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ARCHIVAL ETHICS IN PRACTICE

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FROM THE EDITOR

Sheryl B. Vogt

This special issue of *Provenance*, "Archival Ethics in Practice," had its beginnings in a Society of American Archivists (SAA) workshop on ethics. Held in Georgia in November 1990, the workshop was co-sponsored by the Society of Georgia Archivists (SGA) and led by Bruce Stark of Yale University.

Discussions generated in the workshop continued over the course of months, especially in light of the forthcoming, newly revised SAA "Code of Ethics for Archivists." The recurring theme of these discussions—But what happens when you put ethics set by professional standards into practice?—naturally germinated as an idea for a program session at the next Society of Georgia Archivists’s meeting. On St. Simons Island, March 1991, three experienced archivists presented papers on the practical considerations of following ethical guidelines in performing the archival functions of collecting, processing, and providing access. The session was well received, and those promoting the
idea saw potential for presenting the concept at an annual meeting of the Society of American Archivists.

Throughout 1991, the SAA code was before the society's membership for review, and in 1992, it was formally approved. Brainstorming ideas in the fall of 1992 for SAA's Manuscript Repositories Section program committee was the opportunity to bring the session to the national arena. "Archival Ethics in Practice," chaired by Anne Caiger with papers by Thomas Wilsted, Virginia Cain, and Ronald Becker, reached a larger audience, September 1993, at the New Orleans meeting. Wilsted, Cain, and Becker shared their perspectives of ethics on the front line by focusing on three primary archival functions: collecting, processing, and providing access. Building on the code, the three speakers were to integrate the practical aspects of the complex ethical issues archivists face in managing resources and services daily.

Now, SGA brings the discussion full circle with this theme publication. The experienced archivists from the New Orleans meeting have provided their papers, SAA has granted permission to reprint the Code of Ethics for Archivists and Commentary in its entirety, and Maynard Brichford, chair of the SAA Ethics Task Force, has graciously contributed an introduction to the issue. Provenance Editor Margery Sly, along with SGA President Virginia Cain, were instrumental in planning the issue and gathering material; more importantly, both were steadfast colleagues through the editing process. We deeply appreciate the efforts of so many to bring the idea to its logical conclusion.
Code of Ethics for Archivists

The Society of American Archivists

Archivists select, preserve, and make available documentary materials of long-term value that have lasting value to the organization or public that the archivist serves. Archivists perform their responsibilities in accordance with statutory authorization or institutional policy. They subscribe to a code of ethics based on sound archival principles and promote institutional and professional observance of these ethical and archival standards.

Archivists arrange transfers of records and acquire documentary materials of long-term value in accordance with their institutions' purposes, stated policies, and resources. They do not compete for acquisitions when competition would endanger the integrity or safety of documentary materials of long-term value, or solicit the records of an institution that has an established archives. They cooperate to ensure the preservation of materials in

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repositories where they will be adequately processed and effectively utilized.

Archivists negotiating with transferring officials or owners of documentary materials of long-term value seek fair decisions based on full consideration of authority to transfer, donate, or sell; financial arrangements and benefits; copyright; plans for processing; and conditions of access. Archivists discourage unreasonable restrictions on access or use, but may accept as a condition of acquisition clearly stated restrictions of limited duration and may occasionally suggest such restrictions to protect privacy. Archivists observe faithfully all agreements made at the time of transfer or acquisition.

Archivists establish intellectual control over their holdings by describing them in finding aids and guides to facilitate internal controls and access by users of the archives.

Archivists appraise documentary materials of long-term value with impartial judgment based on thorough knowledge of their institutions' administrative requirements or acquisitions policies. They maintain and protect the arrangement of documents and information transferred to their custody to protect its authenticity. Archivists protect the integrity of documentary materials of long-term value in their custody, guarding them against defacement, alteration, theft, and physical damage, and ensure that their evidentiary value is not impaired in the archival work of arrangement, description, preservation, and use. They cooperate with
other archivists and law enforcement agencies in the apprehension and prosecution of thieves.

Archivists respect the privacy of individuals who created, or are the subjects of, documentary materials of long-term value, especially those who had no voice in the disposition of the materials. They neither reveal nor profit from information gained through work with restricted holdings.

Archivists answer courteously and with a spirit of helpfulness all reasonable inquiries about their holdings, and encourage use of them to the greatest extent compatible with institutional policies, preservation of holdings, legal considerations, individual rights, donor agreements, and judicious use of archival resources. They explain pertinent restrictions to potential users, and apply them equitably.

Archivists endeavor to inform users of parallel research by others using the same materials, and, if the individuals concerned agree, supply each name to the other party.

As members of a community of scholars, archivists may engage in research, publication, and review of the writings of other scholars. If archivists use their institutions’ holdings for personal research and publication, such practices should be approved by their employers and made known to others using the same holdings. Archivists who buy and sell manuscripts personally should not compete for acquisitions with their own repositories, should inform their
employers of their collecting activities, and should preserve complete records of personal acquisitions and sales.

Archivists avoid irresponsible criticism of other archivists or institutions and address complaints about professional or ethical conduct to the individual or institution concerned, or to a professional archival organization.

Archivists share knowledge and experience with other archivists through professional associations and cooperative activities and assist the professional growth of others with less training or experience. They are obligated by professional ethics to keep informed about standards of good practice and to follow the highest level possible in the administration of their institutions and collections. They have a professional responsibility to recognize the need for cooperative efforts and support the development and dissemination of professional standards and practices.

Archivists work for the best interests of their institutions and their profession and endeavor to reconcile any conflicts by encouraging adherence to archival standards and ethics.

**Code of Ethics for Archivists and Commentary**

The code is a summary of guidelines in the principal areas of professional conduct. A longer Commentary explains the reasons for some of the statements and provides a basis for discussion of the points raised.
The Code of Ethics is in italic bold face; the Commentary is in modern type.

I. The Purpose of a Code of Ethics

The Society of American Archivists recognizes that ethical decisions are made by individuals, professionals, institutions, and societies. Some of the greatest ethical problems in modern life arise from conflicts between personal codes based on moral teachings, professional practices, regulations based on employment status, institutional policies and state and federal laws. In adopting a formal code of professional ethics for the Society, we are dealing with only one aspect of the archivist's ethical involvement.

Codes of ethics in all professions have several purposes in common, including a statement of concern with the most serious problems of professional conduct, the resolution of problems arising from conflicts of interest, and the guarantee that the special expertise of the members of a profession will be used in the public interest.

The archival profession needs a code of ethics for several reasons: (1) to inform new members of the profession of the high standards of conduct in the most sensitive areas of archival work; (2) to remind experienced archivists of their responsibilities, challenging them to maintain high standards of conduct in their own work and to promulgate those
standards to others; and (3) to educate people who have some contact with archives, such as donors of material, dealers, researchers, and administrators, about the work of archivists and to encourage them to expect high standards.

A code of ethics implies moral and legal responsibilities. It presumes that archivists obey the laws and are especially familiar with the laws that affect their special areas of knowledge; it also presumes that they act in accord with sound moral principles. In addition to the moral and legal responsibilities of archivists, there are special professional concerns, and it is the purpose of a code of ethics to state those concerns and give some guidelines for archivists. The code identifies areas where there are or may be conflicts of interest, and indicates ways in which these conflicting interests may be balanced; the code urges the highest standards of professional conduct and excellence of work in every area of archives administration.

This code is compiled for archivists, individually and collectively. Institutional policies should assist archivists in their efforts to conduct themselves according to this code; indeed, institutions, with the assistance of their archivists, should deliberately adopt policies that comply with the principles of the code.

II. Introduction to the Code

Archivists select, preserve, and make available documentary materials of long-term value that have
lasting value to the organization or public that the archivist serves. Archivists perform their responsibilities in accordance with statutory authorization or institutional policy. They subscribe to a code of ethics based on sound archival principles and promote institutional and professional observance of these ethical and archival standards.

Commentary: The introduction states the principal functions of archivists. Because the code speaks to people in a variety of fields—archivists, curators of manuscripts, records managers—the reader should be aware that not every statement in the code will be pertinent to every worker. Because the code intends to inform and protect non-archivists, an explanation of the basic role of archivists is necessary. The term 'documentary materials of long-term value' is intended to cover archival records and papers without regard to the physical format in which they are recorded.

III. Collecting Policies

Archivists arrange transfers of records and acquire documentary materials of long-term value in accordance with their institutions’ purposes, stated policies, and resources. They do not compete for acquisitions when competition would endanger the integrity or safety of documentary materials of long-term value, or solicit the records of an institution that has an established
archives. They cooperate to ensure the preservation of materials in repositories where they will be adequately processed and effectively utilized.

Commentary: Among archivists generally there seems to be agreement that one of the most difficult areas is that of policies of collection and the resultant practices. Transfers and acquisitions should be made in accordance with a written policy statement, supported by adequate resources and consistent with the mission of the archives. Because personal papers document the whole career of a person, archivists encourage donors to deposit the entire body of materials in a single archival institution. This section of the code calls for cooperation rather than wasteful competition, as an important element in the solution of this kind of problem.

Institutions are independent and there will always be room for legitimate competition. However, if a donor offers materials that are not within the scope of the collecting policies of an institution, the archivist should tell the donor of a more appropriate institution. When two or more institutions are competing for materials that are appropriate for any one of their collections, the archivists must not unjustly disparage the facilities or intentions of others. As stated later, legitimate complaints about an institution or an archivist may be made through proper channels, but giving false information to potential donors or in any way casting aspersions on other institutions or other archivists is unprofessional conduct.
It is sometimes hard to determine whether competition is wasteful. Because owners are free to offer collections to several institutions, there will be duplication of effort. This kind of competition is unavoidable. Archivists cannot always avoid the increased labor and expense of such transactions.

IV. Relations with Donors, and Restrictions

Archivists negotiating with transferring officials or owners of documentary materials of long-term value seek fair decisions based on full consideration of authority to transfer, donate, or sell; financial arrangements and benefits; copyright; plans for processing; and conditions of access. Archivists discourage unreasonable restrictions on access or use, but may accept as a condition of acquisition clearly stated restrictions of limited duration and may occasionally suggest such restrictions to protect privacy. Archivists observe faithfully all agreements made at the time of transfer or acquisition.

Commentary: Many potential donors are not familiar with archival practices and do not have even a general knowledge of copyright, provision of access, tax laws, and other factors that affect the donation and use of archival materials. Archivists have the responsibility for being informed on these matters and passing all pertinent and helpful information to potential donors. Archivists usually discourage donors from imposing conditions on gifts or restricting access to collections, but they are aware of
sensitive material and do, when necessary, recommend that donors make provision for protecting the privacy and other rights of the donors themselves, their families, their correspondents, and associates.

In accordance with regulations of the Internal Revenue Service and the guidelines accepted by the Association of College and Research Libraries, archivists should not appraise, for tax purposes, donations to their own institutions.

Some archivists are qualified appraisers and may appraise records given to other institutions.

It is especially important that archivists be aware of the provisions of the copyright act and that they inform potential donors of any provision pertinent to the anticipated gift.

Archivists should be aware of problems of ownership and should not accept gifts without being certain that the donors have the right to make the transfer of ownership.

Archivists realize that there are many projects, especially for editing and publication, that seem to require reservation for exclusive use. Archivists should discourage this practice. When it is not possible to avoid it entirely, archivists should try to limit such restrictions; there should be a definite expiration date, and other users should be given access to the materials as they are prepared for publication. This can
be done without encouraging other publication projects that might not conform to the standards for historical editing.

V. Description

Archivists establish intellectual control over their holdings by describing them in finding aids and guides to facilitate internal control and access by users of the archives.

Commentary: Description is a primary responsibility and the appropriate level of intellectual control should be established over all archival holdings. A general descriptive inventory should be prepared when the records are accessioned. Detailed processing can be time-consuming and should be completed according to a priority based on the significance of the material, user demand and the availability of staff time. It is not sufficient for archivists to hold and preserve materials: they also facilitate the use of their collections and make them known. Finding aids, repository guides, and reports in the appropriate publications permit and encourage users in the institution and outside researchers.

VI. Appraisal, Protection and Arrangement

Archivists appraise documentary materials of long-term value with impartial judgment based on thorough knowledge of their institutions' administrative requirements or acquisitions policies. They maintain
and protect the arrangement of documents and information transferred to their custody to protect its authenticity. Archivists protect the integrity of documentary materials of long-term value in their custody, guarding them against defacement, alteration, theft, and physical damage, and ensure that their evidentiary value is not impaired in the archival work of arrangement, description, preservation, and use. They cooperate with other archivists and law enforcement agencies in the apprehension and prosecution of thieves.

Commentary: Archivists obtain material for use and must insure that their collections are carefully preserved and therefore available. They are concerned not only with the physical preservation of materials but even more with the retention of the information in the collections. Excessive delay in processing materials and making them available for use would cast doubt on the wisdom of the decision of a certain institution to acquire materials, though it sometimes happens that materials are acquired with the expectation that there soon will be resources for processing them.

Some archival institutions are required by law to accept materials even when they do not have the resources to process those materials or store them properly. In such cases archivists must exercise their judgment as to the best use of scarce resources, while seeking changes in acquisitions polices or increases in support that will enable
them to perform their professional duties according to accepted standards.

VII. Privacy and Restricted Information

Archivists respect the privacy of individuals who created, or are the subjects of, documentary materials of long-term value, especially those who had no voice in the disposition of the materials. They neither reveal nor profit from information gained through work with restricted holdings.

Commentary: In the ordinary course of work, archivists encounter sensitive materials and have access to restricted information. In accordance with their institutions’ policies, they should not reveal this restricted information, they should not give any researchers special access to it, and they should not use specifically restricted information in their own research. Subject to applicable laws and regulations, they weigh the need for openness and the need to respect privacy rights to determine whether the release of records or information from records would constitute an invasion of privacy.

VIII. Use and Restrictions

Archivists answer courteously and with a spirit of helpfulness all reasonable inquiries about their holdings, and encourage use of them to the greatest extent
compatible with institutional policies, preservation of holdings, legal considerations, individual rights, donor agreements, and judicious use of archival resources. They explain pertinent restrictions to potential users, and apply them equitably.

Commentary: Archival materials should be made available for use (whether administrative or research) as soon as possible. To facilitate such use, archivists should discourage the imposition of restrictions by donors.

Once conditions of use have been established, archivists should see that all researchers are informed of the materials that are available, and are treated fairly. If some materials are reserved temporarily for use in a special project, other researchers should be informed of these special conditions.

IX. Information about Researchers

Archivists endeavor to inform users of parallel research by others using the same materials, and, if the individuals concerned agree, supply each name to the other party.

Commentary: Archivists make materials available for research because they want the information on their holdings to be known as much as possible. Information about parallel research interests may enable researchers to conduct their investigations more effectively. Such information should consist of the previous researcher's
name and address and general research topic and be provided in accordance with institutional policy and applicable laws. Where there is any question, the consent of the previous researcher should be obtained. Archivists do not reveal the details of one researcher’s work to others or prevent a researcher from using the same materials that others have used. Archivists are also sensitive to the needs of confidential research, such as research in support of litigation, and in such cases do not approach the user regarding parallel research.

X. Research by Archivists

As members of a community of scholars, archivists may engage in research, publication, and review of the writings of other scholars. If archivists use their institutions’ holdings for personal research and publication, such practices should be approved by their employers and made known to others using the same holdings. Archivists who buy and sell manuscripts personally should not compete for acquisitions with their own repositories, should inform their employers of their collecting activities, and should preserve complete records of personal acquisitions and sales.

Commentary: If archivists do research in their own institutions, there are possibilities of serious conflicts of interest—an archivist might be reluctant to show to other researchers material from which he or she hopes to write something for publication. On the other hand, the archivist
might be the person best qualified to research an area represented in institutional holdings. The best way to resolve these conflicts is to clarify and publicize the role of the archivist as researcher.

At the time of their employment, or before undertaking research, archivists should have a clear understanding with their supervisors about the right to research and to publish. The fact that archivists are doing research in their institutional archives should be made known to patrons, and archivists should not reserve materials for their own use. Because it increases their familiarity with their own collections, this kind of research should make it possible for archivists to be more helpful to other researchers. Archivists are not obliged, any more than other researchers are, to reveal the details of their work or the fruits of their research. The agreement reached with the employers should include in each instance a statement as to whether the archivists may or may not receive payment for research done as part of the duties of their positions.

XI. Complaints About Other Institutions

Archivists avoid irresponsible criticism of other archivists or institutions and address complaints about professional or ethical conduct to the individual or institution concerned, or to a professional archival organization.
Commentary: Disparagement of other institutions or of other archivists seems to be a problem particularly when two or more institutions are seeking the same materials, but it can also occur in other areas of archival work. Distinctions must be made between defects due to lack of funds, and improper handling of materials resulting from unprofessional conduct.

XII. Professional Activities

Archivists share knowledge and experience with other archivists through professional associations and cooperative activities and assist the professional growth of others with less training or experience. They are obligated by professional ethics to keep informed about standards of good practice and to follow the highest level possible in the administration of their institutions and collections. They have a professional responsibility to recognize the need for cooperative efforts and support the development and dissemination of professional standards and practices.

Commentary: Archivists may choose to join or not to join local, state, regional, and national professional organizations, but they must be well-informed about changes in archival functions and they must have some contact with their colleagues. They should share their expertise by participation in professional meetings and by publishing. By such activities, in the field of archives, in
related fields, and in their own special interests, they continue to grow professionally.

XIII. Conclusion

Archivists work for the best interests of their institutions and their profession and endeavor to reconcile any conflicts by encouraging adherence to archival standards and ethics.

Commentary: The code has stated the "best interests" of the archival profession—such as proper use of archives, exchange of information, and careful use of scarce resources. The final statement urges archivists to pursue these goals. When there are apparent conflicts between such goals and either the policies of some institutions or the practices of some archivists, all interested parties should refer to this code of ethics and the judgment of experienced archivists.

The "Code of Ethics for Archivists" is reprinted with permission of the Society of American Archivists. The code was adopted by the Council of the SAA (Chicago, 1992). Copies are available from the SAA Publications Department (600 S. Federal Street, Suite 504, Chicago, IL 60605) for $2 each or $1.50 for ten or more.
Introduction

Maynard Brichford

Historically, ethics relate to moral principles or values and involve moral obligations or duties. According to Webster's Third New International Dictionary (1966), ethics also means those principles of conduct governing an individual or a profession. Associations have prescribed standards of behavior for their members. Despite contemporary meanings and practices, there are problems in equating standards of professional conduct with ethical decisions. Laws, institutional regulations, and the wide range of conditions in which archival practice is carried out may require decisions that are at variance with optimal conditions and practices.

Every archivist has a code of ethics. Many decisions will involve only the archivist's own personal standards of ethical conduct. Often based on religious or cultural heritage, such decisions are reinforced by family relationships and peer group pressures. Other decisions
will be made on legal grounds. Thousands of federal, state, and local laws and regulations legislate personal conduct. These laws and regulations also provide a bureaucracy for their application and a judicial system for their enforcement. A third type of ethical standard is usually established by one's employer. The federal government has a thirty-eight page regulation on "standards of ethical conduct." Many government and corporate policies control basic ethical decisions. A fourth level of ethical decisions may be established by professional associations. Codes of ethics adopted by professional bodies tend to set forth norms, standards, and policies adopted by study groups and ratified at annual meetings.

In a century characterized by governmental growth, corporate centralization, and the professionalization of vocations, proponents of legal, personnel, and professional ethics have sought to codify personal ethical systems. For archivists, the rapid increase in the number of governmental, academic, corporate, and private archives and an accelerating rate of technological change in communications and records systems have contributed to an interest in professional ethics. A code of professional ethics may benefit practitioners and society. It can create a bond among people who work in different institutions or specialize in different aspects of a common field, recognize the basic elements of theory and practice, reflect a consensus of practitioners about shared obligations to society and influence personal ethical standards, government legislation, and institutional regulations. The 1980 and 1992 ethics
codes represent the Society of American Archivists’s efforts to define the role of professional ethics in archival practice.

Archivists have understood the importance of stating the basic ethical obligations of their professional colleagues and publicizing their common commitment to standards of conduct. They have gradually overcome unfortunate tendencies toward self-glorification, over-reaction to criticism from other professions, and the perceptions that ethics were intended for their competitors or those who were slow to accept a standard promulgated by a grant-funded advocacy group. The membership’s response to general requests for views on the ethics codes has been disappointing, but sessions at meetings and workshops have produced lively discussions of ethical issues. Legislators, administrators, and professional colleagues may continue to adopt educational and enforcement procedures, but individual decision-makers must still apply ethical standards in the context of their daily activities.

The papers in this issue of Provenance are a notable contribution to the continuing process by which ethical standards will be shaped to guide future professional development. Thomas Wilsted’s article on the ethics of collecting relates the development of collecting policies in periods of “unbridled competition” and “archival excesses” to the development of ethical codes and stresses the importance of donor relations and documentation. Virginia Cain’s article on the ethics of processing reviews code statements, provides commentary on the interrelated nature
of arrangement and description, gives examples of ethical decisions and discusses the need for care in processing. Ronald Becker's article on the ethics of access draws upon personal experience at Rutgers University in identifying major ethical issues and relates the practical decisions to appropriate sections of the "Code of Ethics for Archivists."

Maynard Brichford is University Archivist, the University of Illinois at Urbana-Champaign. Dr. Brichford served as chair of the Society of American Archivists Ethics Task Force, from 1988 to 1992.
OBSERVATIONS ON THE ETHICS OF COLLECTING ARCHIVES AND MANUSCRIPTS

Thomas Wilsted

Archivists first began codifying their behavior during the 1950s when "The Archivist’s Code" was written by Wayne C. Grover for use within the National Archives. Reflecting a government archives perspective, it deals with such issues as service to researchers, access to records, avoiding conflicts of interest, and selecting records which can be widely used by researchers. While this code did not deal with any issues relating to institutions collecting personal papers and manuscripts, it was the only document dealing with ethical issues and was widely accepted by archivists and disseminated by the Society of American Archivists. "The Archivist’s Code" remained the standard for the profession for nearly twenty-five years.

A written code of ethics that reflected a wider range of institutions and professional issues was first approved by the Society of American Archivists Council in 1980. This code continued to be reviewed and was revised and annotated during the 1980s. The current code of ethics was approved in 1992. Both the 1980 code and the current code of ethics principally address relationships between three groups: archivists and other archivists, archivists and researchers, and archivists and donors. While the ethics of collecting archives and manuscripts primarily affects the latter group, it also affects the other groups in lesser ways.

The sections of the code of ethics dealing with collecting reflect current archival practices. They also respond to issues connected with the active collecting programs of the 1950s, 1960s, and 1970s. The middle decades of this century saw an explosive growth of new archival programs and the expansion of many of those already in existence. Archivists often operated on the principles that there were too few archival collections and too many institutions, and it was imperative to be the first in the acquisition race. There was a strong belief that material must be preserved before it was lost and that there would always be time later.

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to arrange and describe collections once they were safely housed in the repository. This period witnessed the development of new institutional archives and the establishment of specialized subject collections dealing with labor, women, and minorities.\textsuperscript{3} Support for such archival programs was more readily available as the budgets for state and federal governments and colleges and universities expanded. As these programs grew, competition for collections also expanded creating the archival excesses that the current and former code of ethics were designed to address.

The 1980s proved a watershed for archivists and reinforced the statements on collecting made in the first code of ethics. It was a time of shrinking budgets combined with the realization that rather than there being too few records, there were too many and that choices would have to be made if the profession was to preserve a full and accurate record of societal activities. This change

brought about a careful reevaluation of collecting policies. Some institutions carried out reviews of holdings to determine whether they were indeed collecting what they claimed in their institutional policies. Other institutions decided to narrow their collecting focus and concentrate on those areas of greatest strength. Others began looking at the whole range of information created in American society and discovered that in some cases there was an abundance of information available while in other areas data was totally lacking. Out of this discussion came the concept of the documentation strategies.4

The change in perception that there were too many rather than too few collections for archives to acquire came at a time when other concepts were being discussed within the archival community. While microfilm had been used for decades and new forms of copying were on the horizon, archivists began discussions on what exactly is a permanent record and when did the original document have to be

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Observations on the Ethics of Collecting

preserved. Some archivists began addressing the issue of whether or not archivists should promise that records always be preserved since there was a possibility that material might not be preserved at some time in the future. Finally, the issue of deaccessioning became more than a theoretical issue and is now being included in many institutional collecting policies.

Clearly, there have been massive changes in the archival community during the period that the second code of ethics was being created. Like the 1980 code, the current SAA code of ethics attempts to deal with these excesses. While all of the code sections may have some relevance to acquiring archival collections, there are two which specifically address collecting and one more which is tangential to this issue. These are Section III, “Collecting Policies”; Section IV, “Relations with Donors, and


Restrictions”; and Section XI, “Complaints About Other Institutions.” These sections were written to bring that competition of collecting within bounds.⁸

Paraphrasing the document, the following is a list of responsibilities which fall on every archivist or archival repository:

1. Each archives should have a collecting policy which guides its acquisition decisions.
2. Archives should not seek collections unless they have adequate resources to arrange, describe, preserve, and make accessible those collections which they acquire.
3. Archivists should discourage unjustified donor restrictions on collections. However, when restrictions have been agreed upon, it is the archivist’s responsibility to apply those restrictions fairly and completely.
4. Archivists should create good legal documents covering the transfer of records from the donor to the repository and maintain good record-keeping systems of donor-repository interaction.
5. Archivists should compete fairly in the acquisition of new collections and should not indulge in disparagement as a means of seeking a competitive advantage.

While the 1992 code is an improvement, it does not address or addresses only marginally issues faced by archivists who were the inheritors of massive collecting programs during the last several decades. Some of these challenges include: How does one deal with a massive backlog? Does the archivist have an ethical responsibility to retain material, even though not responsible for acquiring it? What is one’s responsibility to a donor?

Massive backlogs can create endless problems. Both donor and scholars are invariably unhappy when they cannot access the collection because of the lack of a finding aid. Seeking funds to arrange and describe collections from government or private granting agencies is one possibility. Yet, support for such projects is always dependent upon the significance and research value of the collection. If support is not available, the archives can look to the donor for support or can seek to place the collection elsewhere. Both courses of action have an impact on relationships with the donor of the collection. They also have a potential impact on relations with new donors as well as scholars if the repository is unable to maintain its commitments to process collections.

Another legacy of the active collecting programs of the twentieth century is split collections. In such cases, two or more institutions have acquired parts of the same collection at different times. These situations may be brought to the attention of the institution by the donor, a researcher, or by one or the other of the interested archives. What is the archivist’s and the archival institution’s ethical responsibility in such cases? Although it is possible to argue about which
repository has the greatest right to the collection, what should be paramount in this situation are the interests of the donor and the researcher. How can the parts of the collection be reunited? Can the collection be sent to one institution with the other receiving copies? What solution will satisfy the researcher’s needs? What if one institution is willing to work towards a settlement but the other is unwilling? What role should the donor play in negotiating a settlement? If one of the repositories is willing to give up its share of the collection, what impact might that have on future collecting efforts? The question of split collections continues to vex the archival community. Fortunately, archivists have become aware of the problem and are now making a greater effort to avoid this difficult ethical situation. However, except for the ethics code’s emphasis on professional cooperation, it provides little guidance on this thorny issue.

The active collecting programs of the past often leave an additional legacy to the current archives director. This is the donor whose papers were solicited many years previously. In some cases, this is the creator of the collection but in others, it is an heir. Such a situation may be a mixed blessing. Does the institution have an obligation to receive the collection if it was requested? Is there any greater responsibility to this donor than to one whose collection was totally unsolicited? If the collection no longer fits into current collecting policies or the institution is unable to provide adequate housing or support, the answer to the question is quite straightforward. However, in other circumstances, this situation can become more complicated.
An equally potential problem is the donor who changes his mind and either wants a collection returned or moved to another institution. This can also result from a donor’s heir having a change of heart. Other causes for such requests include solicitation from another institution, a realization that the collection may have had greater financial value than the donor originally thought, or a genuine wish to place the collection elsewhere. Although the ethics code suggests open negotiations with a donor when acquiring a collection, requests for the return of collections may come from heirs or other parties. There is little guidance in the code on appropriate behavior.

Requests to remove a collection raise legal as well as ethical issues. If the institution has used a well-written deed of gift, its legal rights should be protected. Even if it does not have this documentation and it has other evidence of donative intent such as a letter from the donor, a thank-you letter from the institution, or evidence that a tax deduction was taken, the institution is generally protected.

When an institution has no legal support, it is likely to return the collection or at least try to negotiate an agreement for the collection to remain under its control. However, what is the ethical position of an institution that has a perfectly legal title to a collection, yet the donor or his heirs is seeking the collection’s return or movement to another institution? Some institutions are unwilling to go to court if a legal document is challenged. There is often an attempt at negotiations, particularly if the material has substantial monetary or research value. Certainly an institution has an ethical obligation to fight to retain a
collection if the donor's purpose in asking for its return is a breakup of the collection through sale, or making the collection inaccessible to researchers.

One institution that did stand on its legal rights was Boston University when the family of Dr. Martin Luther King, Jr., challenged the donation of King's papers to the university prior to his death. In this case, the court sided with the archives since it had documents supporting donative intent, and the collection remains at Boston University.\(^9\) This is an exception, however, since few institutions allow cases to come to court. Institutions generally resolve these issues through negotiation, even though it means the voluntary return of material to the donor or the transfer of the collection to another institution.

Reappraisal—the need to review collections in light of current collecting policies and research demands and to make decisions about what should remain in the collection—is also a resulting factor from recent collecting excesses. Such decisions, of course, are not limited to only those institutions with extensive collections. The need for reappraisal is sometimes found in recently established archives which take material an older archives might reject and in archives which do not have strong collecting policies and whose acquisitions often reflect the whims of a particular staff member. When there are only one or two collections, leaving the material in the stacks and ignoring

the problem completely may be a viable ethical stance. Where there is extensive material or where the collection is of limited or little value, the archivist must take action and this may lead to deaccessioning.

Deaccessioning usually results in the transfer of the collection to another institution, in its return to the donor, in the sale of the collection, or in its destruction. A decision to pursue deaccessioning actively in a manuscript repository raises a number of issues regarding ethical relationships with donors. If a collection has a deed of gift, is there still a responsibility to contact the donor prior to making a decision? Should the wishes of the donor be taken into account if the institution is considering the sale of a collection? Can one proceed with deaccessioning if there is no clear deed of gift?

Decisions to deaccession require careful thought and the development of standard procedures. Although most archives have a collecting policy, many archives have yet to include a deaccessioning statement. This failure is shortsighted and will undoubtedly cause difficulty when such action is required. A deaccessioning policy should define under what circumstances a collection should be deaccessioned, who should recommend such action, and who is responsible for making the final decision. In cases where the item is to be sold, the policy should indicate how funds from the sale are to be used. Since

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deaccessioning is fraught with legal, ethical, and practical issues, and oftentimes, political consequences, it is important that the institutional administration and any governing boards be involved in the development of such policies and be fully supportive of such actions. Archivists who are recommending or making such choices must be able to depend upon the support of their administrations if they are to do their jobs in a responsible manner.

In summary, with the recently revised SAA code, there are ethical issues which still fall outside its precepts. Some of these might be considered to fall under the code's admonition that archivists "reconcile any conflicts by adherence to archival standards and ethics." 11 However, if the profession is to deal with current issues and past legacy, it needs continually to address ethical concerns. Options may include code revision on a regular basis or a more active SAA committee on ethics that archivists can consult when dealing with difficult ethical concerns. Whatever the choice, archivists should continue to raise and discuss issues which affect their programs and share their experiences with the profession.

Just as the collecting activities of predecessors can create current ethical concerns, so too can archivists who ignore this issue. It is important that archivists realize the potential harm that ethical problems can create, many of which can be alleviated by using appropriate policies and procedures. These include a well-defined collecting policy,

a deaccessioning policy, and a personnel policy which defines individual staff member’s ethical obligations. A policy or procedural manual should begin with or include the “Code of Ethics for Archivists” as well as include specific ethical situations which affect a particular institution. Such administrative documents set a standard for determining relationships between the archives and other institutions, researchers, or donors. If staff behave according to a set ethical standard, most problems can be successfully solved. In the long run, reputable behavior will enhance the image of the archives.

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THE ETHICS OF PROCESSING

Virginia J. H. Cain

Carrying out the archival functions of arrangement and description, those activities usually broadly associated with processing, logically comes after the acquisition of papers or records but before reference services and researcher access are provided for these materials. Surely many archives have in their deed of gift or instrument of transfer form a statement similar to this:

...this institution will provide a suitable repository for the materials and will house and maintain the same in good order according to accepted archival principles and procedures to ensure both preservation and accessibility to researchers...

...the materials will be available to all qualified researchers on terms of equal access. Any restrictions on access requested for reasons of privacy or confidentiality must be noted specifically.

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in this agreement and must have a date of termination. . . .

Therefore, once papers or records are acquired, an archivist has obligated herself to arrange and describe them in a professional manner and to make them available as far as possible without restriction.

There are a number of sections and phrases in the Society of American Archivists's 1992 "Code of Ethics for Archivists" which can help explain issues and try to answer questions related to ethical issues in arrangement and description.¹ These are among the many professional considerations which must weigh into the way in which an archivist administers both processing and an overall archival program.

¹ A Society of American Archivists Ethics Task Force, appointed in 1988, revised the 1980 "Code of Ethics," and it is this new code, adopted by the SAA Council in 1992, and its commentary which this article addresses. A published draft of what would become the 1992 "Code of Ethics for Archivists and Commentary" may be found in the SAA Newsletter, July 1991. In his introduction to this published draft, Society of American Archivists Ethics Task Force Chair Maynard Brichford provides a brief overview of SAA's consideration of professional ethics. Additional discussion and background information may be found in "Ethics for Archivists: The SAA's Code and Commentary—A Special Edition with Introduction" written and made available through the Society of American Archivists for classes, study, and discussion by former Committee on Ethics Chair David E. Horn.
While a careful reading of the code of ethics will suggest that every section can relate to arrangement and description in some way, it is interesting to note that even the 1990 manual, *Arranging and Describing Archives and Manuscripts*,\(^2\) does not devote a section to ethics. Much ethical behavior—or at least knowledge of ethics—is possibly presumed at a certain point, and certain aspects of applying ethics are—like certain aspects of processing itself—possibly considered to be common sense, albeit controlled and orderly common sense. This article will consider those sections of the code which have a more specific relation to processing and will also consider situations in which these portions of the code may affect the practical pursuit of processing.

In the opening sections of the code commentary, Sections I, “The Purpose of a Code of Ethics,” and II, “Introduction to the Code,” reference is made to selecting, preserving, and making available records and papers that have lasting value. While not specifically stated, arrangement and description can be understood to be included in this broad description of the principal functions of archivists, perhaps most specifically in the area broadly defined as making archival materials available.

In addition, these sections warn of the frequency with which ethical decisions will be faced; “[presume] that archivists obey the laws...[and] act in accord with sound

archival principles”; remind practicing archivists that “they subscribe to a code of ethics based on sound archival principles and promote institutional and professional observance of these ethical and archival standards”; and establish an expectation of “the highest standards of professional conduct and excellent work in every area of archives administration.”

New members of the profession, practicing archivists, and donors or others who have some contact with archives and archivists can and should expect that, in meeting certain moral and legal responsibilities, high professional and ethical standards will be upheld.

Section III, “Collecting Policies,” also makes reference to processing in its final sentence: “[Archivists] cooperate to ensure the preservation of materials in repositories where they will be adequately processed and effectively utilized.” The commentary for this section does not address preservation and processing specifically but rather dwells on collecting policies, cooperation, and competition.

This section serves as a reminder of two important things, however. First, while there are separate, specific standards and ethical considerations in professional preservation work, the basic survival of materials through protection, maintenance, and responsible custody is an important reason for collecting in the first place. The handling and housing of materials in arrangement and

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description, even when specific, detailed preservation work is not undertaken, can either promote or hinder further survival once the material is safely in a repository.

Second, implicit in this section of the code is the suggestion that a repository should only seek to acquire materials for which it can indeed provide adequate processing. This suggests resources for staff and supplies, staff—paid or volunteer—with both time and training to do processing work, and space in which to work on and to house materials. The commentary for this section mentions that casting aspersions upon the practices or capabilities of other repositories or other archivists is unprofessional. While archivists may have opinions—sometimes seemingly substantiated by comments from donors or researchers—about the administrative and processing capabilities of other repositories, these opinions may not be used as tools in seeking or competing for collections. This is also a reminder that a repository should be keeping its own processing house in order; in part, the reputation of a repository and its ability to attract donors and serve researchers rests on its abilities to handle the materials in its care. This does not imply that a repository with a backlog is a “bad repository”—or worse, an unethical one—or that an archivist should somehow be able to process materials fully the moment they arrive. A repository with a processing backlog is not the same as a repository which collects materials with no intention of or no resources to process the materials and make them available. Indeed, if materials are important enough to acquire, they are important enough to process, though processing order and
priority will be determined and adjusted by balancing a number of important factors considered within the individual repository.

Archival ethics obligate archivists to maintain a sound arrangement and description program, to train staff to process to an acceptable level, to stay current with professional developments, to adhere to national standards, to set standards and establish procedures for processing, to dedicate time to work on processing, and to work steadily to see that materials already owned or newly received by a repository are arranged and described in accordance with accepted archival principles and practices. In this as in other areas, "institutional policies should assist archivists in their efforts to conduct themselves according to this code. Indeed, institutions, with the assistance of their archivists, should deliberately adopt policies that comply with principles of the code."

Section IV, "Relations with Donors, and Restrictions," states that archivists negotiating for papers seek fair decisions based on full consideration of many factors including plans for processing, and also states that archivists discourage unreasonable restrictions on access or use but may accept clearly stated restrictions of limited duration, may on occasion suggest restrictions to protect privacy, and must observe faithfully all agreements made at the time of transfer or acquisition. This again speaks to an institution's obligation to process the papers it acquires and ties processing capacity and capability directly into acquisitions decisions.
For example, how can a public library with no trained archival staff plan to process and make available a huge collection of congressional papers? How can a repository staff plan to process a large collection of badly disarranged papers to a usable level with no staff professionally trained to identify and reconstruct original order? And, how can a repository, even though it may be able to assist in the immediate protection of an important collection, plan to process that collection if it contains films and wire recordings when it owns no equipment on which to play the recordings, or view the films for purposes of identification and description, and for which it cannot afford duplication for security, preservation, or access?

Processing work should always begin with consideration of the principles of provenance and original order. Processing should always be done with impartiality. For instance, arrangement and description should not be tailored to the wishes of a single researcher, who might wish to find all correspondence of a single individual or all speeches on a particular topic located together. If a collection contains a large run of chronologically arranged correspondence on a wide variety of topics, the archivist will not rearrange the papers to suit a researcher who may wish to read only letters on certain topics or exchanged with certain individuals. Instead, the archivist seeks other tools, such as selective name and content indexing, to provide intellectual access and linkages in a way that the physical arrangement of the papers cannot. An archivist should also consider whether it is possible that, in employing a sophisticated subject specialist to process certain
collections, this specialist processor will become too involved in the subject to process quickly and impartially or that he or she will arrange and describe a collection in a highly specialized and potentially distorted way.

The question of restrictions in relation to processing is raised in this section of the code, as well. While the processor may not always be the same individual who negotiates a transfer or an acquisition, processors can hope for reasonable restrictions and offer opinions in the matter of restrictions, especially about the difficulty a certain restriction will pose for arrangement, description, and access. Once a group of papers is acquired, the processor should become fully familiar with all terms of acquisition so that processing plans will not be in conflict with a restriction or other portion of the donor agreement.

Consider a deed of gift in which a donor has specified that all the correspondence between herself and another individual is to be completely closed for a period of twenty years. These letters, which are relatively few in number, are interfiled throughout ten linear feet of general correspondence. With no other restriction in effect, it would be a disservice to potential researchers to close this series or the entire collection for the twenty-year period. In such a case, the archivist could, as he processes the papers, separate all the correspondence covered by the restriction, leave withdrawal sheets in place of the removed items, and house the restricted materials separately in a way that will prevent their accidentally being served to a researcher.

It is always possible that a restricted item will escape a processor’s attention. A processing plan with such specific
provisions for the removal of restricted materials should also include at least one additional safeguard to ensure that the terms of the original donor or transfer agreement are faithfully observed. Such safeguards may include a review by a second staff member at the time of processing or prior to their first use by a researcher. These steps are time-consuming and labor intensive, and they assume a staff of more than one person, but they might be necessary if such restrictions have previously been accepted.

Section IV of the code also mentions restrictions suggested by the archivist. While the code is certainly not advocating that archivists seek or promote restrictions, this portion of the code could also relate to processing. In arranging and describing papers, an archivist will look more closely at the papers than will any other staff member, than will many researchers, and indeed than may have the donor or agent of transfer himself. What if the archivist finds in a collection of personal papers correspondence containing damaging information about living persons? What if the information concerns a deceased person whose descendants are very prominent in the community? What if a group of records includes applications for financial assistance that reveal useful demographic and sociological information but also give names and personal and financial details about persons who are presumably still living? Protection of the privacy of living persons, especially those who had no voice in the placement of the papers or records in an archives, is a very real concern and steps must be taken to protect this privacy.
There is no single, simple course to follow—the repository could impose its own restrictions, could renegotiate with the donor, or could do a combination of the two and approach the donor with specific recommendations for handling the situation. An archivist must be careful not to be so extreme in such measures that his efforts could be interpreted as over-sensitivity at best, and as sanitizing or censoring collections at worst. If materials are separated from the collection, criteria for these decisions must be determined carefully, documented thoroughly, and applied consistently. Withdrawal sheets could hold the place of the removed items, or narrative notes in the description could account for the separated material.

Section V of the code is entitled “Description.” This section is completely new to the 1992 code—the former code did not address description so directly. The finding aid, mentioned prominently in the text of the code, is the basic product of description and is at the heart of both archival processing and reference service.

Processing actually begins with the decision to acquire a specific collection, and continues with the decision to process the collection to a certain level and to create all the needed parts of the finding aid from which description and access points are derived in order to facilitate access to the collection. Reference, on the other hand, begins with an inquiry which leads to a search of access tools and the identification of specific finding aids to use as gateways into specific collections to find the needed information. In both cases, the finding aid plays a key role in linking the
intellectual needs of researchers to the physical location of information in collections.

Section V states that "archivists establish intellectual control over their holdings by describing them in finding aids and guides to facilitate internal controls and access by users of the archives." The commentary goes on to explain clearly that "description is a primary responsibility and the appropriate level of intellectual control should be established over all archival holdings. A general descriptive inventory should be prepared when the records are accessioned. Detailed processing can be time-consuming and should be completed according to a priority based on the significance of the material, user demand and the availability of staff time. It is not sufficient for archivists to hold and preserve materials; they also facilitate the use of their collections and make them known. Finding aids, repository guides, and reports in appropriate publications permit and encourage users in the institution and outside researchers."

This commentary says a lot about description in a very few words—description, however time-consuming, is a vital link in the archival continuum from acquisition to reference and research. Finding aids and subject guides used internally facilitate use of the collections by researchers who have come to the repository. Notices in journals and in national guides used by subject specialists, entries in the National Union Catalog of Manuscript Collections, records in national databases such as OCLC (Online Computer Library Center) and RLIN (Research Libraries Information Network), and the availability of full-text finding aids through the Internet bring holdings to the attention of researchers.
who have not yet visited and who may never actually visit the repository. Archivists are indeed obligated both practically and ethically to make their holdings accessible and to promote the use of the holdings of their repository.

The code and its commentary, however, do not reach a level of detail that would allow it to address some other practical issues surrounding description which cannot be overlooked in a consideration of processing and ethics. In description, an archivist is obliged to be impartial, accurate, and complete. An archivist should follow the standards of the profession and keep abreast of changes in the area of description as in other areas. Leaving the writing of laudatory biographies or even steamy sagas or exposes to others, an archivist does not draw conclusions for researchers, and must be impartial, accurate, and complete in recording information about collections.

Section VI, "Appraisal, Protection, and Arrangement," also contains parts relevant to processing. It seems that the code puts the archival cart before the archival horse, treating description before appraisal, responsible custody, and arrangement. This unit, whatever its placement, is important.

The section charges archivists with preserving the arrangement of documents in the repository, protecting the integrity of records and papers in their custody, providing for the physical safety of the materials, and ensuring that evidential value inherent in records and papers is not impaired through archival work including arrangement and description. Each charge clearly relates to processing and alludes to the importance of arranging and managing
papers and records in a careful and professional way that will not jeopardize original order or evidence inherent in pre-existing arrangement. Description can also be a key to protecting arrangement and integrity and to security, for the descriptive records made beginning at the time of acquisition will document when the materials were acquired, what materials actually form the acquisition, what related materials are located in other parts of the same collection and in other collections, and in what order the materials have been or should be arranged in case they are disarranged during transfer or use.

Section VII, "Privacy and Privileged Information," addresses an issue that is crucial in archival ethics. In addition to the previously mentioned concerns about establishing and respecting reasonable restrictions in order to protect the privacy of living persons, this section speaks to the fact that archivists have access to this restricted information and to other confidential information, and that archivists must guard such information carefully. Not only would it be unethical to reveal or to profit from such information, the code states, but it would also be a blow to the integrity of the repository and of the profession to violate the safeguarding responsibilities with which archivists are charged.

Respect for restricted and confidential information is a vital ethical value to instill in archival staff from the earliest moment of their employment. This applies to staff at all levels from student workers to experienced professional archivists. Think how easy it can be to marvel at confidential facts over a cup of coffee in the staff lounge or
to reveal personal information in cocktail party conversation, and think of the damage this can do. Safeguarding confidential information is a concrete value of the archival profession that might provide a good place to start in conveying the concept of archival ethics in on-the-job training.

In Section VIII, “Use and Restrictions,” processing interacts closely with reference service. Carefully documented acquisition, accurate arrangement, and thorough description will make reference service easier, especially in a repository in which some staff spend more time on processing while others spend more time on reference. Any staff member involved in reference must have clear information about the status of a collection, and must not be expected to remember which portions of which collections are governed by which restrictions and for how long. Similarly, archivists must not seem to be keeping information from researchers, whether intentionally or not.

Description can again be the key in both cases. Descriptions should account for all materials, whether restricted or not, and as far as possible, should note related materials elsewhere in a large collection or in another collection. A withdrawal form can hold the place of items withdrawn from a collection or group of records for restriction. This informs a researcher of what is in the collection but not available. It can help a researcher avoid drawing incorrect conclusions and assuming that certain documents never existed or once existed but are now lost. As important is that it can reassure the researcher that the
The Ethics of Processing

repository is not capriciously restricting information and is not hiding information.

In addition, a collection description should contain a clear statement about restrictions on access, quotation, or reproduction either on its cover page or in its introduction or other narrative sections. While it would be impossible and impractical to provide complete details about restrictions in a single section of a single page, a brief statement on a cover page, for example, does provide information about restrictions that can be conveyed to remind reference staff and to inform researchers. Information about restrictions should also be included in online records and in finding aids available on the Internet.

A final section of the code that can apply to processing is Section X, "Research by Archivists," which describes ethical conduct for archivists who are using their own holdings for research and for archivists who collect manuscripts. The commentary for this section recognizes a conflict that exists: on one hand, the archivist doing research in the holdings of her employing institution may be reluctant to make these materials available or to share information about the holdings with other researchers working in the same area; on the other hand, the archivist may be the person best qualified to do research in areas represented in institutional holdings. The commentary suggests that the best resolution is to clarify and publicize the role of the archivist as researcher.

In this, as in other areas of the code, there are no specific means for answering questions and solving problems related to ethics. The code of ethics gives
guidelines, not procedure. The code is, in other words, *descriptive* rather than *prescriptive*. It provides the basis for that controlled common sense mentioned at the outset.

In addition, the code recommends no specific enforcement mechanism, but enforcement and discipline were not intended to be derived directly from this code.\(^4\) Section XI does admonish archivists to “avoid irresponsible criticism of other archivists or institutions and [to] address complaints about professional or ethical conduct to the individuals or institutions concerned, or to a professional archival organization.” The role for national or regional archival organizations, their officers, committees, or task forces in promoting ethical practice remains to be defined, practiced, tested, and refined.

Proactivity in the use of the code’s ethical guidelines remains an important responsibility of the individual archivist. The code sets expectations which the archivist can use in developing sound institutional policies, making informed decisions, and applying professional judgment in arrangement and description as well as in other archival operations. It will remain a professional and personal challenge to the archivist to factor the general guidelines of

the code into the specific situations which arise in daily practice.

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THE ETHICS OF PROVIDING ACCESS

Ronald L. Becker

Archivists today make some of the most difficult ethical and legal decisions at the public service desk. It has always been a difficult process to balance the archivist's legal and ethical obligations to the researcher, to the donors of collections, and to the institution served and, furthermore, to factor in obligations to those who often are not even aware that archives hold materials that impact on their lives. Balancing equality of access for all patrons with institutional needs and requirements is at least as difficult. Despite sincere efforts to limit the acquisition of restricted material, many important and potentially useful collections are restricted. Indeed, some have never been used. Naturally, archivists would like to encourage the use of collections that reveal a wealth of information documenting social, economic, literary, and educational history.

With its “Code of Ethics for Archivists,” the Society of American Archivists (SAA) has clarified the areas of concern to consider in trying to resolve the conflicts faced in light of
the law, institutional needs, the highest ethical standards and, of course, the desire to serve which led many archivists into the profession in the first place. It is the responsibility of the individual archivist, the unit in which that archivist works, and the employing institution to use and build upon this code in solving the often complex ethical issues encountered in public service. This article demonstrates how the code, most particularly in those sections which deal with issues relating to access, can be used and amplified to deal with real, true-to-life, practical situations.¹

Privacy and Restricted Information

The code, Section VII, reads: “Archivists respect the privacy of individuals who created, or are the subjects of, documentary materials of long-term value, especially those who had no voice in the disposition of the materials. They neither reveal nor profit from information gained through the work with restricted holdings.” SAA’s commentary continues, “In the ordinary course of work, archivists encounter sensitive materials and have access to restricted information. In accordance with their institutions’ policies, they should not reveal this restricted information, they should not give any researchers special access to it, and they should not use specifically restricted information in their own research. Subject to applicable laws and regulations,

they weigh the need for openness and the need to respect privacy rights to determine whether the release of records or information from records would constitute an invasion of privacy.\(^2\)

At Rutgers University, archivists have encountered such conflicts in four areas: case files and similar materials in various manuscript and archival collections; legal files in the archives of organizations, particularly those of labor unions; sensitive materials in the University Archives which document the events and activities of the employing institution; and private correspondence, especially in literary collections.

Case files can be found in a number of different types of organizational and institutional records. At Rutgers, the preponderance of case files are found in its congressional, labor, consumer, and social welfare holdings. The term *case file* is a generic term which covers any file which is kept on an individual or group of individuals for whatever reason the organization assigns. Congressional offices solve problems for their constituents which could range from facilitating the receipt of veteran's benefits, to getting the utility company "off my back," to serious cases of unreported child or spouse abuse. In the international archives of a prominent labor union, the National Maritime Union of America, case files document the improper behavior of members (usually drunkenness, but sometimes more serious behavior) and subsequent "trials" by a union-

\(^2\) Ibid., [3].
and company-approved court, and their disposition. In the records of social welfare organizations are found detailed files relating to physical and mental development of children, assistance to immigrants, and other materials concerning individuals and families. There are even case files in such unlikely places as the archives of the first consumer product testing organization in the country, Consumers’ Research, Inc. After a bitter strike in the 1930s and the resulting formation of Consumer’s Union, which soon rivaled and then far surpassed Consumers’ Research in influence on the public, Consumers’ Research turned far to the Right politically and began to compile files on individuals of what CR termed ‘radical’ and ‘communist’ influence on the consumer movement—individuals whom most people would hardly consider in those terms. The practice continued for years and the files are quite substantial.

Because congressional case files are voluminous (a substantial amount of the resources of the Washington offices and nearly one hundred percent of those of the district offices are devoted to casework), somewhat repetitive, and fraught with privacy concerns, Rutgers has been very selective as to which office’s casework to accept

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3 AFL-CIO Archives, National Maritime Union of America, Special Collections and University Archives, Rutgers University Libraries, New Brunswick, N.J.

with the archives and how much of it to take. The member of congress will usually have an opinion concerning its disposition. Some have chosen to discard all of these files before the archives are transferred. For better or worse, Rutgers now has several collections complete with samples of case files. Access to these files is restricted, and even when the politician gives permission for their use, access is usually not granted immediately. After all, when one writes to a member of the House or Senate about a personal or family dilemma, it is often done as a last resort and in confidence (even though it is a tacit confidence). Correspondents truly had no voice in the disposition of the materials that convey information about them. Imagine the distress that these individuals and families would feel knowing that their private lives are being made public.

At Rutgers, archivists cope with the inherent conflicts involved in this privacy vs. social history research dilemma by making certain that legitimate research can be carried out using these documents without making the individuals’ lives public. An Application to Use Restricted Materials\(^5\) is completed, and if aggregate research information is sought about the casework or a biographer wants to know what kind of casework a politician takes on and how that office resolves conflicts, permission is usually granted. In order to protect the individual’s privacy from invasion, the researcher must agree never to reveal names in the file, and no

photocopying is allowed. To date, only a handful of requests have come in for case files in congressional collections. One researcher was most interested in the workings of the office of an outspoken congresswoman, and another in the office of a congressman who later became governor. Use should remain low for this type of record at least in the near future. Perhaps another generation of scholars will find a way to make better use of this material after the restriction is lifted seventy-five years from the creation of the record or the known death of the subject of the file (similar to the restriction placed upon student transcripts in the University Archives). This method of making restricted materials available to the public without invading the privacy of the individual covered in the case files is not completely foolproof. A researcher could renge on his contract in the Application to Use Restricted Materials. However, the institution should be covered legally and ethically by executing such a document.

Case files located in labor collections pose a slightly different problem. The National Maritime Union of America (NMU) represents American seamen who by the nature of their work travel throughout the world in cramped quarters over long periods of time. Although the archives consist of all the usual materials (constitutions, contract negotiations and compliance, speeches, organizing documents, company files, reports, photographs, publications, etc.), the largest single portion of the records contains case files dating from the 1940s to the late 1960s. These records derive in most instances from charges of misconduct brought against an individual by his fellow crew members.
The charges, such as drunkenness, not appearing when scheduled to appear on a ship, or refusal to work, were ruled upon by an NMU port trial committee which then assessed punishments in the form of fines, probation, or suspension. The "court" must have been very busy because these records cover over ninety linear feet! There is clearly some potential research material in these records.

Because the NMU port trial committee was not a public criminal judiciary body, the records that it generated cannot be deemed public, and access to them is restricted. As with the congressional case files, a researcher applies to use the restricted materials and agrees not to use personal names. Again, photocopying is forbidden. With the NMU records, permission to use them must also be sought from the union \textit{and} if the individual who is the subject of the case file is living, from that person. A letter is drafted and signed that reads "I understand that \underline{\text{\hspace{5em}}}} will be conducting research using the National Maritime Union of America documents in your possession. Since I was an active member of the union in the 1930s and 1940s, some of the document files, particularly the trial committee files, may contain information about my activities relevant to their research. I hereby grant permission for them to examine the restricted trial committee files on me."

Needless to say, the researchers were only interested in looking at a few

\footnote{\textit{\hspace{5em}}} Subject of case file to Special Collections and University Archives, Rutgers University Libraries, 4 July 1989, Control File, AFL-CIO Records, National Maritime Union of America.
of the case files. It would take many letters of permission to examine fully a record group consisting of ninety linear feet of case files of mostly living people, and a correspondingly greater time tracking down scores of dead people. Thus, this practice will severely limit the full research use of these files until the twentieth-first century.

Rutgers holds the records of a number of social welfare agencies dating from the eighteenth century and including orphan asylums, children’s services, and resettlement societies. One such agency is the Jewish Counseling and Service Agency of Essex County, New Jersey, into which merged the Bureau of Service to the Foreign Born conducted by the Newark Section of the National Council of Jewish Women. The bureau began its efforts in 1917, expanding to a county-wide program in 1940. Through its largely volunteer staff, it provided aid to immigrants and aliens, especially in adjusting to and integrating into life in America, and information and guidance relating to questions of legal status, immigration procedures, and naturalization. The bureau’s records include case files on approximately five thousand immigrant individuals and families, including their histories and documentation of bureau efforts on their behalf from 1939 to 1961. The case files are restricted similarly to those in congressional papers, which allow scholarly research to take place without invading the privacy of the individuals and families that are the subjects of the files.

Another agency of note is the Sheltering Arms Children’s Service and its antecedent organizations. Rutgers holds the records of these agencies dating from 1852 to 1966. In
addition to the usual reports, correspondence, financial records, minutes, and publications, there are extensive children's information files (1864-1955) and foster home files (1917-1966). The earlier organizational files have received much use. Until very recently, the only use of the case files was done at Sheltering Arms headquarters in New York. All requests are forwarded to Sheltering Arms. If Sheltering Arms approved, the individual file would be photocopied and mailed to their office. Only individual files rather than groups of files have been requested. This implies that only the subjects of the case files, that is, children who had lived in Sheltering Arms or in its foster homes, are asking to see those files. Recently, a social historian asked to see several years of the case files for a comparative study that he is conducting. This was the first real research request for these records and was not covered in the agreement with Sheltering Arms. After a discussion of basic policies allowing access to restricted materials while requiring the researcher to agree in writing never to reveal the identity of individuals and families and prohibiting photocopying, Sheltering Arms readily accepted the conditions and allowed the researcher to use the collection.

The Consumers' Research Archives noted earlier is currently being processed with federal funding assistance and will be opened to the public in December 1994. The organization does not consider the case files created on the consumer movement's left-wing and 'fellow travelers' to be confidential in any way. In fact, they were used in testimony given to the McCarthy hearings in the 1950s. Since the names in the files are well-known, the invasion of privacy
justification takes on a new meaning. It would be awkward to allow access, but not reveal names. Because that part of the collection is closed, there is time to study the need, if any, for restrictions and for the fair application of any that are imposed.

The list of the types of collections that contain case files or similar collections can go on and on. In addition to those outlined, there are records of churches and synagogues, some of which contain membership files that read much like case files, especially where clerical counseling is detailed. Where those files exist, they are restricted. To date, no requests for their use has been filed, but the same principles that have been used for similar situations will in all likelihood be applied wherever possible. As indicated earlier, the SAA code of ethics calls for weighing the need for openness against the need to respect privacy rights and calls for policies such as those at Rutgers. There is no guarantee that a researcher will not violate an agreement, but at least these policies make it possible to meet both needs.

Similar privacy concerns can occur with legal records. Much has been said about the need to preserve the confidential lawyer/client relationship just as there is a need to preserve the clergy/layperson relationship that might be documented in the files of church and synagogue records. Legal records are not found only in the archives of law firms. The trials file (although quasi-legal) in the National Maritime Union of America archives is an example. Another is the records of the legal department of the International Union of Electrical, Salaried, Machine & Furniture Workers
(IUE), yet another large collection currently being processed and made available for public research. The union has been involved in numerous landmark cases since its founding in 1948, including those centering around pregnancy leave/disability and other women's rights issues. Most are very much in the eye of the public, having been tried in the federal courts and the National Labor Relations Board. However, much of the documentation gathered by the legal department resembles the case files discussed previously. Individual grievances, personnel files, and similar "private" materials once again call for ethical judgments in addition to simply "legal" solutions.

At Rutgers, there are also some literary holdings in which access to the correspondence files and possibly to the manuscripts are restricted. As in many correspondence files, the papers of the literary figure tend to contain the letters of the sender to that person rather than the reverse (unless the literary figure kept a copy). Thus literary rights and the right to privacy really belong to the person who wrote the letter, who is not likely even to know that the letter has been donated to a repository. If the letters are personal in nature, restrictions on access might be necessary regardless of the wishes of the donor. Unlike the case files noted earlier, these letters are often of well-known figures. In addition, this material does not lend itself to aggregate studies as does material in case files, and it is much more difficult to justify access ethically and legally without the consent of the writer of the letter.
Equitable Access

The code, Secton VIII, reads: "Archivists answer courteously and with a spirit of helpfulness all reasonable inquiries about their holdings, and encourage use of them to the greatest extent compatible with institutional policies, preservation of holdings, legal considerations, individual rights, donor agreements, and judicious use of archival resources. They explain pertinent restrictions to potential users, and apply them equitably." SAA's commentary continues with "archival materials should be made available for use (whether administrative or research) as soon as possible. To facilitate such use, archivists should discourage the imposition of restrictions by donors. Once conditions of use have been established, archivists should see that all researchers are informed of the materials that are available, and are treated fairly. If some materials are reserved temporarily for use in a special project, other researchers should be informed of these special conditions." The types of repositories and nature of the collections often dictate the way in which the individual archivist deals with ethical considerations involving the use of collections. Clearly, fairness and equality within the institutional framework should be uppermost in the mind of the archivist. To illustrate some of the potential problems and to show how building upon the code of ethics can provide some resolution, consider access to certain

7 SAA, "Code of Ethics," [4].
materials in the Rutgers University Archives and in literary collections.

The commentary accompanying Section VIII urges archivists to discourage the imposition of restrictions by donors. The logic behind that reasoning is irrefutable. Unfortunately, there comes a time when certain collections must be taken with restrictions because that is the only way in which they will be donated; and if they are not accepted, irreplaceable primary research documentation could be destroyed. The most extreme example concerns a collection that was accepted by Rutgers several years ago which contains business records dating from the eighteenth to the mid-twentieth century. The last owner of the business was the direct heir of the founders of the company. His children had inherited the archives and had the right to donate the collection to a repository. There is only one catch: the collection is closed to the public until the death of certain other family members who would be extremely upset to learn that the archives had not been destroyed years ago and horrified that anything relating to that family was in a public repository. The donors are adamant about the restriction and maintain the right to remove the collection if it is violated. Recently, the archives received a reference inquiry by mail that could have been answered in great detail with materials from the collection. The researcher had been looking for this information for years. After much agonizing, the answer to the researcher was that there is nothing "currently" available in the collections that would shed light on the inquiry. Clearly, there was no alternative answer given the nature of the restriction.
Fortunately, archivists do not face issues this extreme on a daily basis, but they must be prepared with policies and practices to make every effort to avoid situations where they are not giving available information on an equitable basis to the research community.

If an archivist is operating out of an institutional setting such as a business, religious, organizational, or university archives, the institutional framework will influence the archivist's ability to provide information on an equitable basis. However, by balancing the obligations inherent in the requirements of the parent organization with legal requirements and ethical considerations, the materials within these archives could be utilized by researchers from outside the organization. In an institutional setting, an access policy statement is essential for setting up the parameters of use. The discussions between the archives and the parent institution could help the institution understand how the materials could be used for scholarship and their importance in that role as well as the administrative role that they play in the operation of the institution.

The Rutgers University Archives access policy states that "all of those records required by law to be maintained or publicly available at their inception will be made available immediately. All other institutional records will normally remain closed for a period of 20 years from the date of their creation unless the office of origin has designated a shorter period. The records that are closed for longer periods include Board Committee minutes restricted for 35 years and student and personnel records which are restricted for
Records created by the Office of University Counsel in its capacity as counsel to the University are privileged and confidential and exempt from access. Other records may be restricted for more than 20 years as determined by the Committee on Archives. During the restricted period, the records will be available only to the office of origin, the staff of the Archives, and officers of the University as necessary. Consideration for access by others will be given when a written request is presented to the University Archivist. A review of that decision may be obtained from the Committee on Archives by submitting a written request for such a review. Both the initial request and the review of the decision must be accompanied by sufficient information as to the intended uses of the records. The University Archivist may impose whatever conditions on the use of the records as he or she deems necessary to preserve the confidentiality of the information contained in such records. This policy will not impinge upon the normal administrative uses of University records.

To date, this policy has worked quite well in assuring that university records will be used to their fullest by researchers while protecting the university and obeying the appropriate statutes. The following example illustrates how the University Archives waded through a delicate situation that ultimately met the needs of the university and outside researchers.

In 1935, an instructor in the German Department of the New Jersey College for Women (now Douglass College) at Rutgers University was denied promotion and had his appointment terminated. The instructor, Lienhard Sergei, was an outspoken critic of Nazism and the Hitler regime (the only one in his department). In grievance hearings and in public, he claimed that he was being discharged for his political stance and thus victimized by the pro-Hitler bias of his department and particularly by its chairman, Friedrich Hauptmann. With the subsequent involvement of the press, the American Civil Liberties Union, and a number of student organizations, the case became widely known; and the university found itself having to defend charges of harboring Nazi sentiment and racism. Rutgers President Robert Clothier convened a committee of five trustees to hear the grievance case. After two months of hearing testimony, the committee concluded that the university was justified in its decision to deny the reappointment to Sergei. In addition, Hauptmann was cleared of all charges leveled against him. The report was filed and the case was officially closed. Sergei eventually took a position in the German Department at Queens College of the City University of New York, was tenured, and remained there for approximately forty years. Hauptmann continued to support the Nazi cause and as time went on became somewhat of an embarrassment to the university. Hauptmann abruptly resigned in October 1940, and using funds provided by the German consulate in New York, moved to Germany, joined the Nazi Party in 1941, and was then employed by the German Academy in Slovakia until the end of the war. He was arrested and
interrogated in Austria in 1946, but never prosecuted. He remained in Austria and died there in 1978.

As many years passed and the university grew from small liberal arts colleges to a major state university, the memory of the case faded. However, a student leader from the class of 1935 did not forget and on the fiftieth anniversary of the case in 1985, Alan Silver asked then Rutgers President Edward Bloustein to reopen it and issue an apology to the Bergel family during Professor Bergel’s lifetime. After being rebuffed, Silver took his case to the press and soon the affair was being debated throughout the state and the region. Once again, a team was assembled to investigate the case and issue a report. This time the team consisted of three historians who were charged with examining all of the evidence in the University Archives and elsewhere. Over a fifteen-month period, they examined personnel records, the papers of the Rutgers president and Douglass College dean, the records of the special 1935 trustees’ grievance committee as well as ACLU records at Princeton, American Association of University Professors records in Washington and the FBI files on Hauptmann and Sergei. In December 1986, they issued their report; and in 1989, they published *The Case of the Nazi Professor* issued by the Rutgers University Press. The report and subsequent book detailed the case and concluded that the original trustee’s report was predictable and biased; after all, they were protecting a university which was more on trial than was Instructor Bergel. Many of the allegations made earlier and again in 1985 concerning Hauptmann’s spectacular Nazi activities were also over-exaggerated, and
ultimately, the university made its decision not to reappoint Bergel on factors other than Hauptmann’s bias. The university was suffering declining enrollments during the Depression and had only room for one junior professor to be reappointed and chose another that it thought was more qualified than Bergel.⁹

While the 1985-1986 investigation was taking place, all of the university records relating to the case were closed to the public. The University Archivist’s letter to the community read, “At the request of the President of the University, a special faculty committee has been appointed to conduct an historical assessment of the Bergel/Hauptmann case, and publish its findings. During the Committee’s investigation, University records relating to the case will be closed and unavailable for public use, but will be opened again as soon as possible.”¹⁰ Only the committee had access to the records which (with the exception of personnel records of living people) had previously been open to the public. The justification for closing the records for this temporary period (sixteen months) was that they needed to be kept together for the committee’s use, and to assure the integrity of the contents of the records, thus protecting them from alteration.


¹⁰ University Archivist to Patrons of Special Collections and University Archives, 16 October 1985, Correspondence File, Special Collections and University Archives, Rutgers University Libraries.
or destruction. The records were again open to the public in their entirety after the issuance of the report.

This procedure was not without some problems. Alan Silver, who initiated the 1985 investigation by contacting the president, and his informal research team which consisted of a historian and a retired chemistry professor, were not given access to the collection during the fifteen-month period of the investigation. In addition to being critical of the report, they lodged informal complaints of not being given equal and fair access to the materials for their investigation during the period of the official investigation. They also felt that once the committee had access to personnel records of living people, their use could no longer be restricted. Although these complaints were not pursued formally, the ethical dilemma is clear. The code states that the archivists “in accordance with their institution’s policies...should not give any researchers special access” to restricted information.11 The key part of that phrase concerns “their institution’s policies.” If the Hauptmann/Bergel materials were not part of the University Archives, but of the manuscript collections within Special Collections, then both groups of scholars should have been given “equal access”; and neither group should have been given access to the personnel files of living people without their permission. However, because these are the official records of the university, and the university, albeit reluctantly, was conducting an official investigation, it had the right to allow unequal access for its official committee.

In a case such as this, the archivist's duty is clear: follow the mandate of the institution for whose official records the archivist administers.

The preceding example covers only one type of case regarding equal access. Others could relate to the sophistication and background of the researcher. With most acquisitions programs still booming despite recent years of recession, and with greater access to archival collections through on-line subject catalogs and better finding aids, more and more researchers are entering the reading room, many for the first time. In a large university setting such as Rutgers, which only recently loaded its Archives and Manuscripts Control File (AMC) records into its on-line catalog, many researchers are drawn to the collections through the catalog. Of these, a fair percentage have never thought to use manuscript material in their work. The result is an influx of undergraduates and others with little or no experience in archival research, who expect the same kinds of service to which they are accustomed when working with general library materials. Educating these novice researchers in the use of archival resources and encouraging them to exhaust secondary materials first in such a way that they will be confident in using manuscript sources in the future is becoming a routine challenge.

The Society of American Archivists's "Code of Ethics for Archivists" can be used as a starting point to help solve inherent conflicts relating to the provision of access to archival materials. However, there will always be conflicts in all of the areas addressed. As the code states in its concluding paragraph, "Archivists work for the best interests
of their institutions and their profession and endeavor to reconcile any conflicts by encouraging adherence to archival standards and ethics." The commentary continues, "When there are apparent conflicts between such goals and either the policies of some institutions or the practices of some archivists, all interested parties should refer to this code of ethics and the judgment of experienced archivists."¹² Such adherence of conflicting parties to the spirit and provisions of the code would constitute an ideal state. It remains to be seen whether this state will be realized. In actual situations of potential conflict, the experienced archivist will think and act ethically as well as practically and will do everything possible to allow access to historical materials in a consistent and equitable manner.

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Use of terms which have special meanings for archivists, manuscript curators, and records managers should conform to the definitions in Lewis J. Bellardo and Lynn Lady Bellardo, compilers, A Glossary for Archivists, Manuscript Curators, and Records Managers (Chicago: SAA, 1992). Copies of this glossary may be purchased from the Society of American Archivists, 600 S. Federal Street, Suite 504, Chicago, IL 60605.
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