

Case Study #2: Ethical Issues Within Riva University Archives

Ethical dilemmas are part of life. This can be especially true in the professional realm, where one's personal moral code may be at odds with a course of action suggested on the job. Even when personal considerations do not present challenges, competing professional ethics can make decisions difficult. For example, the archivist at Riva University Archives (RULA) discovered unprocessed donated materials from a now-deceased anthropology professor that include "recordings of deceased members of an Indigenous tribe on whose traditional lands the university is located" (Riva University Archives, n.d., p. 1). Deciding whether to keep or return the materials to said Indigenous tribe could be difficult enough given where the university sits, but further complicating matters is the fact that descendants of those in the recordings have asked that the recordings be repatriated to their community. Acquiescing to the request may seem the logical, ethical choice, but as with most things, the decision is not so clear-cut.

One cannot truly argue that the recordings in question are not "culturally sensitive," as any such materials may include recordings of songs, chants, music, religious practices, healing and medicinal practices, personal or family information, oral history, community history, myths, and folklore (First Archivists Circle, 2007, p. 12). Such materials may well be subject to the principle of cultural patrimony, which is any physical or intangible property "that is owned by a community as a whole, or by a group which holds such property in trust for the community, is inalienable except by community consent, and which may be fundamental elements of a community's cultural identity and heritage" (p. 15). This does not necessarily equate a *legal* obligation to return the recordings, however. The term "repatriation" is most often associated with the 1990 Native American Graves Protection and Repatriation Act (NAGPRA), which governs human remains and related materials and cultural patrimony. While courts have yet to determine whether "cultural patrimony" applies to other forms of archival materials, such as recordings, the *Protocols for Native American Archival Materials* note that some institutions voluntarily repatriate culturally sensitive materials (p. 16). However, ethics is not merely a matter of legality or right and wrong; "it seeks to establish how individuals should act in certain situations" (Moran & Morner, 2018, p. 363). One way of looking at it is to consider that morality defines individual behavior while ethics provide generalized, "universal standards that prescribe what humans should do based on well-considered philosophical standards" (p. 363).

Unfortunately, philosophical and professional standards further complicate the situation under consideration.

The Nature of the Problem

The primary ethical issue facing the archivist is the matter of repatriation of donated materials. Descendants of the people that the anthropology professor recorded have asked that the recordings, which include traditional tribal knowledge, be repatriated (Riva University Archives, n.d., p. 1). This matter is not quite as simple as it may appear on the surface, however. Riva University itself sits on traditional tribal lands, which could complicate any existing or potential relationship with the tribe (p. 1). Beyond that, the materials themselves give rise to further ethical quandaries like a set of thorny nesting dolls. Based on the information provided, the exact provenance of the recordings is murky at best. It is unclear whether the professor obtained permission to make the recordings legitimately, or if the interviewees were somehow coerced or tricked into providing consent. Pringle (2019) notes that such issues are particularly common for records of anthropologists and archaeologists (p. 5). Likewise, one cannot clearly determine whether these individuals had the proper authority or permission to share tribal knowledge with someone outside the tribe. Furthermore, the archivist at present does not seem to have any information as to whether or not the people who have requested repatriation of the materials as tribal knowledge have the authority to speak for the tribe in making such a request. Even legitimately collected recordings are often obtained through an understanding that they would “remain under the control of responsible community representatives, or essentially ‘held in trust’ for the community. These trust holdings can and should revert to community control upon request” (First Archivists Circle, 2007, p. 16). As noted in the *Protocols for Native American Archival Materials*, only “consultations with culturally affiliated communities can determine whether or not materials in archives are there illegally or unethically” (First Archivists Circle, 2007, p. 15). All this, combined with a professional duty to preserve materials and their information in support of information access as a human right (Pérez Pulido, 2018, p. 5) clouds the issue about whether to acquiesce to the demand.

There are a number of ways of looking at an ethical quandary. A utilitarian approach seeks to find the greatest good for the most people (Moran & Morner, 2018, p. 372). There is obvious value in retaining and properly cataloging the recordings. Processing similar recordings in the American Philosophical Society (APS) Library’s holdings helped to make the “materials

discoverable and usable to researchers who would not have heard of the APS Library otherwise” (Carpenter, 2019, p. 5). From a utilitarian standpoint, the ethical decision would be for the archives to process, preserve, and keep the recordings in house, as RULA would provide access to a greater number of academics, researchers, and the like. Contrariwise, consideration from the standpoint of social justice would have a decision reached based on fair treatment of all involved (p. 372). In this light, keeping the recordings would unfairly deny and reinforce the historic imbalances between Western and Indigenous peoples while also denying the Indigenous community’s right to “assert greater control over how their culture is accessed and communicated about” (Pringle, 2019, p. 9). When faced with conflicting ideologies, a set standard of ethics and guidelines can prove beneficial.

What Should Be Done About It?

Fortunately, in the case of this scenario, such an ethical framework exists. The Society of American Archivists formally endorsed the *Protocols for Native American Archival Materials* in 2018 (Carpenter, 2019, p. 3), which means that the archivist would be acting according to accepted professional ethics to follow them. Even so, trying to determine the right place for donated materials can be tricky. In addition to geographic relevance, archives often face the fact that others may hold the rights to materials, a donor may not have the authority or right to donate them, and “a competing institution within the same geographic area may ultimately be more suitable for the long-term care of the materials” (Pringle, 2019, p. 5). Navigating such questions can be tricky. Pringle (2019) describes deaccessioning materials that were not created directly by or for the Indigenous community – such as the recordings made by the anthropology professor – as “the extreme solution” (p. 12). Rather, he recommends a “two-pronged approach” of providing copies to the community and “collaborating with appropriate representatives on a series of restrictions. ... [that] would need to be specific about (1) the nature of the restriction and under whose authority; and (2) the methods and procedures by which the restriction can be lifted” (p. 12). Conversely, the *Protocols for Native American Archival Materials* suggest that the archival institution seek permission to hold copies and return the original recordings to the community. Should the tribe or community lack proper facilities to maintain the records, the guidelines suggest an in-trust holding or similar agreement with the archiving institution (First Archivists Circle, 2007, p. 17). Thus, the proper course of action should be dictated by

determining how best to properly preserve the materials while following the Indigenous community's own prescripts and guidelines for access to the information therein.

Repatriating the recordings while seeking permission to retain copies seems the best route to take, and should be the default consideration. As the *Protocols* note, Native American communities possess the “primary rights for all culturally sensitive materials that are culturally affiliated with them” (First Archivists Circle, 2007, p. 5). However, no decisive action should be taken rashly, and this kind of decision cannot be made unilaterally. Instead, RULA should bring together the Native American and non-Indigenous “stakeholders for collective decisions making, according to procedures that allow a balanced debate between the ones affected for reaching an agreement” (Pérez Pulido, 2018, p. 3). Following the *Protocols*, the archivist should begin by contacting the tribal chair's office and the community's library, archives, cultural center, or cultural preservation office (p. 5). The materials can be reviewed for determination as to whether potential issues with “original collection and ownership should lead to access and use restrictions being placed on some materials, whether some collections should be repatriated, (returned) or whether some materials should be available for access only with prior community review and approval” (p. 9). Only once the materials and questions have been thoroughly vetted should a decision be reached by both RULA and Indigenous community officials.

Conclusion

For information professionals such as an archivist, ethics concerns “issues such as the relationship between information and the good of society and the relationship between information providers and the consumers of information” (Moran & Morner, 2018, p. 369). Such conflicts are nothing new. As the *Protocols for Native American Archival Materials* were developed, many archivists expressed “discomfort with the level of engagement with source communities recommended in the *Protocols*, and how firmly held understandings of intellectual and physical property rights were now being challenged” and reported reported trepidation that the guidelines “would impinge on core professional values concerning access and both academic and intellectual freedoms” (Pringle, 2019, p. 2). History shows that this is not necessarily the case. To the contrary, APS reports that after its own work in processing Native American collections, archive use has actually increased “alongside efforts to more accurately flag and restrict culturally sensitive and private content” (Carpenter, 2019, p. 11). Plus, restrictions on culturally sensitive materials has actually proven a net benefit for researchers in preventing

inadvertent exposure to such material (p. 12). Carpenter (2019) also notes that working on one particular APS “archival operation relating to Indigenous collections led naturally to addressing other archival practices” (p. 10). Continued dialogue and strengthening ties over time can only benefit all involved if the proper effort is made.

References

- Carpenter, B. (2019). Archival Initiatives for the Indigenous Collections at the American Philosophical Society. *Society of American Archivists*.
https://www2.archivists.org/sites/all/files/Case_1_Archival_Initiatives_for_Indigenous_Collections.pdf.
- First Archivists Circle (2007, April 9). *Protocols for Native American Archival Materials*. First Archivists Circle. <https://www2.nau.edu/libnap-p/PrintProtocols.pdf>.
- Moran, B. B. & Morner, C. J. (2018). *Library and Information Center Management* [Kindle Edition]. Libraries Unlimited.
- Pérez Pulido, M. (2018). *Ethics management in libraries and other information services*. Chandos Publishing. <https://doi.org/10.1016/B978-0-08-101894-1.00001-X>.
- Pringle, J. (2019). Northern Arizona University's Cline Library and the Protocols. *Society of American Archivists*.
https://www2.archivists.org/sites/all/files/Case_2_NAU_Cline_Library_and_Protocols.pdf.
- Riva University Archives (Case 2)*. Louisiana State University.