

**Society of American Archivists
Council Meeting
February 2 – 4, 2010
Washington, D.C.**

**Report: Committee on Ethics and Professional Conduct
(Submitted by Tim Pyatt, Chair)**

ANNUAL MEETING SESSIONS

The proposed session on ethics and social justice along with the forum on global issues recommended by the Committee on Ethics and Professional Conduct (CEPC) for the 2009 SAA and CoSA Joint Annual Meeting in Austin were not accepted for the program. For the 2010 meeting in Washington, D.C., CEPC developed a session on the history and proposed direction for the Code of Ethics, “Updating the SAA Code of Ethics for Archivists,” and in cooperation with the Privacy and Confidentiality Roundtable helped create and endorsed the proposed session entitled “A Code for Success? Ethics for Processors.” “Updating the Code” was selected as an alternate while “Ethics for Processors” was not selected. See Attachment 1 for draft minutes of the Committee’s August 11 meeting in Austin.

CEPC CHARGE REVISED

As part of the aftermath resulting from the Anthony Clark controversy and questions about how SAA should respond to such controversies, the SAA Council has formally amended CEPC’s charge to remove “responding to complaints to SAA alleging violation of the Code of Ethics.” Outgoing chair Rand Jimerson’s May 29, 2009, response to SAA President Frank Boles further explains this change (see Attachment 2).

SAA CODE OF ETHICS

Since 2006 the Committee on Ethics and Professional Conduct (CEPC) has been engaged in analysis and review of the current Code of Ethics and the possibility of developing additional guidelines regarding the professional responsibilities of archivists. At its 2007 annual meeting in Chicago, CEPC reviewed and discussed comparisons between the 1992 and 2005 Codes of Ethics, as well as comments (both published and orally conveyed) regarding deficiencies in the current (2005) Code. In 2007 CEPC compiled comments about ethical codes and discussed reports of complaints heard from other SAA members. In 2008 CEPC voted to examine options for revising the Code to address some of its perceived weaknesses. CEPC members support an aspirational Code of Ethics, but one that more clearly reflects recent scholarship and professional discourse regarding archival ethics and the profession’s goals and identity. CEPC used its 2009

meeting to discuss the timing and shape of a proposal to the SAA Council for revising the Code (see Agenda Item III.H.).

**Committee on Ethics and Professional Conduct
DRAFT Minutes, August 11, 2009
SAA Annual Meeting, Austin, TX**

Agenda, 1 pm – 5 pm

1. Introduction of current and new members of CEPC
2. Approval of minutes, August 2008 meeting (see attached file)
3. Report of CEPC chair
 - a. Anthony Clark controversy
 - b. Amendment to CEPC charge (see attached file, "Comments on Code of Ethics Enforcement")
 - c. SAA Values Task Force
 - d. Memory for Justice and Archival Ethics proposed sessions (see attached file, "CEPC Annual Report 2008")
 - e. Elena Danielson book on archival ethics
4. Discussion of plans to review and revise the SAA code of Ethics
 - a. Supporting documents:
 1. Memo comparing 1992 and 2005 ethics codes (Supple and Pyatt, Nov. 2007; see file, "CEPC Ethics Code Comparison Memo")
 2. Outgoing chair's recommendations (see attached file, "Comments on the SAA Code of Ethics 2009")
5. New business
 - a. Session Proposals for 2010 SAA Annual Meeting -- suggestions and discussion
 - b. Other new business
6. Adjournment

1. Introduction of new members

Present:

Elena Danielson (incoming member)
Tiffany Schureman (intern)
Tim Pyatt (incoming chair)
Tom Hyry (Council liaison)
Rand Jimerson (outgoing chair and member)
Jean Green (member)

CEPC members unable to attend:

Shannon Supple (outgoing member)
Robert Leopold (member)
Clare Flemming (member)
Shawn San Roman (member)
Nancy Shrader (member)

Also attending (for portions of the meeting): Rene Mueller (SAA staff member); Nancy Beaumont (SAA Executive Director).

2. Approval of minutes: Approved.

3. Report of CEPC Chair

a. Anthony Clark controversy: Rand Jimerson spoke about the controversy in which Anthony Clark [AC] claimed he had been denied access to NARA records [specifically record group 64], which became a public controversy in part because of Richard Cox's [RC] treatment of the issue. The controversy was addressed by SAA President Frank Boles and discussed by the SAA Council, which considered whether CEPC should have a role in such matters. However the Council concluded that having this committee respond to such complaints should not be part of CEPC's charge. Council liaison Tom Hyry commented that issues some members have with the Code of Ethics were raised during discussions of the Clark controversy. Some people are frustrated with the Code of Ethics because it is aspirational, and if people violate it, there is really nothing we can do to enforce it. However, even if it were deemed an idea the organization should pursue, SAA is not set up to legally or administratively enforce the Code of Ethics. Following this logic, the Council passed a resolution in May to change CEPC's charge and to clarify its role (see b. below). Discussions of the controversy did lead the Council to take the proposed revision of the Code of Ethics even more seriously, and it has charged CEPC to go ahead with planning this effort.

b. Amendment to charge: The Council has formally amended CEPC's charge to remove "responding to complaints to SAA alleging violation of the Code of Ethics." Rand's May 29, 2009 response to SAA President Frank Boles further explains this change [see documents distributed with the meeting agenda]. SAA does not have the resources, legal or financial, to have an enforcement mechanism. Elena Danielson commented that public statements of policy are very effective. Rand agreed that should an approach is a way of responding without having direct criticism.

c. SAA Values Task Force: The Task Force on Developing a Statement of Core Values for Archivists was approved by the Council. They were to meet late morning on Wednesday as to how to proceed. The Task Force includes Rand, Shawn San Roman (also a CEPC member), Rebekah Kim, Tamar Evangelista-Dougherty, Rosalye Settles, and Frank Boles. Rand sees some overlap between values and ethics. Tim and Rand agreed to share information back and forth between the Values Task Force and CEPC.

d. Memory for Justice and Archival Ethics: Rand stressed the importance of the question of archival ethics and social justice together for discussion. It is an issue that more people want to hear about. Unfortunately, his session proposal turned down and the forum not approved for this meeting. Tom commented that this went down 8-2 in Council. There wasn't room on the schedule and they were worried about this as a trend. Other groups are increasingly asking for forums. The Council agrees it is important, but could not find a spot for it. Rand commented that this makes two years in a row session proposals have been turned down. This seems that this is an issue where there are enough people concerned with these issues and should be brought to the forefront. Tom further elaborated on the discussion in the Council that this type of programming is setting the precedent that people may be uncomfortable with. For example, in the case of the *Native American Protocols*, the SAA Council did not adopt it as a standard – they approved three forums so the membership would know the topic was important and needed dialogue. The

Council formed a Task Force on Cultural Property. Rand expressed disappointment in the decision. He was concerned that this should be discussed every year. It is difficult to convince a new program committee every year that this is important. The Issues & Advocacy Roundtable could be an appropriate venue for discussion. Rand asked if folks wanted this recommendation as part of the report to the Council. Tim suggested that it might be a future session proposal.

e. Elena Danielson book on archival ethics: Elena wanted to read Rand's new book before completing her manuscript. She commented that it has been so interesting to read up on archival ethics and has written 200 pages, including a chapter on forgery and authentication, as well as more on displaced cultural property. However, the book will not be finished this year.

4. Revision of Code of Ethics: The Council would like CEPC to propose a revision to the Code and recommend the process of how to do it. It will be difficult to come up with a Code that everyone would agree upon, especially since certain elements of the former code cannot be included due to concerns raised by SAA's legal counsel [see Supple/Pyatt 2007 analysis of previous and current versions of the Code for more detail].

Deadline? Tim asked if the Council had suggested any sort of timeline. Incoming SAA President Peter Gottlieb had expressed the desire for the revision to be ready by the 2010 meeting in DC in an email to Tim. Tom commented that he didn't think having it done in a year was realistic and would rather have it done right than done quickly. He suggested the committee create a report on how CEPC would like to proceed and include a timeline. The report should be ready in time to be placed on the February Council meeting agenda [DEADLINE DECEMBER 20]. Tom later commented that he thinks a revised code in 2011 is acceptable and will report this back to the Council.

Mid-year meeting? Tim asked about the possibility of a mid-year meeting. Tom said probably not because while the SAA budget is stable, this year's budget is already set and it not the best fiscal environment to request an unbudgeted mid-year meeting. Tim commented that ethics revision is a difficult email discussion and that a face-to-face meeting would be more productive and probably the only way to have a revision ready by the 2010 meeting. Tom said that he would take this back to Peter Gottlieb and Nancy Beaumont. The Council may need to reconsider the proposed 2010 deadline (as he recommended above).

How to begin the conversation? Assuming a 2011 deadline, Tim suggested we start talking about it at the DC meeting to gather concerns and comments. The committee could conduct an "environmental scan" and try to get something on the program for next year to raise awareness (see New Business). CEPC members could also request a moment on the agendas of relevant roundtables and sections to solicit comment. Rand suggested we start this at this meeting. He would raise the Code revision at the Issues and Advocacy Roundtable meeting. Elena suggested a possible open forum in DC?

Lending continuity to the conversation: Rand felt that Tim as incoming Chair would lend continuity. Rand's book has taken up a lot of time. The conclusion of book is called re-thinking archival ethics and he thought it would be unseemly for him to lead the discussion. Rand is also sure that Elena would have some ideas and thoughts, too.

What would a revised code look like? What process would best achieve that revision?

Elena commented that most important thing was disconnecting Code from an enforcement procedure. Now the Code can be much stronger/more specific. Tim suggested we look at Rand's recommendations [agenda attachment], look for things that are missing in the Code, and look for things that are there and should be removed. Elena commented that it might be helpful to see a wiki/library of cases/decisions to refer to [e.g., international conventions] including justification and source material separate from code. Tim agreed that related readings allow people to dig deeper. Tom also agreed that he would like such a resource page of professional wisdom on topic.

Important points: Rand commented that the Code is not meant to be *legally* restraining. Tim agreed that the old Code left a lot to interpretation and that everything related to law should not be in Code. Tim suggested that there needs to be something about *disclosure* in there. Elena pondered the issue of how to deal with the unbiased, *neutrality* issue [cited internal records from cigarette company and archives]. Tim also mentioned *authenticity* issues – with the Internet there is an ease of manipulation – we need to look beyond the paper-based record – public needs to understand level of trust that is involved with records. Tom commented that *transparency* is valued. Elena suggested that *social justice* needs to be in there and would like to fold in “for the benefit of the society as a whole.” Keeping the *public faith* in mind, Rand stressed that voices that have been marginalized or excluded need to be heard for a fair and balanced archives. Tim also suggested looking closer at the role of a *privacy* statement in the code. Rand said we may want to include *access* and privacy rights. [Tom suggested that some corporate archivists may see this differently – the goal is access but there may be restrictions.]

Other points of discussion: *Whistleblower* protection legislation, *working with dealers* and personal collecting, *accepting gifts*.

Intelligible to the general public: Rand advised CEPC to keep in mind that the broader public would be looking at the Code, not just archivists.

Future action: Tim would like to see an outline of existing Code – what needs to be added, what needs to be eliminated – drafted before the DC meeting. He hopes to then get more input from committee members who are not present. Many suggested looking at other codes [e.g. Chicago Institute of Technology, ALA RBMS, Canadian Archivists, ICA]. Rand said CEPC should keep in mind what is in the Code now and what was there before – we don't need to reinvent the wheel – we need to create a Code that outlines principles that we want to uphold. Rand commented that the values statement should be driving our ethics code – they stand parallel and need to be cross-referenced [reference to Greene's speech from SAA 2008 and his list of values]. Tim stressed a focus on desired results, expected outcomes. Tim also suggested setting aside time for the Values Task Force and CEPC to meet in DC. Tom advised we go ahead with revising the Code, and use the 2010 CEPC meeting to do some real writing. Sending a draft to the Council and then on to membership for public comment would be the process. Nancy Beaumont (who attended a portion of the meeting) and Tom warned CEPC to expect high-quality feedback, but low amounts of it.

5. New Business: Session proposals for the 2010 SAA Annual Meeting

1. Elena – “History of Code of Ethics” panel: Case studies for the whistle-blower controversy

Tim - Bring up events that have brought the Code of Ethics into play.

Rand – Use something out of Elena’s book? Have her on the panel.

(Elena will develop this)

2. Elena – “Papers of Prisoners of Conscience,” “Archives and Social Justice,” “Outsider Archives” [e.g., Nelson Mandela archives] – three case studies where human rights and social justice are built into the study.

Tim – e.g., Ted Kaczynski archives

Rand – e.g., war orphans of Norway

(Rand will begin developing this)

3. Elena – “Authenticity and Forgery”: Cuneiform tablets that were forged, Lincoln forgeries, electronic forgeries, report from Iron Mt. that is a forgery, Quigley’s book.

(Jean and Tim will begin developing)

Adjourned at 4:33 p.m.

Attachment 2



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TO: Frank Boles, SAA President

FROM: Randall C. Jimerson, CEPC Chair

DATE: May 29, 2009

RE: Comments on SAA Role in Ethics Controversies

In response to your request for my personal comments on ethics matters coming before SAA Council next week, I can only speak for myself since there is not enough time to consult with the full Committee on Ethics and Professional Conduct. CEPC continues to work towards a process for reviewing the Code of Ethics for Archivists, with a goal of making recommendations for revision. The starting point for this review is a belief, expressed by Council in past years, that the Code should remain aspirational rather than prescriptive. Our working premise is that the Code should outline what archivists should do as well as the reasons for and desired outcomes of such actions.

With these understandings in mind, I think CEPC members would agree with me in supporting the proposed revision of the Council Handbook to amend the charge to CEPC by deleting paragraph III.4, which charges CEPC with "responding to complaints to SAA alleging violation of the Code of Ethics." I agree that this is inconsistent with recent practice and with recent Council decisions, and that deleting this paragraph is appropriate and desirable.

Since you also asked me for comments on the report on "SAA's Role When Controversies Arise," I will offer my personal thoughts, rather than formal comments on behalf of CEPC.

The central issue, it seems to me, is whether the SAA Code of Ethics should be backed up with an enforcement mechanism. Although there are significant and valid reasons that archivists might want such an enforcement process, it seems to me that the arguments against such a

process are more compelling. Creating an enforcement process would require significant expenses for legal services, liability insurance, oversight, and implementation. As many other professional groups (including ALA, AHA, OAH and others) have discovered, even with adequate financial resources and legal expertise, enforcement of sanctions against alleged violators of professional ethics codes becomes complicated, controversial, and problematic. It potentially pits members of the profession against each other in disputes that are seldom clear cut and obvious in how the relevant ethical principles are interpreted and adjudicated. For example, the AHA and OAH faced serious difficulties in enforcing their ethics codes in recent years, as shown in the books *Historians in Trouble* by Jon Weiner and *Past Imperfect* by Peter Charles Hoffer. In the end AHA and OAH had to abandon their efforts to maintain an enforcement mechanism for their ethical codes.

Many of the most obvious cases of ethical and legal violations, as this report acknowledges, already have established dispute resolution processes (such as EEO, FOIA, and union contracts). SAA might be called upon to provide testimony regarding ethical principles arising in such cases, but should not try to create a secondary system of enforcement or resolution.

The nature of the American legal system is designed to protect the interests of both alleged violators and those affected by their actions. This often involves lengthy processes of discovery, argument, and potential appeals of decisions. By establishing an enforcement process for alleged ethics violations, SAA would incur legal liabilities that exceed present capacities. It does not seem likely that SAA members would strongly support added dues or other expenses in order to create a system that has already proven to be unworkable for other professional groups.

Rather than attempt to create a complex ethics enforcement process, it seems to me that SAA would better serve the needs of the profession by revising and strengthening the Code of Ethics and the proposed Values Statement, as the first two recommendations state (under the heading "For Discussion"). SAA could then serve the profession, and interpret archival concerns to the public, as (in the report's language) "a positive voice for professional best practices and concerns."

I want to add, however, that I am delighted to see the focused attention of Council on these important matters and I applaud the hard work that went into consideration of how an enforcement process might be constructed. I wish that I could endorse these goals and procedures, but I do not think that SAA serves its members or the profession by engaging in this type of complex and potentially litigious and controversial process. I think SAA can make its greatest contribution to these debates over archival ethics by

carefully considering revisions to the current Code of Ethics for Archivists and by fully exploring the proposed values statement for archivists.

As the outgoing chair of CEPC and as a member of the values task force, I am willing to contribute as much as I can to this ongoing discussion.