 1921:

"We all journeyed to Rivers Beach...Here Lovecraft...did the 85 foot drop switch-back three times in conclusion and complained bitterly to the tameness of it all...Picture if you will the philosophical form of one Henry Paget-Lowe, Edward Softly, Theobald, Jr., H.P.L., popping out and bounding toward us."¹⁸

And the columnist Zoilus wrote in 1921, letting the cat out of the bag amidst a critique:

"Another than Lovecraft had recourse to a pseudonym to cloak recent work..."¹⁹

If friends (and himself--if Zoilus was indeed a Lovecraft pseudonym) revealed that he was using particular pseudonyms, then there was no longer either any use or need to hide behind them in print. Nor was there any point in concocting new ones if some AJ editor or writer later publicly unmasked him.

Before Lovecraft's employment of pseudonyms came to an end he had attempted to create the fiction that two of them were real entities by supplying fake biographies of them in the amateur press.

The first one was an "autobiography" anent Humphrey Littlewit:

"Tho many of my readers have at times observ'd and remark'd a Sort of antique Flow in my State of Writing, it hath pleased me to pass amongst the members of this Generation as a young Man, giving out the fiction that I was born in 1890 in America. I am now, however, resolv'd to unburthen myself of a secret which I have hitherto kept thro' Dread of Incredulity; and to impart to the Publick a true knowledge of my long years, in order to gratify their taste of authentick Information of an Age with whose famous Personages I was on familiar terms. Be it then known that I was born on the family Estate in Devonshire, of the 10th day of August, 1690, (or in the new Gregorian Style of Reckoning, in the 20th of August) being therefore now in my 228th year..."²⁰

The second 'biography' to appear was that of Lewis Theobald, Jr.,

"...Mr. Theobald...is a scholar and poet of considerable attainments, and was born a little over 35 years ago in Blavely, France, where his parents were living at the time. When Mr. Theobald was 10 years of age the family returned to England... Mr. Theobald...claims an even closer connection with English letters...and says...the Lewis Theobald mentioned in Pope's 'Dunciad' was his great-grandmother's uncle. Several years ago Mr. Theobald came to America and acted until quite recently as third assistant librarian of the Providence Public Library, where Mr. Lovecraft made his acquaintance."²¹ Readers interested in learning more about the original Lewis Theobald and Lovecraft's probable motivation for adopting this name are referred to R. Boerem's excellent essay "The First Lewis Theobald," in Essays Lovecraftian (Darrell Schweitzer, ed.) from T-K Graphics. (Note by DWM)

If Lovecraft attempted to breath some life into Littlewit and Theobald, he tried to a lesser extent with the Ward Phillips pseudonym. In a 1921 issue of the United Amateur appeared a story by Frank Belknap Long which was illustrated by no other than Ward Phillips! And in the January 1919 issue of the National Amateur Ward Phillips co-authored a letter with another HPL alias--Ed Softly.

The pseudonymous Lewis Theobald publicly gave his age as 38; but in private correspondence he apparently was an aged man, to judge from his constant references to his friends as his grandchildren and to himself as "Grandpa Theobald." Lovecraft himself admitted in 1927²² that when younger (1920 or so?) he affected "premature elderliness" in his clothing and speech. The similarities between Lovecraft and Theobald are too obvious to make comment, except to wonder if Theobald was his alter ego.

I long entertained a suspicion that the use of pseudonyms by HPL may have been suggested to him by C.W. Smith, and that Lovecraft started the fad among his friends in amateur journalism. The basis for this is as follows: Smith wrote in 1943;

"About 1911 Edith Minter wanted me to print a memorial to Susan B. Robbins...my eyes were bothering me and I didn't think they could stand the strain of setting type. I chewed over the matter some time and thought I can give my eyes a tryout anyway. And that's how Tryout came to be named in 1914. Calling myself Tryout was the suggestion of Howard P. Lovecraft. One of my letters to him was signed Tryout and it pleased him. Since then I have signed all my letters Tryout..."²³

When Smith first signed himself Tryout in his letters is not known, but presumably circa 1914. With the meagre copies of Tryout at hand I can only find the Dec. 1921 wherein he refers to himself as "Tryout."

The earliest known use of the Theobald pseudonym occurred in the Feb. 1916 issue of The Providence Amateur. Smith at this time was 64 years old and a grandfather. The resemblance between Smith and Theobald is suggestive but not certain.

Where did Lovecraft obtain his pseudonyms? The late Jack Grill (a great collector of anything Lovecraftian) wrote me (circa December 1957) that--

"the Eddys told me that HP got his aliases reading the odd names on old tombstones while wandering around old graveyards."²⁴

What names they were we may never know. I would guess ones like Theobald and Littlewit. Others like Ward Phillips, Henry Paget-Lowe, and L.P. Drawoh are merely variants fashioned from HPL's real name. As for Augustus T. Swift, I have long thought it arose from the "great (august, that is) T(om) Swift," a boy hero whose books of scientific inventions were popular in Lovecraft's day.

¹ The Fossil, July 1953; Keffer to Jack Grill (letter) Nov. 28, 1958.

² Lovecraft at Last, Willis Conover, 1975, page 30.

³ Selected Letters I, pp 56-60.

⁴ H.P. Lovecraft-A Tentative Bibliography, by Francis T. Laney and William Evans, Winter 1943

⁵ "Pseudonyms of H.P. Lovecraft," by R.H. Barlow, The Acolyte, circa 1943.

⁶ "Pseudonyms of HPL," by Ray Zorn, The Lovecraft Collector, Jan. 1949.

⁷ H.P. Lovecraft: A Bibliography, by Joseph Payne Brennan, revised edition, 1952.

⁸ John H. Stanley (Brown U. librarian) to Wetzel (letter), August 25, 1975.

⁹ Selected Letters I, 1965, pp 86, 88, 112, 142, 144, 155, etc.

¹⁰ Lovecraft Collectors Library; Selected Letters I, p. 108.

¹¹ DeCamp to Wetzel (letter), Sept. 5, 1975.

¹² "The Vivisector," by Zoilus, The Wolverine No. 9 (March 1921), No. 10 (June 1921), No. 11 (Nov 1921).

¹³ Keffer to Wetzel (letter) Jan 23, 1956 and April 18, 1972.

¹⁴ Selected Letters I, pp 161-2.

¹⁵ Selected Letters I, pp 152, 157-8, 167, 201.

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- 16 The Tryout, July 1921; Laney-Evans biblio. op. cit.; Galpin to Wetzel (letter) Nov. 15, 1957; Keffer in The Fossil.
- 17 "News Notes," The Tryout, March 1919.
- 18 National Tribute, August 1921.
- 19 Zoilus, The Wolverine, November 1921.
- 20 "A reminiscence of Dr. Samuel Johnson," The United Amateur, Nov. 1917.
- 21 "News Notes," The United Amateur, March 1918.
- 22 Selected Letters I, p. 208.
- 23 Boy's Herald, Jan. 1943.
- 24 Grill to Wetzel (letter) circa Dec. 1957; also in Huiloxopetl No. 8, ed. Meade Frierson, 1972, p. 36
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COPYRIGHT PROBLEMS OF THE LOVECRAFT LITERARY ESTATE

Who owns the H.P. Lovecraft literary estate? A great deal of hearsay built up over the years names the late August Derleth as the owner. Sam Moskowitz said that "August W. Derleth had, shortly after Lovecraft's death, acquired rights to most of the latter's works."¹ James Warren Thomas (who wrote a master's thesis on HPL) believed that Derleth and/or Arkham House apparently owned the rights.² Robert W. Lowndes heard "some rumours about a hassle over the rights to Lovecraft material, between Derleth-Wandrei and Robert Barlow."³ Manly Wade Wellman wrote that he always supposed that August Derleth had some sort of title to Lovecraft's writings, both finished and unfinished.⁴

One or two Lovecraft scholars consider even now that Sonia Greene Davis, Lovecraft's estranged wife, had the best legal claim. Even Derleth, I understand, immediately after HPL's death left the impression on others that she was Lovecraft's only heir and legal claimant to his literary estate.

Others, like myself, desiring to either reprint or quote from HPL's works were thoroughly confused as to whom to apply. Asking the wrong person and receiving permission, one still ran the risk of a charge of infringement from some other claimant. Then, this question and its answer is of wide spread literary interest, considering HPL's international status as a writer, to judge by all the foreign reprint editions of his work.

Accordingly, I solicited statements and facts, at times unsuccessfully, by mail from parties I felt were informed on specific areas of the question. When I could, I also obtained photocopies not only of pertinent legal documents, but relevant statements in published books and magazines. Finally, a great many visits were made to the U.S. Copyright Office in Alexandria, Virginia, outside of Washington, D.C., where I obtained a great deal of information.

To begin with, Sonia Davis, and now her heirs--are they the only legitimate claimants? Lovecraft married her on March 3, 1924. After several years of marriage, they separated and Lovecraft filed for divorce. The record in the Family Court of Providence, R.I., states that the case was heard on March 5, 1929, but "no final decree (was) entered."⁵ The marriage was never dissolved.

Prior to his marriage, Lovecraft had drawn up a will on August 12, 1912, leaving his entire estate to blood relatives.⁶ In most

states marriage automatically revokes a will written by the husband prior to the marriage. But Rhode Island is one of the few states where it does not.⁷ Derleth reversed his opinion regarding Sonia's claim to the Lovecraft literary estate when he threatened action against her some ten years after Lovecraft's death if she printed any of his personal letters to her.⁸

If the Rhode Island statutes are correct, we might likewise discount her claim. In order to evaluate other possible claimants, I obtained photocopies of both HPL's will and that of his aunt, Mrs. Annie E. Phillips Gamwell.

Under Lovecraft's 1912 will, Mrs. Gamwell, the only surviving heir named in it, came into possession of his entire estate, save one small portion of it soon to be discussed. In the estate's inventory there was no listing of his literary property.⁹

During the few years Mrs. Gamwell outlived Lovecraft, she could well have disposed of his uncopyrighted material verbally. But to dispose of his copyrighted work she would have had to put it in writing. As there was no immediate way to determine this, I reexamined her will for any clues. She died on January 29, 1941, with the court naming Ralph Greenlaw as her executor, as Edna Lewis declined to officiate.¹⁰ Her estate was divided in equal shares between Ethel Morrish and Edna Lewis. Other than that, Mrs. Gamwell willed *only* her royalties from The Outsider and Others to Derleth and Donald Wandrei. Nothing was said therein about copyrights or unpublished material.

In reference to that will, Derleth later publicly stated that "Mrs. Gamwell left a will in which the income from the Lovecraft writing was left to Donald Wandrei and myself."¹¹ When Derleth expanded the original article in which this statement is excerpted, and reprinted in as an Arkham House chapbook, he did not only not repeat this statement, but the entire section of which it formed a part was likewise expunged.

The statement by Derleth is inaccurate if the Gamwell will is re-read, particularly the passage relating to Derleth and Wandrei, because she made a specific bequest to them (royalties from the sale of The Outsider and Others), and not "income from the Lovecraft writing," a statement that is misleading.

There is also the public disclaimer that Derleth made, apparently for the record, in 1947, that "at no time (had he) claimed possession or acquisition of the rights to H.P. Lovecraft work."¹² This should have clarified for all time the belief commonly held by many that Derleth owned the Lovecraft work. But it obviously did not, and Derleth was appraised of it in 1965, indirectly, by James Warren Thomas.

Maurice Levy, a French scholar, desired to utilize some portions of Thomas' unpublished thesis, and presumably some of the unpublished letters of Lovecraft's quoted therein. Thomas advised Levy to clear permission to do so with Derleth, adding that it was his understanding that Derleth owned the literary rights to the Lovecraft estate.¹³

Thomas mailed Derleth a carbon copy of his own reply to Levy, so that Derleth was aware of Thomas' belief that Derleth owned the Lovecraft rights. Derleth never bothered to write Thomas and refute this misconception, if it was a misconception.

Hoping to confirm the validity of Thomas' belief, I communicated

with Forrest Hartmann, the executor of the Derleth estate. What excuse I used for my inquiry is not important. Hartmann responded in 1971 that the Lovecraft literary works were a part of the Derleth estate. This claim was at variance with a growing suspicion I had that Morrish and Lewis had the only rights to the Lovecraft rights. A subsequent inquiry I made to Mrs. Morrish went unanswered.¹⁴ Miss Lewis I could not locate.

I pursued several other blind alleys, the nature of which are not worth mentioning. Finally, I returned to Hartmann, and this time told him right out that I was researching all relevant data regarding the Lovecraft literary estate which I intended to couple at that time with a biographical sketch of Lovecraft for Meade Frierson's HPL tribute. I solicited from Hartmann the documentary basis upon which the Derleth estate laid its claim to the Lovecraft rights.¹⁵ He refused to divulge anything.

Having exhausted at the time all private lines of inquiry, I now utilized the public records in the U.S. Copyright Office. There I went through various file drawers containing Assignee/Assignor records, Copyright Registration cards, and Copyright Renewal applications, plus their microfilms of documents pertinent to copyright matters of many types. What I discovered propounded more puzzles and questions.

To begin with, despite Derleth's disclaimer of acquisition of HPL's copyrights in the fall of 1947, it must have been practically on the heels of that disclaimer, to judge by the date of a certain document in the Copyright Office (October 9, 1947), that he and Wandrei had assigned to them by Weird Tales all its interest "...with the exception of magazine serial rights according to previous agreement as registered copyright proprietors in and to the copyrights of the following stories, all by Howard Phillips Lovecraft..."¹⁶ What followed was a list of forty-six stories, from which only "Imprisoned with the Pharoahs" was lacking.¹⁶

Every Lovecraft scholar to whom I either sent a photocopy of this assignment or expounded upon its contents knew nothing of its existence. Nor had I myself ever read a hint of its existence among the magazines in the fantasy field, including Fantasy Commentator wherein Derleth had so shortly before disclaimed ownership of any of HPL's works.

To my knowledge Barlow, the purported literary executor of the Lovecraft work, likewise never knew of this assignment. Derleth publicly referred to Arkham House in 1949 as representing the estate, which makes no sense as there is presently no documentation to that effect.¹⁷ Was he basing this office of representing the estate on the fact he had bought the Lovecraft copyrights from Weird Tales?

This assignment from Weird Tales to Derleth and Wandrei raises many more knotty questions. To begin with, how could Weird Tales sell to Derleth and Wandrei (or anyone else, for that matter) the subsidiary rights to thirty-five of the stories on that list of forty-six?

To try to answer some of these questions, we must decide just what Weird Tales' business policy was with respect to their writers. Wellman wrote me that when Farnsworth Wright was editor, Weird Tales bought all rights, though he never had any trouble getting them back on request.¹⁸

The late Otis Adelbart Kline wrote that Weird Tales "bought all rights, usually from the new writers...as they couldn't get away with this with the writers who knew something about protecting their subsidiary rights...I insisted in my rights from the start"¹⁹ Kline, who was a literary agent for Robert E. Howard, among others, recalled that when the latter became better informed he demanded that Weird Tales would henceforth get only his serial rights.

Information on Lovecraft's copyright sales to Weird Tales and other professional magazines comes entirely from the five volumes of his letters. Prior to 1926 Weird Tales bought outright all rights to eleven of Lovecraft's stories.²⁰ There is no question from Lovecraft's own statement that beginning with January, 1926, he sold Weird Tales only serial rights.

Additional proof that HPL retained his subsidiary rights appears in other of his published letters. Thus he sold anthological rights to three of his stories that had been originally published by Weird Tales.²¹ In lieu of money he accepted certain back issues of Weird Tales in return for their reprinting certain of his stories.²² He also retained the subsidiary rights to stories he sold Home Brew, for Weird Tales paid him to reprint them.²³ HPL refused to sell Weird Tales the radio rights to a submitted story along with the serial rights.²⁴

HPL told a correspondent that Weird Tales had "waived all book rights on such material (of his) as had appear'd in W.T."²⁵ Under the circumstances, the book rights returned to him had to be those eleven stories sold before 1926. This waiver of book rights amounted to a license from Weird Tales to Lovecraft regarding them only; Weird Tales still retained title to the remaining subsidiary rights of said eleven stories.

On the basis of this waiver, Lovecraft could legally include any or all of those eleven stories, along with any others, when he tried to market a book collection of his stories to three different publishers.²⁶

In the last years of his life, HPL allowed first Julius Schwartz, then Wilfred B. Talman, and then Derleth to attempt to market a book collection of his stories. Eventually Derleth used this marketing permission as a license to publish the two omnibuses of HPL's tales.

Derleth and Wandrei sold the movie rights to three HPL stories, sold to them by Weird Tales, in 1965. They also sold the movie rights to "The Colour Out of Space" that year, but I found no record of it having been transferred to them by Amazing Stories or anyone else. Interestingly enough, "The Dreams in the Witch House" and "The Dunwich Horror," two of the stories which they sold the movie rights to were apparently in the public domain during 1965, as I found no record of their copyright renewal later on in my investigations.²⁷

One writer on copyright law states that "The author, his widow... and children, executor...and next of kin are entitled to the renewal right...Notwithstanding the fact that the original copyright is not owned by the author but his assignee."²⁸ According to this, all the stories that Lovecraft sold to Weird Tales after January, 1926, could only have been renewed by himself, or Sonia Greene Davis--he had no children--so that the executor of his estate, Albert Baker, would have had the next right, or lastly his next of kin (which is somewhat far

fetched, as there does not appear to have been any once Mrs. Gamwell passed on); and Barlow having the power as a literary executor, if that office was legally recognized, which it appears it was not.

I went through the copyright renewal files at the Copyright Office, and after checking about twenty Lovecraft stories published originally in Weird Tales, and finding no renewal, I quit. Someone was terribly negligent in protecting HPL material from going into the public domain.

If Barlow alone had the power to renew the copyrights, his death in 1951 would preclude him from blame, though the renewals should have started that year. None the less, we should examine his claim to the literary executor title anyway. Barlow's appointment by HPL rests on a document that Lovecraft had titled "Instructions in Case of Decease,"²⁹ and which Barlow described as a "manuscript memorandum"³⁰ and which technically might be termed as a codicil to HPL's 1912 will.

That document is of extremely questionable validity. It lacks the formal construction as in the original will as required by law: that is, it was not dated nor signed by witnesses. Worse yet, what survives today is but a copy in Mrs. Gamwell's handwriting, not the original holographic "Instructions," from which facsimile there appears to be missing one, if not more, pages. Finally, the original manuscript was never submitted for probate.

What powers this document contained--the testamentary distribution of personal property and the collection of a pecuniary debt--clearly infringed upon the testamentary provisions already conceded to Baker, the executor of HPL's 1912 will. Nowhere did the "Instructions" specifically instruct Barlow to sell unpublished manuscripts, renew copyrights, or take action against infringers--the chores one would associate with a literary executor. And if this were not enough to make it totally impotent legally, there is the fact that Barlow was disqualified by law as an executor of any part of the estate due to his being a minor. The best that could be said of the document is that it was precatory.

I feel that Derleth read this document sometime during Barlow's lifetime, or at least the facsimile made by Mrs. Gamwell, now in the John Hay Library. This is because there is a note penciled on the reverse of page two by someone named "August" and addressed to a "Bob". The note asks if certain manuscript fragments were complete stories or plans for stories.

If Derleth ever saw this facsimile, it may have encouraged him to dispute Barlow's claim to the literary executor office. That there was a conflict of two persons attempting to exercise the prerogatives of a literary executor to the Lovecraft work is made clear by Baker's letters to Barlow regarding it.³¹

If we could locate the complete holographic "Instructions," might we not find on the pages or pages missing from the facsimile some additional directives to Barlow establishing his powers of literary executor more clearly than in the portion presently available? But where to look for it? Mrs. Gamwell retained the holograph--what happened to it?

I think that a clue might exist in the following excerpt of a letter Steve Eisner wrote me:

Am enclosing the promised list of material that H. Douglas Dana turned over to the Hay Library. He acquired much of it from the executors of the estate of Mrs. Gamwell. She died, as you know, in 1941 and upon learning of her demise, Dana went to the house at 66 College Street to see if anything of value had been overlooked when Barlow went through H.P.L.'s papers in 1937. You can imagine his surprise and consternation when he found that the remaining Lovecraft papers (among them dozens of manuscripts) had been dumped in a large pile on the floor and were about to be committed to the furnace. A hasty deal was transacted (I believe for \$75) and Dana came away with a collector's coup. However, Mr. Dana is not only a scholar, but a true lover of books. He made the entire acquisition available to Brown at roughly his cost. The university hesitated, but eventually unwrapped enough of the red tape to make the purchase. All of the listed items are now a part of the Hay Library Lovecraft Collection along with those deposited by Barlow.³²

Could the holograph of the "Instructions" have been already placed in that furnace and consumed just before Dana arrived? We have no way of really knowing unless we could find and question that furnace stoker. Dana, being deceased, is eliminated as a source of naming that person.

There exists some circumstantial evidence that Dana did retrieve the "Instructions" holograph among his purchase; if so, then that document might have survived and is in the hands of a collector somewhere. Part of the basis of this supposition is Eisner's own statement that Dana sold the material to Brown at roughly his own cost--not exactly his own cost. The implication of this is that it was less because he held some things back.

The other half of this theory rests on the fact that Dana later sold through his bookstore certain associational material pertaining to HPL. Ken Faig once told me that a friend of his had purchased from Dana's widow two letters of Whipple Phillips to his grandson HPL.

The late Jack Grill, a great collector of Lovecraftiana, related to me in several letters descriptions of several unusual HPL items he had collected: a letter to HPL from his grandfather, dated February 20, 1899; the holographic The Illustrated Scripture History for the Young (c. 1897) made by HPL; a travel essay typed--claimed Grill--by HPL himself on his old typewriter; and, even more provocative to my theory, several "old original mounted" photographs of Winfield Lovecraft, the house in which HPL was born (relatives in the foreground), and a snapshot of the old school where HPL's grandfather had been a teacher.³³

Then there was another curious holographic item of juvenilia made by HPL: his astronomic notebook which the late Dr. David H. Keller obtained somewhere and later sold to Grill.³⁴

All of these items came from somewhere. And what more logical place than from the Gamwell household where they had been retained as family keepsakes? The "Instructions" document could well have been among them and later rescued from the fire by Dana and sold by himself or his widow.

Derleth, in the midst of a history of Arkham House, casually interpolated the information that "Robert H. Barlow, whom Lovecraft had

named his literary executor (an obligation that came to Arkham House after Barlow's death in 1951)..."³⁵ The question arises: by what means was this so-called obligation passed to Arkham House? Did Barlow pass it on to Derleth or Arkham House by some written instrument?

I discussed Robert Barlow with his brother, E. Wayne Barlow. Wayne wrote me that to the best of his knowledge his brother had never transferred his executorship to anyone else. He also didn't know whether Robert left a will. Wayne added that both he and his father waived all interest in Robert's estate so that the mother received it.³⁶

Webb and Beanco explain "When a person dies without a valid will, it must be determined to whom his property should descend... if there are no descendants and no surviving spouse, the entire estate goes to the parents, brothers, and sisters."³⁷

It seems fairly clear from the circumstances related by Wayne Barlow, when collated with the Webb-Beanco quotation, that there was an intestate distribution of Robert Barlow's estate--which is to say that he left no will.

It is obvious that Derleth exercised some of the prerogatives of HPL's literary executor even while Barlow, the other literary executor, was still alive. Derleth threatened a number of people he felt had or might infringe upon Lovecraft's copyrights, the Corwin Stickney incident coming to mind immediately, followed by his admonitions to Sonia Greene Davis who, in a black moment of bitterness at such a refusal, burnt hundreds of HPL's letters to her.

Derleth exercised another prerogative of a literary executor in that he obtained publication for several unpublished Lovecraft manuscripts and his letters.

But the one prerogative of an executor that Derleth never exercised was that of renewing the copyrights on HPL's published stories and poems. To me that is indeed strange and makes no sense. Derleth was certainly not ignorant of the legal and formal details necessary to make copyright renewal. The renewal registration file in the Copyright Office attest to the fact that where his own fiction was concerned Derleth carefully saw to it that his work was protected and renewed.³⁸ Was it because Derleth could not satisfy the Copyright Office that he was legally recognized as the executor of HPL's literary estate, Derleth assertions to the contrary?

It may seem anti-climatic to relate what I now did: I sent a fee and a request to the Copyright Office for the name of the present copyright proprietor of "The Rats in the Walls" and its renewal date, if any. I desired authoritative verification of my own research in their files that there never were any renewals on some twenty Lovecraft stories published in Weird Tales which I had checked. By inference, my own findings would suggest by extension that all other HPL stories in Weird Tales lacked renewal.

The Copyright Office answered after several months, stating in their certified search report that they could discover no renewal for "The Rats in the Walls."³⁹ As for its present owner, they listed as possible assignees/assignors the names of H.P. Lovecraft, Derleth, Donald Wandrei, Weird Tales, and a host of other people whose only

connection with the Lovecraft opus according to other Copyright Office documents which I later looked up was their involvement in the sale and bankruptcy proceedings of that magazine.⁴⁰

When I discussed this startling corroboration of my own copyright research to a correspondent of mine, he argued that The Outsider and Others, copyrighted in 1939, had been renewed in 1966 in a reprint edition and that the HPL stories therein were thus still protected.

My debate with him over this and other points is worth repeating. Copyright law is explicit about renewal as to when and only when the original copyright can be renewed and extended.⁴¹ A composite copyright such as the 1939 registration of The Outsider and Others could not extend the duration of, say, for example, "Dagon" whose original copyright period of twenty-eight years began in 1923 and ended in 1951, and could not be renewed ahead of time in 1939; but only in the year 1950.

To make my point further, I directed his attention to The Dunwich Horror and Others, collected and copyrighted by Derleth in 1963. On the copyright page therein, "The Rats in the Walls" is listed as having been copyrighted by the Rural Publishing Company in 1924, and copyrighted as a reprint in 1939 and 1945 by Derleth and Wandrei. These latter dates were on the new material and the composite copyright, not the renewal date of 1951.

Is "Imprisoned with the Pharoahs" part of the Lovecraft literary estate? True, it was written by HPL. The story is reprinted in Marginalia (1943) with a footnote explaining that HPL had ghostwritten the story for Houdini. The opening portion of the story was an account of an allegedly true experience Houdini swore occurred to him and which J.C. Henneberger of Weird Tales passed on to Lovecraft to be amplified and formulated.⁴²

One Lovecraft letter speaks of this story as a collaborative effort.⁴³ In a later letter he wrote "This story may appear without my name."⁴⁴ The copy of Weird Tales I examined recently for May-June-July 1924 credited the story as by Houdini alone.

What was the financial relationship between Weird Tales and Houdini? Did he pay them a part of the money paid to HPL just to have something with his name on it, to satisfy his ego? (HPL called him "supremely egotistical."⁴⁵) Somewhere in the last few years I read that Houdini actually had a financial interest or investment in Weird Tales which might explain some of the arrangement: that as part owner he could, and did, ask for some work bearing his name to appear in the magazine. Two other issues of Weird Tales preceding this one have stories purporting to be written by Houdini but which I now suspect were ghostwritten for him.⁴⁶

The next question is whether "Imprisoned with the Pharoahs" can be considered as a work done for hire. Henneberger paid HPL \$100 for the manuscript but nothing was said if Houdini was paid a collaborator's fee.⁴⁷

If done for hire (for Houdini), "There have been no test cases to determine the court's attitude, but a member of the Copyright Office once suggested that if the 'ghost'...is sought out by the author to do the job for 'hire', he stands in the shoes of an employee."⁴⁸ A concurring opinion is that "the employer, not the creator of the work,

owns the copyright, and is the 'proprietor' of it."⁴⁹

Lovecraft stated that prior to 1926 Weird Tales bought all rights from him. If "Imprisoned with the Pharoahs" was truly a collaborative effort between Houdini and Lovecraft and not a job done for hire by Lovecraft, we can be fairly certain then that Weird Tales bought it outright as it did all other of HPL's stories prior to 1926.

On the other hand, why is it conspicuously absent from the list of Lovecraft stories Weird Tales sold the copyrights to Derleth and Wandrei in 1947? There is a strong implication by all this that it was a "done for hire" job and that Houdini, and now his heirs, own the copyright to it. Though its copyright was not renewed separately it is possible that it was protected under a later composite renewal of Weird Tales in the 1950s.

Of the composite renewals of Weird Tales I checked the Copyright Office files for the years 1951-1952-1953 and found the composite or entire contents of Weird Tales for the issues April 1923 through March 1926. In 1954 they renewed nothing. In 1956 they renewed only the April 1930 issue. I never checked the 1959-1960 years. Skipping to 1961 I found the January 1934 issue alone renewed. And from 1962 to 1967 they renewed nothing at all.

Another day I returned to the Copyright Office and read documents pertinent to the sale and bankruptcy of Weird Tales. On October 3, 1952 Popular Fiction Publishing Company assigned the composite copyrights of Weird Tales (March 1923 to October 1938) to Short Stories. That company went bankrupt and an auction was held on September 13, 1955 at which Marvin Isaacs in turn sold to Steinberg Press for \$925 Weird Tales and Short Stories, including their titles, bound volumes of past issues, and their copyrights. Finally, on July 12, 1956, Steinberg Press sold all the preceeding assets to Color Printing Corporation for \$100.³⁸ (The bound volumes of Weird Tales alone were a steal at that price.) Excluding "Imprisoned with the Pharoahs," the copyrights to all other Lovecraft stories had already been transferred to Derleth and Wandrei in 1947 before the magazine owners went bankrupt.

My friendly antagonist, upon hearing of my discovery of the composite renewals of Weird Tales, argued now that, despite the error of the executor of the Lovecraft or Gamwell estate in overlooking the renewals, the actions of the new owners of Weird Tales had nevertheless saved all the Lovecraft stories in that magazine from going into the public domain. I now quoted him the following from Nicholson that a good reason

...in favor of the author's having the copyright in his own name... (was that) if the publisher becomes bankrupt a copyright in the name of the author is not transferable to the receiver.⁵⁰

Weird Tales in 1947 sold all rights to Derleth and Wandrei for forty-six Lovecraft stories. As already pointed out, Weird Tales was in error in assuming they owned all rights to those forty-six stories. Only in eleven of those stories had HPL sold them all rights prior to 1926, after which he had become wiser as to retaining subsidiary rights. There had been a letter that passed between Weird Tales and Derleth just previous to that 1947 assignment. A copy of it may exist in the Derleth papers in the State Historical Society of Wisconsin.

But no copy is in the Copyright Office files. That letter might clear up whether or not Weird Tales considered Derleth and Wandrei as literary executors of the Lovecraft estate or just simply as buyers for all the HPL rights in the free market place.

The fact that Derleth and Wandrei did not renew the HPL copyrights would point to their not qualifying as representatives of the Lovecraft or Gamwell estate, Derleth's several assertions to that designation to the contrary. But once the HPL copyrights were transferred, they were out of legal title of Weird Tales. In my opinion this would then remove them from inclusion in the composite renewals of Weird Tales of April 1923 to March 1926 made in 1951-1953, several years after the 1947 assignment.

Are HPL contributions to magazines of the so-called amateur press fraternity part of the Lovecraft estate? To attempt an answer, I must precede it with some history. When I initially began my compilation of some of HPL's AJ or amateur press appearances, I was immediately struck by the obvious absence of a copyright notice. Having some familiarity with copyright law, I jumped to the conclusion that their entire contents were thus in public domain, without determining whether they were "published" or "privately circulated."⁵¹ A result of this conclusion was that I conceived the idea of selecting the best Lovecraft items and reissuing them in a booklet.

However, I had a temporary reluctance to proceed due to my recollection of the Corwin Stickney incident. I felt that Derleth was wrong in that incident. Yet I had no wish to provoke a man that a professional writer like de Camp had likewise found to be bellicose. As a practicality, I asked Derleth in 1952 if he had any objections to my reprinting certain AJ material of HPL's. I included in my letter my observations that the specifically desired items were in uncopyrighted amateur journals. When Derleth responded to my inquiry, he made only oblique remarks about the lack of copyright on the AJs. Nor did he demand a reprint fee from me.

This last seems strange in light of what de Camp's experience with Derleth had been. De Camp stated of Derleth that "He demanded reprint fees even when the stories had long been in public domain. Anthologists (including the present writer) wishing to keep on good terms with Derleth for the sake of future business, usually went along with his demands."⁵²

I do not think that Derleth let me off on the matter of reprint fees which he charged others because he felt generous towards me. My other experiences with Derleth incline me to the view that because I had done my research personally on those AJs, that Derleth did not desire to buck me and create an issue that would cause others to look into my allegations of the vast amount of Lovecraft material existing in public domain through its appearance in uncopyrighted amateur journals.

The Stickney incident should be mentioned here for several reasons, foremost being that it shows Derleth exercised the prerogative of a literary executor for which he apparently had no legal authority. Corwin Stickney was a fan who decided, upon hearing of HPL's death, to publish a memorial chapbook of poetry in 1937. When it appeared, Derleth accused him of infringement of its eight poems by HPL. Moskowitz,

who wrote up the story, was of the opinion that the items were in public domain.⁵³

In rebuttal, Derleth replied that "a majority of the poems and pieces published in fan publications under H.P. Lovecraft's byline appeared previously in other magazines unknown to fan editors, and many of them were and are under copyright."⁵² Unfortunately for our consideration, Derleth never identified those previously copyrighted magazines he alluded to. Nor did he indicate if all or only some of the Lovecraft items Stickney purportedly pirated were under copyright.

All of those items, however, are listed in the Chalker compilation of HPL's printed appearances which Derleth had to have seen since he published it in 1966 in The Dark Brotherhood and Other Pieces. In the Chalker listing, all of the HPL items reprinted by Stickney, save for "The Dweller," had originally appeared in magazines lacking copyright. The professional, copyrighted appearances of the same items according to the Chalker listing were later, post-dating Stickney's use and the uncopyrighted AJ appearances. Chalker's listing, accepted by Derleth for publication, thus apparently gave the lie to Derleth's assertion that the items Stickney used were under copyright.

One last point: Derleth did have some limited control over some Lovecraft material just before and after HPL's death--presumably a license to market HPL stories in a book collection--but no authority over any Lovecraft poems or articles to my knowledge.

On the copyright pages of both Beyond the Wall of Sleep (1943) and Something about Cats and Other Pieces (1949), Derleth lists a number of magazines of the amateur journalism field as having copyright notices and from which he reprinted certain Lovecraft items. In the many years of my own Lovecraft bibliographic researches I have handled many a copy of these magazines, and I have never seen a copyright notice in any one of them, except perhaps Driftwind. I have no idea why Derleth would want to mislead with fraudulent information, and can only conclude that he relied on someone who fed him spurious data.

Just to be certain, I rechecked certain of those titles I recalled as lacking copyright protection, Dirk Mosig has a complete file of The Fantasy Fan and wrote me that none of them contained copyrights.⁵⁴ He likewise had a complete xerox copy of The Phantagraph for July 1937, containing "The Wall" and "Ex Oblivione," and states that it also lacks copyright.⁵⁵

Hyman Bradofsky wrote to Mosig that his Californian issues were never copyrighted.⁵⁶ Joseph Bradburn wrote me that his copy of The Californian for Winter 1935 had no copyright.⁵⁷ All of the just mentioned amateur journals were cited by Derleth as bearing copyrights in Beyond the Wall of Sleep and Something About Cats.

For the sake of argument, let us assume that certain AJs that Derleth listed were truly copyrighted, and that I or my quoted informants are in error. We then encounter the fact that some of them were reprinted in other magazines that I contend also lack a copyright. If this is true, we still have a situation damaging to Derleth's claim of prior copyright protection. For if a writer allows his rights to be infringed upon without offering protest, he loses them to the public domain. And anyone who has researched the AJ field of 1915 to 1930 well knows that HPL was obviously aware of his work appearing without

copyright protection therein, as his official duties in several amateur press associations prove.

For example, a great many of his works were printed in the non-copyrighted The Tryout. Lovecraft himself disclosed that for some years he had "been attached to the Tryout staff as rhymster, rhyme-collector, historian, and proof-reader." 58

Derleth himself spoke of "Lovecraft's contributions to such amateur papers" and listed substantially a great many titles I too call amateur papers.⁵⁹ Note Derleth's connotation of them as "amateur" as opposed to "professional", which would imply a lack of copyright.

One place where Derleth appeared to be grossly misled by someone else is the purported 1936 copyright by the Visionary Publishing Company of The Shadow over Innsmouth, which Derleth lists in The Outsider and Others. I could never find any original copyright registration of this story at the Copyright Office under title, publishing company, or its owner, William L. Crawford.*

What may also cause great consternation in some quarters is the fact that about twenty stories printed and copyrighted by Weird Tales had prior publication in various amateur journals. Weird Tales' later copyright to the contrary, these stories were thus lost to the public domain.

The question that arises is whether these AJs constituted "publication," that is "an authorized, unrestricted circulation, placing on sale or subscription, or gratuitous public distribution of copies."⁶⁰ Or could they be described as "limited publication"? A court once defined this as meaning a work "that communicates the contents of a mss to a definitely selected group and for a limited purpose, and without the right of diffusion, distribution, or sale is considered a 'limited publication' which does not result in the loss of the author's common-law copyright to this mss; but that the circulation must be restricted both as to persons and purposes, or it cannot be called a private or limited publication."⁶¹

But were AJs a form of "limited publication"?

To help answer this I offer the following printed in one of them. C.W. Smith, editor and publisher of The Tryout, tried to encourage other amateur papers to apply for cheap second class postal rated which he thought they would have no difficulty in acquiring if they complied with U.S. Government regulations: a paid in advance subscription list and accepted advertisements. Subscriptions, of course, would make AJs "publications". Smith concluded that The Brooklynite and The Woodbee had already obtained second class rates. Lovecraft's work appeared in these last two AJs.⁶²

Seeking additional proof of this I wrote to Sheldon Wesson, a former president of the National Amateur Press Association. He replied that "the question of copyright status of material in the amateur press has been the subject of conversation, but not intense exploration,

* Author's Note: The National Union Catalog gives the copyright number of The Shadow over Innsmouth as A 107619.

from time to time. To the best of my knowledge, no legal test has ever occurred...Yes, amateur journals have been sold, from time to time. A minority of publishers have put subscription prices on them, intending these to be paid by non-members; but have distributed same through the association without charge. The official organ of the several associations (such as The National Amateur, United Amateur, Fossil, etc.) are customarily sold to non-members on a single-issue basis. There have been a few subscriptions sold from time to time; but these are few and irregular."⁶³

I could have obtained a certified research at the Copyright Office for every AJ that HPL was known to have appeared in, but the cost of this would be financially prohibitive. So I have decided in February 1976 to once again do my own research. At the Copyright Office I checked over their copyright registration files looking for these titles: The Acolyte, Bacon's Essays, The Californian, The Conservative, The Fantasy Fan, Leaves, The National Amateur, The Phantagraph, The Scot, The United Amateur, and The Tryout.

As I expected, I found no copyright registration under any of their titles, except for The United Amateur, and that was only for the June 1900 and September 1905 issues. Several were also checked under the claimant: The Acolyte-Francis T. Laney; The Californian-Hyman Bradofsky; The Tryout-Charles W. Smith; Leaves-Robert H. Barlow. Only the Barlow magazine was copyrighted, and under his own name, not the magazine title.

Can any "fair use" be made of the Lovecraft literary corpus? Judging by past information, it was a path beset with pitfalls.

Fair use of copyrighted material has been defined by the courts as that extra-legal use that is usual, reasonable, and customary.⁶⁴ Fair use also has been defined as "a use of the copyrighted material which is permitted by the law even though no express authorization is granted by the copyright owner"⁶⁵ Among the reasons for fair use or quotation is to provide background. "This has been described by the courts as that casual use of quotation, usually music or verse, to create an atmosphere...A springboard, or what Ladas, in his book on International Copyright, calls 'a jumping off use'. It is the use of one work as the inspiration and incentive for a second one."⁶⁶

The application of these definitions of fair use to HPL work brings out some illuminating things. That particular part of the Lovecraft literary work of interest to us is what Derleth coined the descriptive phrase "the Cthulhu Mythos."⁶⁷ Other writers either borrowed from or contributed to its corpus. In speaking of these accretions Derleth said "many of Lovecraft's correspondents added other deities which Lovecraft welcomed gladly" and spoke of "the ready eagerness with which Lovecraft invited other writers to add to the mythology."⁶⁸

Derleth stated further that "It is possible to trace the original inception of this mythology back through...Chambers, Bierce, and Poe."⁶⁹ Laney likewise said "Though the Cthulhu Mythos is rightfully credited to H.P. Lovecraft, many other authors have also had a part in developing it."⁷⁰ He elaborated by giving the same historical list of contributors as listed by Derleth, but adding Arthur Machen. The literary work of these contributors is now in the public-domain-a fact that I cannot emphasize strongly enough.

Derleth admitted that "many another writer, with Lovecraft's permission, availed himself of facets of the Mythos for his own use."⁷¹

The sum of all this is that it should be unquestionable that HPL himself during his lifetime established the precedent of fair use regarding his Mythos, and even of countenancing others both borrowing and adding to it. It was with great surprise that I learned in 1966 that Derleth said in a *Mirage* publication that "the title 'Necronomicon' is a literary property and may not be used without permission."⁷²

Now the *Necronomicon* first appeared as a part of the story "The Hound," copyright 1924. This copyright was not renewed in 1951. The story's entire text, including the coined word "Necronomicon", would then be in public domain.

In 1972, Hartmann informed Eva M. Brananmen, who had asked permission to use the "Necronomicon" in a story, that since titles could not be copyrighted, there were no restrictions on her use of it.

In 1971, Hartmann informed E.P. Berglund that though the use of the Cthulhu Mythos had previously been restricted, its wide use was a reason to lift this restriction.

Another interesting question regarding use of the literary property "Arkham" relates to Derleth himself. In 1939, Derleth and Wandrei conceived the idea of Arkham House. The impression one gets from reading Derleth's own account of the choice of the name is that it was decided upon by Derleth and Wandrei. There is no reference in Thirty Years of Arkham House to asking Mrs. Gamwell for her permission to use this literary property, nor a similar request to the Lovecraft literary executor, Robert Barlow. If Derleth were still alive, it would be interesting to hear how-in view of the strictures he himself later put on fair use of certain of the HPL literary corpus--he justified his own fair use adoption of "Arkham" in the name of his publishing house.

Another copyright problem revolves around the question of the pseudonymous material, both known and attributed to Lovecraft, in AJs. I have devoted a while study elsewhere to this matter. However, assuming that some claimant to HPL's literary estate would decide that all such material (the purported by scholars as well as the known) were part of that estate, could they make it stand up in court? There does exist some proof among HPL's letters that couple his authorship to certain pseudonymous material. But what of the material merely attributed to HPL by scholars? How the courts would view such hypothetical authorship and ownership is anyone's guess.

It is perhaps superfluous to add that what portion of HPL's articles I have seen in newspapers is in the public domain, as the majority of newspapers are not copyrighted unless the individual contents are accompanied by a separate copyright notice.

As to who owns or has the best claim on the Lovecraft literary estate--those portions of it not in the public domain--the reader may make his own conclusions based on the facts presented herein. However, there is a final state of affairs to consider which speaks for itself.

In 1971, Hartmann warned me that any unauthorized use of HPL material would be at the user's peril, because that material formed a part of the Derleth estate. Five years later, in 1976, Hartmann told Mosiq that the Derleth estate did not get very upset about unauthorized use of the HPL corpus. Why did Hartmann modify his position on alleged infringers?

De Camp, in his biography of Lovecraft, quoted extensively from both published and unpublished Lovecraft letters; and he only acknow-

ledged Ethel Morrish (one of the two Gamwell heirs) as "giving permission to quote ad libitum from Lovecraft's letters."⁷³

It is provocative to add that de Camp's opinioned that "Derleth also asserted questionable claims to the entire Lovecraft literary corpus."⁷⁴

Simultaneously with de Camp's challenge to the Derleth estate is another by Conover in his Lovecraft memoir where he also acknowledges receiving permission to quote from unpublished Lovecraft letters from Mrs. Ethel Morrish.⁷⁵

Authors Notes: In 1976, Hartmann wrote me in answer to my query that "imprisoned with the Pharoahs" is part of the Derleth estate...During the 1940's Derleth forced William L. Crawford to pay \$25 for use of "Celephais" in The Garden of Fear even though Crawford had copyrighted this story during the 1930's...Derleth stopped Weird Tales writer C. Hall Thompson from using elements of the Cthulhu Mythos in his stories during the mid 1940's...In To Quebec and the Stars, de Camp states that he believes Mrs. Morrish "is the owner to the rights of any unpublished writings by Lovecraft", page 9.

1. Moskowitz, 1947, p. 87.
 2. James Warren thomas, MS letter to George Wetzel, 18 Nov 72.
 3. Lowndes, 1971, p. 49. (I am indebted to Ken Faig for this Lowndes quote as well as excerpts from letters which Robert H. Barlow wrote to others, plus other Barlow papers found after his death in Mexico in 1951 and microfilmed by George T. Smisor. Henceforth, all Barlow papers refered to herein will be noted under "Smisor.")
 4. Manly Wade Wellman, MS letter to Georger Wetzel, 29 Dec 72.
 5. The Clerk of the Family Court, Providence, penned this on the bottom of my letter to him.
 6. Probated April 20, 1937.
 7. Farmers et al., 1968, pp. 58-60.
 8. De Camp, 1975, p. 434.
 9. Will of Annie E. Phillips Gamwell, January 10, 1940.
 10. Ken Faig, letter to Wetzel: Reputedly Ralph M. Greenshaw was HPL's counsel (Providence Evening Bulletin, March 26, 1929). The similarity to Greenlaw, the Ganwell executor, suggests a misspelling and that they were one and the same lawyer.
 11. Derleth, 1949, p. 3.
 12. Derleth, 1947, p. 146.
 13. Thomas, MS letter to Maurice Levy, 4 Oct 65 (carbon, JWT).
 14. Wetzel, MS letter to Ethel Phillips Morrish, 14 Nov 72 (carbon).
 15. Wetzel, MS letter to Forrest Hartmann, 24 Sept 72 (carbon).
 16. Assignment of Copyright, DCLI, 99-101 (U.S. Copyright Office).
 17. Derleth, 1949, op. cit.
 18. Wellman, op. cit.
 19. Kline, 1970.
 20. HPL, letter to W.B. Talman, 5 Mar 32, Selected Letters, IV, 27.
 21. HPL, letter to F. Wright, 8 Nov 28, Selected Letters, II, 251-2.
 22. Conover, 1975, p. 174.
 23. HPL, letter to F.B. Long, 10 Feb 28, Selected Letters, II, 224.
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24. HPL, letter to F. Wright, 16 Feb 33, Selected Letters, IV, 154-5.
- 25 & 26. HPL, letters to A.W. Derleth, 31 Mar 32, SL, IV, 34; to E.H. Price, 3 Oct 32, SL, IV, 74; to R.E. Howard, 24-31 July 33 to Aug 33, SL, IV, 226; to E. Toldridge, 5 Oct 33, SL, IV, 273.
27. Derleth and Wandrei assigned to Alta Vista Productions "The Dunwich Horror" (March 1, 1963, MCLIII, 89), "The Case of Charles Dexter Ward" (March 1, 1963, MCLIII, 90), and "The Colour Out of Space" (October 22, 1963, MCLXXI, 444); and to American International Productions "The Dreams in the Witch House" (March 5, 1965, MCCV, 189).
28. Rothenberg, 1960, pp. 126-7.
29. HPL, MS. "Instructions in Case of Decease." A facsimile in the handwriting of Annie E. Phillips Gamwell. (JHL).
30. R.H. Barlow, MS letter to Albert Baker, 12 Oct 38 (Smisor).
31. Albert Baker, MS letters to R.H. Barlow, 7 Oct 38 and 19 Oct 38 (Smisor).
32. Steve Eisner to George Wetzel, circa 1957.
33. Jack Grill to George Wetzel, circa December 1957; circa August-September 1957; March 15, 1955; circa 1955-56; circa Easter 1955. Grill had an eccentric habit of omitting date on most of his letters.
34. Keller, 1949, pp. 1-4.
35. Derleth, 1970, p. 3.
36. Wayne Barlow to George Wetzel, November 16, 1972.
37. Webb and Ceanco, 1970, pp. 60, 62.
38. Derleth: Renewals in the files of the Copyright Office: "Altimer's Amulet," (c) May 1941, renewed April 1968; "Old Mark," (c) August 1929, renewed April 1957; etc.
39. Certified search report, U.S. Copyright Office, January 8, 1975.
40. Microfilm records, U.S. Copyright Office, Volume DCCCLI, 4; CMLXX, 1-3; Mxiii, 359-62.
41. Pilpel and Goldberg, 1969, p. 14.
42. Lovecraft to F.B. Long, February 14, 1924; Selected Letters, I, 311.
43. Ibid.
44. Lovecraft to F.B. Long, March 21, 1924; Selected Letters, I, 333.
45. Lovecraft to F.B. Long, Feb. 14, 1924; Selected Letters, I, 312.
46. Weinberg, 1977, p. 20.
47. Lovecraft to James F. Morton, Feb. 19, 1924; SL, I, 313.
48. Nicholson, 1956, p. 661.
49. Pilpel and Goldberg, p. 2.
50. Nicholson, p. 62.
51. Pilpel and Goldberg, p. 2.
52. De Camp, p. 434.
53. Moskowitz, pp. 87-88.
54. Dirk W. Mosig to George Wetzel, April 13, 1976.
55. Dirk W. Mosig to George Wetzel, April 17, 1976.
56. Hymán Bradofsky to Dirk W. Mosig, April 6, 1976 (Dirk W. Mosig).
57. Joseph Bradburn to George Wetzel, March 30, 1976.
58. Lovecraft, "408 Groveland Street," p.4.
59. Derleth, "Addenda to H.P.L.: A Memoir," in Lovecraft, 1949, pp. 252-3.
60. Nicholson, p. 150.
61. Ibid., p. 152.
62. C.W. Smith, 1921, pp. 2.

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63. Sheldon Wesson to George Wetzel, November 14, 1972.
 64. Nicholson, pp. 91-92.
 65. Pilpel and Goldberg, p. 22.
 66. Derleth, 1945, p. 69.
 67. Ibid., p. 76.
 68. Derleth and Wandrei, "Howard Phillips Lovecraft: Outsider," in Lovecraft, 1939, p. xii.
 69. Ibid.
 70. Francis T. Laney, "The Cthulhu Mythology: A Glossary," in Lovecraft, 1943, p. 415.
 71. Derleth and Wandrei, p. xii.
 72. Mark Owings, 1967, title page.
 73. De Camp, pp. xiii, vii.
 74. Ibid., p. 434. (omitted from paperback version)
 75. Conover and Lovecraft, 1975, p. 259.
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