

# Ethical Issues in Archival Management

by Donald R. Lennon

**T**he archival profession in the United States, though a product of the twentieth century, has been granted the sacred trust of preserving our nation's documentary heritage. From its inception as a profession, archival practice in this country has been based on the sound principles developed in Europe during the nineteenth century. Among these rudiments of the profession was the understanding that the government was responsible for properly preserving its documentary heritage, that the public had a basic right of access to government records, and that historical scholarship should be encouraged and supported through the work of the archivist.<sup>1</sup> These considerations are directly germane to the ethical foundation of the profession.

Although a concern for codifying ethical criteria for the profession was voiced soon after the Society of American Archivists was formed in 1936, not until 1955 was "The Archivist's Code" brought forward by the National Archives. The code, attributed to Archivist of the United States Wayne C. Grover, was an in-house document prepared for use in the National Archives in-service training program. "The Archivist's Code" was published in the *American Archivist* in 1955 and unofficially, at least, became the moral code by which the profession judged itself.<sup>2</sup>

Even though the 1955 code set a standard toward which the professional archivist could strive, the seven simple paragraphs did have certain limitations. It was written for the internal use of the National Archives staff and as such did not address the field of historical manuscripts, with its concerns for donor relations, deeds of gift, and competition among repositories. Also, a code written in 1955 could not anticipate the ethical issues that were to surface during the final decades of the century,

such as questions surrounding rights to privacy, copyright protection, and contractual commitments.

In 1977 the council of the Society of American Archivists formed a committee to prepare a draft code of ethics for the profession and "to make recommendations to the council on the appropriateness and feasibility of the Society adopting sanctions against unethical action."<sup>3</sup> The committee labored for three years before a final version of the code was approved by the council in 1980. Although the wording was substantially reconfigured, major provisions of the 1955 document are recognizable in the eleven unnumbered paragraphs of the "Code of Ethics for Archivists." A detailed commentary accompanying the code attempted to justify each article and explain the rationale for the code and the thinking of the committee that framed it.<sup>4</sup> Dissatisfaction with this

1980 document resulted in the authorization by the SAA council in 1988 for the establishment of an ethics task force to review the code and recommend revisions or additions. This task force met between November 1988 and September 1990 before submitting the revised code to the SAA council. After repeated pleas for membership input into the process, the new version of the code was approved by the council at its fall 1992 meeting. The 1992 code contains twelve unnumbered paragraphs in its summary form. The commentary section was substantially rewritten to articulate better the reasoning behind the code statements.<sup>5</sup>

It is interesting to note that the framers of the 1980 code and the 1992 revisions had difficulty deciding whether their document was a "moral and legal statement" or whether it simply "implies moral and legal responsibilities." The 1980 version and early drafts of the 1992 statement had specifically contended that "A code of ethics is not a moral or a legal statement." Some critics had pointed to this effort to distance the code from its moral nature as one of several weaknesses in the document. George Stevenson, of the North Carolina State Archives, argued that "morality cannot, by definition, be separated from ethics. When a code is devised that is not centered in moral considerations, it may be an administrative code, a legal code, a code of etiquette, a code of chivalry, a code of honor—it may be almost any kind of code, but a code of ethics it is not."<sup>6</sup> Apparently yielding to expressions of concern, the version adopted by the SAA council reworded the statement of purpose to read simply that "A code of ethics implies moral and legal responsibilities. It presumes that archivists ... act in accord with sound moral principles."

The new code does provide a broad base of guidance for the archivist in the

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management of an archives or manuscript repository. As expressed by Karen Benedict in *Managing Archives and Archival Institutions*, "The purpose of an ethical code is to delineate for the members of the profession and for the public at large, the issues of greatest concern and the areas of potential conflict between individual action and the purpose of the group and to guarantee that the special expertise of the group will be used to the good of society."<sup>7</sup>

In reviewing the question of ethics in archives management in general and the "Code of Ethics for Archivists" in particular, this author frequently will elaborate on issues far beyond the code and the commentary that accompanies it. Issues of ethical importance to the profession were not always addressed specifically by the task force and it is the feeling of this author that they are valid considerations for the archivist to contemplate from an ethical perspective.

The initial paragraph of the 1992 code serves as an overview statement to identify the principal functions of archivists and explain their basic role in the profession. The reader is reminded that not every aspect of the code is applicable to all members of the profession since archivists, records managers, and manuscript curators have distinctly different responsibilities.

The second and third unnumbered paragraphs of the code as adopted in 1992 deal with questions involving the accession/acquisition process with which all archival and manuscript repositories are concerned. Archival agencies have statutory requirements that stipulate the records for which they are responsible. Archivists, operating within legally formulated "collecting policies," should strive to assure that the regulations under which they operate are adequate to protect the vital records of the agencies they serve. Equally important is the need to assure that the laws or regulations are enforced faithfully to guarantee that agencies and officials remain in full compliance. It is of questionable ethical behavior for an archivist to endanger the records within his legal purview through failure to enforce the records laws. In the past, the problem of estrays, records that have left the jurisdiction of the level of government for which they were created, has haunted the archives and manuscript profession. In states where comprehensive public records laws hold sway, there should be little confusion over the disposition of modern government records. The threat of replevin, though still a significant issue where older documents are concerned, can be minimized if acquisitions by non-archival agencies are carefully appraised with statutory requirements in mind. Replevin cases in recent years have created a storm of pro-

tests within the manuscript community, but it is a valid and necessary tool of government when enforced wisely.

In recent years archivists representing manuscript repositories increasingly have realized the necessity of developing collecting policies that emphasize cooperation with colleagues at competing institutions. Competition, which appeared so critical to repositories during the 1960s, has been tempered by the realization that no single collection of documentary materials is so important that the integrity of the institution should be sacrificed in its pursuit. Competition will and should exist among repositories with overlapping collection development policies. But a friendly competition in which institutions give primary consideration to the safety and integrity of the materials and to the best interests of the donor should be the basis for an active collecting program. Not only should the archivist not disparage or question the integrity of competing institutions, they should never resort to undue pressure in soliciting private manuscripts. The archivist should be attentive to the donor; forthright and thorough in explaining the legal and financial ramifications of a donation; and truthful in describing the facilities, staffing, and priorities of their own repository. The archivist should then step back and allow the donor to ponder the alternatives and decide for himself where, how, and when he would feel most comfortable donating the materials in question. Donors should always have the opportunity to make their own decisions without undue pressure, having a full understanding of what can be reasonably expected from the various repositories that have expressed an interest in their materials. Ethical behavior in dealing with the prospective donor is tied very closely to a cooperative "friendly competition" with colleagues at other institutions. A strong commitment to ethical principles and practices makes it possible for repositories to better fulfill their own missions and undertake cooperative ventures within the community of research repositories.

Once a contractual arrangement has been formalized between donor and repository, the archivist has the responsibility to observe faithfully all agreements to which the repository has committed. In negotiating the deed of gift, every effort should be made to discourage unreasonable restrictions and unrealistic requirements while protecting the privacy and the personal rights of the donor and the

creator of the papers. All qualifications and restrictions of the donor should be clearly and concisely recorded in the document as should the commitments of the repository. Once the institutional and donor signatures are finalized, there should be no surprises or unfulfilled expectations for either party.

The fourth and fifth paragraphs of the code deal with questions of description, appraisal, protection, and arrangement in that order. The placement of the statement on description in advance of and separate from a paragraph dealing with appraisal, protection, and arrangement appears somewhat incongruous. Some form of preliminary inventory should be prepared at the time of acquisition to establish a rudimentary level of intellectual control until more detailed processing can be scheduled. However, many archivists would view the normal progression as a continuous orderly function that begins with appraisal and is followed by arrangement, description, and protection. Arrangement and description are interrelated components of any effort to gain intellectual control over documentary

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materials, and protection of the materials is an ongoing function that is always applicable. Archivists are responsible for preparing descriptive inventories and other finding aids as needed to inform researchers and encourage the research use of the documentary materials for which they are responsible.

As regards the appraisal function, an archives should utilize comprehensive and comprehensible written guidelines for appraisal procedures. Appraisals should follow a standard pattern, and should only deviate from that standard for clear and explainable reasons.<sup>8</sup> The appraisal of private manuscripts carries ethical responsibility even if there are no statutory implications, as is the case with public records. Appraisal standards for manuscripts require impartial evaluation of the materials. The archivist easily can distort or reshape historical perspective through the intentional or even the unwitting retention of only documentation that reflects



one view of events or individuals. The archivist's responsibility lies not only in preserving those records that accurately reflect the past but also in being certain that he has sufficient intellectual grasp of historical events to appraise accurately those materials with which he is working.

In order to serve the public trust and the governmental, corporate, or private donors that have provided the body of materials for which it is responsible, a repository must assure the safety and integrity of its holdings. The code and its commentary speak to the requirement that archivists guard documentary materials against defacement, alterations, theft, and physical damage. It also warns against endangering evidentiary value of materials during the arrangement and description stage. What is not addressed, yet has serious ethical implications, is the necessity of adequate facilities to safeguard documentary materials. To accept records without providing for their long-term care should be a clear violation of ethical standards, as should the practice of accepting materials for which the repository cannot provide sound archival appraisal, conservation, and processing in a reasonable length of time. All repositories realize that backlogs in arrangement and description are normal to an active program, especially for larger collections that may contain restrictions on public access; but this is far different from actively soliciting materials for which there can be no foreseeable prospect of appraisal, arrangement, and description.

Repositories should provide a reading room accessible to the research public and they should maintain regular, stated hours of operations during which materials can be examined. Donald McQuat of the Archives of Ontario, Canada, has made a strong argument that an institution that cannot be open five days a week year round with a properly qualified staff on hand to guide researchers and with photocopying equipment available to provide copies "has no business acquiring collections of original manuscripts of general historical significance."<sup>9</sup> All researchers have the right to expect equal treatment and equal access to the holdings of public repositories. Naturally, restrictive clauses on access must be honored, and occasionally a donor may require that a designated researcher be allowed sole access to a given body of materials; but, such restrictions should be accepted only in unique situations, and specific time limitations should be stipulated as a feature of the restrictive clause. The archivist should provide rea-

sonable and knowledgeable assistance to all researchers. Not only is courteous and helpful reference service a positive reflection on a repository, it also can be a reflection on the integrity of the profession. Although finding aids vary widely among repositories, the researcher should be able to expect that access to materials will be expedited by a knowledgeable staff and at least a minimal level of finding aid tools.

The question of privacy and confidentiality is addressed in the sixth paragraph of the code of ethics. This concern has become the focus of increased attention since federal legislation brought the issue to the forefront in the early 1970s. As Heather MacNeil has noted in *Without Consent*, "Archivists are bound by their professional calling to identify, preserve,

and make available for use, records of enduring value. Before they can make such records available for use, they must understand the administrative, legal, and ethical dimensions of the privacy debate and its implications for the management of archival records; and they need to translate that knowledge into policies and procedures that will ensure that access to records implicating privacy values is administered in a systematic and equitable manner."<sup>10</sup> Despite the fact that few states have privacy laws of their own, there is no national privacy legislation that covers non-federal records except for student records, national security information, and records generated as the result of federal grants and contracts. In the absence of specific legislation, most privacy issues are judged by common law principles and by

## The Archivist's Code

**The archivist** has a moral obligation to society to preserve evidence on how things actually happened and to take every measure for the physical preservation of valuable records. On the other hand, he has an obligation not to commit funds to the housing and care of records that have no significant or lasting value.

**The archivist** must realize that in selecting records for retention or disposal he acts as the agent of the future in determining its heritage from the past. Therefore, insofar as his intellectual attainments, experience, and judgment permit, he must be ever conscious of the future's needs, making his decisions impartially without taint of ideological, political, or personal bias.

**The archivist** must be watchful in protecting the integrity of records in his custody. He must guard them against defacement, alteration, or theft; he must protect them against physical damage by fire or excessive exposure to light, damp, and dryness; and he must take care to see that their evidentiary value is not impaired in the normal course of rehabilitation, arrangement, and use.

**The archivist** should endeavor to promote access to records to the fullest extent consistent with the public interest, but he should carefully observe any established policies restricting the use of records. Within the bounds of his budget and opportunities, he should work unremittingly for the increase and diffusion of knowledge, making his documentary holdings freely known to prospective users through published finding aids and personal consultation.

**The archivist** should respond courteously and with a spirit of service to all proper requests, but he should not waste time responding in detail to frivolous or unreasonable inquiries. He should not place unnecessary obstacles in the way of those who would use the records, but rather should do whatever he can to spare their time and ease their work. Obviously, he should not idly discuss the work and findings of one searcher with another, but where duplication of research effort is apparent, he may properly inform one searcher of the work of another.

**The archivist** should not profit from any commercial exploitation of the records in his custody, nor should he withhold from others any information he has gained as a result of his archival work in order to carry out private professional research. He should, however, take every legitimate advantage of his favored situation to develop his professional interests in historical or other research.

**The archivist** should freely pass on to his professional colleagues the results of his own or his organization's research that add to the body of archival knowledge. Likewise, he should leave to his successors a true account of the records in his custody and of their proper organization and arrangement.

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court rulings in previous cases.<sup>11</sup> In developing a uniform policy for dealing with privacy issues and the rights of the research public, the archivist should be guided by ethical concerns that normally will be confirmed in law and practice.

It is imperative that the privacy of individuals who are the subjects of records and papers must be protected. How can an archivist in good faith, without some level of protection, make available a body of personal correspondence pertaining to the mental illness of an individual, the necessity of institutionalizing that person for a period of years, and the difficult road to recovery that ensued? Frequently gift contracts will speak to the necessity of restricting highly personal materials during the lifetime of the individuals involved; however, the donor frequently is not aware of

the sensitive nature of some materials in the collection that has been donated. Even when sensitive materials are not covered by contractual provisions, institutional policies should provide some degree of protection against invasion of privacy. It is not unusual for an institution to operate under a policy that closes sensitive materials and makes information from these materials available only if names and identifiers have been obliterated. It is always wise to consult with the donor if sensitive materials unexpectedly turn up during the processing of a collection. Privacy is generally considered a right of the living and normally does not extend to the dead; therefore, restrictive covenants, either written or self imposed, do not constitute a permanent prohibition to access.<sup>12</sup>

Paragraphs seven through nine are

concerned primarily with researchers and their best interests. The 1955 code cautions against "idly" discussing "the work and findings of one researcher with another," while suggesting that the archivist may inform one researcher of another's work if duplication of effort is apparent. The 1992 document takes this admonition a step further by suggesting that the archivist "endeavor to inform users of parallel research by others using the same material, and, if the individuals concerned agree, supply each name to the other party." Regardless of which approach the archivist may pursue, the course of action is fraught with dangers. Despite the admonition of the code and its official commentary, the archivist must use sound judgment in following this tenet. Although the code and many repositories have a contrary view, a valid argument can be made for some confidentiality with respect to a researcher's use of materials. Visitor registration as well as collection call slip information should be considered privileged information and should never be made public without the individual's express consent. An effort to bring two researchers together who are exploring the same topic may be a service to both individuals, but there are implications that must be considered. The archivist must, with sound reflection, be positive that he is not simply meddling and that both parties will benefit from the efforts to bring them together. Finesse and sound judgment must be the cornerstone of this undertaking.

The archivist frequently functions as an historian and, in most cases, historical training is critical to the archival profession. The archivist can serve the research public by being directly involved as a practicing scholar. Care must be taken not to take unfair advantage of one's proximity and inside knowledge of a repository's holdings; and the archivist should never withhold materials from public access for personal use. This issue was brought to the forefront in 1968 when a historian accused archivists at the Franklin D. Roosevelt Library of failing to inform him of records critical to his research because they were protecting them for their own documentary publication purposes. The controversy that ensued cast the Roosevelt Library and the archival profession in an extremely unfavorable light.<sup>13</sup> Archivists must exercise extreme caution to avoid the appearance that they are conducting themselves in a self-serving fashion. Nevertheless, the archivist who actively researches and publishes is better equipped to provide insights for the research public. In all cases, the archivist should be willing to share knowledge and experience for the benefit of researchers and other archivists who may benefit from the individual's

## Code of Ethics for Archivists



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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 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 indi-

viduals 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.

Adopted by  
the Council of  
the Society of  
American Archivists,  
1992



professional skill.

Paragraphs ten and eleven speak to professional standards that impact on the profession as a whole and its ability to function as a body of interdependent and supportive colleagues. The archival profession always benefits by the sharing of knowledge and the mutual interests of associates. It is incumbent upon each member of the profession to participate as fully as possible in professional activities. The archivist is called upon to avoid engaging in the disparagement of other institutions or other archivists. If concerns exist about the operation of a repository or the behavior of a particular archivist, a professional archival organization or the party in question should be addressed directly concerning the complaint. Although efforts have been made to develop an enforcement component that will make it possible for the Society of American Archivists or some other body to receive complaints and act upon charges of unethical behavior, a satisfactory mechanism to accomplish this goal has not yet been formulated. Numerous archival theorists have called for the creation of a committee or panel to investigate and adjudicate alleged breaches of conduct, and it is likely that such a body will be established in the future.

Finally, archivists are encouraged in paragraph twelve to work for the best

interests of their institution and their profession. The measure of professional integrity is inextricably bound to the degree to which archivists conduct themselves in dealings with other repositories, donors, and the research public. As a representative of the individual institution and the profession, ethical behavior in the daily conduct of business requires that archivists display absolute integrity to the profession and to the public at large.

#### References

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<sup>2</sup>"The Archivist's Code," *American Archivist* 18 (July 1955): 307-308.

<sup>3</sup>David E. Horn, "The Development of Ethics in Archival Practice," *American Archivist* 52 (Winter 1989): 65-66.

<sup>4</sup>For the full text of the 1980 version of the "Code of Ethics for Archivists," along with its commentary, see *American Archivist* 43 (Summer 1980): 414-418.

<sup>5</sup>"SAA Code of Ethics and Commentary" Insert, *SAA Newsletters* (July 1991); "The Society of American Archivists Code of Ethics for Archivists, Adopted by the Council of the Society of American Archivists, 1992."

<sup>6</sup>George Stevenson, "Researchers: Ethical

Considerations," (paper read before the Society of North Carolina Archivists, Winston-Salem, N.C.), October 9, 1992.

<sup>7</sup>Karen Benedict, "Archival Ethics," in *Managing Archives and Archival Institutions*, ed. James Gregory Bradsher (Chicago: University of Chicago Press, 1989), 176.

<sup>8</sup>Gary M. Peterson and Trudy Huskamp Peterson, *Archives & Manuscripts: Law, SAA Basic Manual Series* (Chicago: Society of American Archivists, 1985), 18.

<sup>9</sup>Donald McQuat, "Acquisitions Policy: Competition or Cooperation?," *Canadian Archivist* 2 (1970): 24-26.

<sup>10</sup>Heather MacNeil, *Without Consent: The Ethics of Disclosing Personal Information in Public Archives* (Metuchen, N.J., and London: Society of American Archivists and Scarecrow Press, Inc., 1992), 5-6.

<sup>11</sup>Peterson, *Archives & Manuscripts: Law*, 40.

<sup>12</sup>Peterson, *Archives & Manuscripts: Law*, 40.

<sup>13</sup>Benedict, "Archival Ethics," 179. For an in-depth discussion of the issue, see Herman Kahn, "The Long-Range Implications for Historians and Archivists of the Charges Against the Franklin D. Roosevelt Library," *American Archivist* 34 (July 1971): 265-275; and Richard Polenber, "The Roosevelt Library Case: A Review Article," *American Archivist* 34 (July 1971): 277-284.

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