Instructors

Mr. Richard Pearce-Moses
Office location: Baker University Center 316B
Office hours: Face-to-face, by appointment. Virtual (phone, email): 10:00 A.M. – 4:00 P.M. Monday through Friday, as available; appointment recommended.

COURSE DESCRIPTION

This course examines ethical and legal issues that in archives that result from professional and cultural practices, laws, regulations, and rules. Students will be able to describe and explain the legal basis of access to public and private records, of rights of privacy and publicity, and of use of records in legal proceedings, such as discovery, production, and preservation holds. Students will investigate the evolving areas of intellectual property rights, including copyright and cultural property rights. Students will be able to discuss and explain professional expectations for ethical conduct and the core values of the archival profession.

Additional topics will include questions relating to specific archival functions, such as acquisition and ownership (including transfer of ownership and rights as well as donor-imposed restrictions on access to records), processing, reference, and preservation.

PREREQUISITES

ARST 5000, ARST 5500

CREDIT

3 hours

SCHEDULE AND LOCATION

Lecture: Wednesdays, 6:30 P.M. – 8:30 P.M., WebEx virtual classroom.

COURSE FORMAT

Online course including weekly, synchronous lectures by the professor, with small group discussion and student led presentations. Readings and assignments accessible through Georgia View.

BACKGROUND

Archivists regularly confront legal matters. They must balance archival principles of access and use against competing concerns, such as privacy, intellectual property, and statutory restrictions. The balance will vary with the nature of the collections. How to handle materials in collecting archives differs from government and corporate archives. Archivists must also understand how to respond in case the records are part of litigation or investigation.

At the same time, archivists have an ethical obligation to society to serve the public good by capturing a record of the past that is as complete, accurate, and authoritative as possible. At the same time, archivists have an ethical obligation to individuals whose lives are documented in the records.

COURSE LEARNING OUTCOMES
To identify and evaluate legal risks in all areas of the archival enterprise, including intellectual property, privacy, and public records laws

To develop policies and procedures that facilitate the archives achieving its mission, while minimizing legal risks and balancing the rights and interests of all stakeholders

To identify and evaluate ethical concerns of all stakeholders in all areas of the archival enterprise

To develop policies and procedures that facilitate the archives achieving its mission, while balancing the ethical rights and interests of all stakeholders in accordance with the Society of American Archivists’ Code of Ethics and Statement of Values

**REQUIRED TEXTS**


Danielson, Elena S. *The Ethical Archivist* (Society of American Archivists, 2010).


**OTHER RESOURCES**


Legal Information Institute at Cornell University. http://www.law.cornell.edu/

**Grading**

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<thead>
<tr>
<th>Component</th>
<th>Weight</th>
<th>Description</th>
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<tbody>
<tr>
<td>Class participation</td>
<td>25%</td>
<td>Includes asking questions in class, engaging other students and the instructor in discussion, reading reports, and discovered readings.</td>
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<tr>
<td>Assignments</td>
<td>25%</td>
<td>Demonstrates mastery of the concepts through discussion, analysis, and application of ideas.</td>
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<tr>
<td>Midterm</td>
<td>25%</td>
<td>Ability to discuss in depth core principles of appraisal.</td>
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<tr>
<td>Term project</td>
<td>25%</td>
<td>Demonstrated mastery of concepts and how they relate to each other as part of an integrated policy that provides clear guidance for what records should be selected for the archives.</td>
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Exceeds expectations (4): Participates with many comments, questions, and answers, showing exploring relationships to other ideas, depth of understanding, preparation, leadership, engagement, or other qualities.

Meets expectations (3): Participates with some comments, questions, or answers, showing fundamental understanding, preparation, engagement, or other qualities.

Acceptable (2): Participates with only a few comments, question, or answer, showing limited understanding, preparation, or engagement.

Unacceptable (1): Present but with little or no engagement, no demonstrated understanding of the material.

Missing (0): Unexcused absence or missing work.

**Disclaimer**

The instructors are not lawyers. While making every effort to provide accurate information about the law and legal process, students should not rely on the content of the course as a substitute for legal advice. The course is intended to help students understand a legal framework so that they can pursue their own research, and, when appropriate, make decisions based on the advice of legal counsel.

**Computing Requirements**

Students enrolled in Archival Studies courses at Clayton State University are required to have a reliable computer that meets faculty-approved hardware and software requirements.

Students must have a connection to the internet with sufficient bandwidth to participate in live video lectures. Connections using a broadband cable modem are generally the best, and DSL is usually acceptable. Wireless broadband may not be adequate, and dial-up access is not acceptable.

Lectures and office hours (especially technical support) require a robust connection using WebEx. Students are responsible for working with WebEx to troubleshoot any problems that prevent them from connecting or maintaining a stable connection.

Students must have appropriate space and configure their system so that there is no extraneous noise of audio feedback during lectures. The best solution is the use of a USB headset (earphones and microphones) similar to the Logitech USB Headset H390 (http://www.logitech.com/en-us/product/stereo-headset-h390?crid=36), which retails for approximately $25.

Students should have a webcam; an internal webcam in a laptop is acceptable. Microsoft’s Lifecam Studio USB webcam (https://www.microsoft.com/hardware/en-us/p/lifecam-studio/) retails for approximately $50.
### COURSE SCHEDULE

*Note: Dates are based on Spring 2014. Dates for future offerings will vary, depending on start date, holidays, and other factors.*

#### Abbreviations

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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<td>AA</td>
<td>American Archivist.</td>
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### 15 Jan ~ 1. Course overview and introductions

Review of course outcomes, syllabus and assignments, expectations of graduate work and student participation. Introduction to basic concepts of law and legal research tools. Introduction to ethics and perspectives on the “moral defense” of archives; objectivity and neutrality.

**Students should be able to**

- Describe core concepts of Kant's model, including imperatives and deontology
- Describe core concepts of Mill's model, including consequentialism and the "greatest happiness principle".
- Describe core concepts of Kant’s deontological model, including autonomy and imperatives.
- Describe core concepts of Mill’s utilitarian model, including consequentialism.
- Discuss historical and current opinions on archivists’ ethical responsibilities.

**In-class discussion**

Case study: Funding possibilities.

| Term project: Exploration of archival ethics. |
|---|---|
| Draft due: 5 Mar. |
| Due: 30 April. |
| Term project A: |
| Thesis development. |
| Discussion due: 28 Jan. |
| Draft due: 12 Feb |
| Final due: as part of term project. |
| Term project B: |
| Literature review. |
| Discussion due: 4 Feb and throughout the semester. |
| Draft due: 12 Feb |
| Final due: as part of term project. |

### 22 Jan ~ 2. Core concepts: ethics

Archives have power: archivists’ actions have impact on individuals and cultures. In Orwell’s terms: he who controls the past controls the future. Kant’s deontology and Mill’s utilitarianism suggest different understandings of the ethical use of that power.

**Students should be able to**

- Discuss strategic ideals.
- Discuss individual and cultural influences on what is considered ethical.
- Discuss the power of archives and the ethical implications associated with that power.
In-class discussion
Case study: Archives and power.

Readings


Optional reading


See especially §§1, 2, 2.3, 2.6

29 Jan ~ 3. Term project: thesis development
Students will work together in class to review their thesis statements.

Readings


Optional reading

5 Feb ~ 4. Professional ethics
Professions are distinguished from other types of work, in part, by a code of ethics, by principles that establish acceptable conduct.

Students should be able to
· Discuss “archival edge” as liminality.
· Discuss criteria for considering ethical implications.
· Distinguish ethics, social norms, professional conduct, and institutional best practices
· Discuss core principles in professional codes of ethics
### In-class discussion

Are the core ethical principles common to archival codes based in ethics?

### Readings

**Benedict.** Ch. 1-3, p. 4-20.
“Core Values of Archivists” and “Code of Ethics.” American Archivists.  
http://www2.archivists.org/statements/saa-core-values-statement-and-code-of-ethics

Dowd, Maureen. “A Vice President Without Borders, Bordering on Lunacy.”  

### Optional readings


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### 12 Feb ~ 5. Core concepts: law

Introduction to basic legal principles and concepts.

**Students should be able to**
- Distinguish black letter and case law.
- Find and review case law to understand how judges how apply the law.
- To discuss the responsibilities of the archivist and the role of legal counsel

**Readings**

Peterson, Gary, and Trudy Huskamp Peterson. “Working with the Lawyer,”  

**Reading reports:**  
Find an example of litigation (civil or criminal) involving records or archives. Post a citation, URL (if appropriate), and a brief summary.

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### 19 Feb ~ 6. Privacy and confidentiality

Many records contain information of a personal nature or that may be restricted by law.

**Students should be able to**
- Explain the various legal understandings of privacy, including Warren and Brandeis’ essay.
- Distinguish confidentiality, privacy, practical obscurity, third party rights, public records, personally identifying information.
- Describe major categories of federal and state statutes relating to privacy and confidentiality, including FERPA and HIPAA.

**In-class discussion**
- Case study: Privacy, ethics, and the law.

**Readings**


**Assignment 1:**  
Privacy evaluation.  
Due: 5 Mar.


http://www.nytimes.com/2010/08/12/technology/personaltech/12basics.html?_r=0

http://mobile.nytimes.com/2014/02/18/opinion/bruni-hillarys-secrets.html

### Optional readings

http://www.stanfordlawreview.org/sites/default/files/online/topics/64-SLRO-88.pdf

http://scholarship.law.wm.edu/wmlr/vol51/iss2/14/ (checked 11 Jan 2014).


http://www.library.vcu.edu/mlt/specoll/hipaa.html

### 26 Feb ~ 7. Midterm

Exam or writing assignment. To be determined.

### 5 Mar ~ 8. Copyright and intellectual property

Much – if not most – of the materials in archival collections are protected by copyright. Archivists must understand the implications of intellectual property on many aspects of their jobs. *Note:* Discussion of reproduction by libraries and archives for preservation under 17 USC 108 is covered later in the course.

**Students should be able to**
- Discuss the legal basis and limits of copyright and the public domain
- Determine if a given work is protected by copyright
- Discuss the application of fair use (fair dealing)

| Assignment 2: Copyright analysis. Due: 12 Mar. | Reminder: You will interview an archivist as part of your term project. There is no specific due date, but consider conducting this... |
· Discuss the implications of copyright on reproduction of archival records, including fair use, orphan works
· Describe Creative Commons licensing

In-class discussion
Consider how the ethical imperative to provide access must be balanced against intellectual property rights.

Readings
Behrndt-Klodt. Ch. 20-22, p. 203-274. Note: information on pages 213-221 is updated by the following


Optional reading:

<table>
<thead>
<tr>
<th>7 Mar ~ Semester midpoint</th>
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<tr>
<td>Last day to withdraw from class with a passing grade. Withdrawing from the course after this date results in an automatic failing grade, regardless of how well a student is doing in the course.</td>
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<table>
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<tr>
<th>12 Mar ~ Spring break</th>
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<tr>
<td>No class</td>
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<tr>
<th>19 Mar ~ 9. Cultural property rights</th>
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<td>Collections may contain information that is not covered by intellectual property law, but may be subject to claims by indigenous peoples and other groups. Archivists must understand extra-legal and ethical aspects of these groups’ assertion of rights to control use of the materials.</td>
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Students will be able to
· Explain the concept of cultural property rights
· Describe the concerns of communities regarding the appropriation of traditional cultural expressions and propose strategies to address concerns of traditional cultures.
### Readings


### Optional readings


### 26 Mar ~ 10. Civil and criminal proceedings

Archivists and records managers may be actively involved in litigation. They must be familiar with legal requirements to protect records and produce them for trial.

**Students will be able to**
- Describe the process of civil litigation, including impact of records managers and archivists.
- Describe the basic process of criminal investigation and prosecution, including impact on records managers and archivists.
- Describe how to respond if served a warrant or subpoena and the rationale for that response.
- Define the following concepts: evidence (in the context of the Rules of Evidence), hearsay, the business records exemption, discovery, production, preservation orders (destruction holds), subpoena, warrant, deposition, pleadings, motions, rule of evidence, spoliation, adverse inference, dockets, decisions, reports, electronically stored information, stare decisis.

**Recorded Interview**

Ken Withers, Director of Judicial Education for The Sedona Conference.

**Readings**


Piasecki, Sara J. “Legal Admissibility of Electronic Records as Evidence and Implications for Records Management.” AA 58:1 (Winter 1995), p. 54-64. Note: This may be dated.

“Way of a Warrant” (Google, 27 March 2014). A short video on how Google responds to a warrant from the federal government (outside national security requests). http://www.youtube.com/watch?v=MeKKHxcJfh0

### Assignment 3:

Summarize trial documents. Due: 2 Apr.
Optional Reading


2 Apr ~ 11. Government and business records

Records managers and archivists may be required to help develop policies and procedures to ensure that adequate records are created and that the records are properly managed and disposed of.

Students should be able to

- Distinguish public (government) records from private records.
- Describe open records laws.
- Define replevin and describe strategies to recovery stolen records.
- Describe statutory requirements for and limits to access to public records, including the Freedom of Information Act and FERPA.
- Describe common limitations and statutory requirements that restrict access to nongovernmental records.

In-class discussion

Case study: Privacy and public records.

Readings

Danielson. Ch. 8, p. 249-293.
66 AJS Records and Recording Laws §1-19. Pay close attention to the body of the text. Chase a few footnotes to get a sense of the relationship between the court opinions and the text. In particular, skim “Denver Post Corp. v. Ritter, 255 P.3d 1083 (Colo. 2011),” linked under Cases in §3.
Georgia Open Records Act (OCGA 50-18-70).
Griffis v. Pinal County County, 156 P.3d 418 (Ariz. 2007).

Optional and background readings

Baron, Jason R. ”The PROFS Decade: NARA, E-mail, and the Courts.” In Thirty Years of Electronic Records (Scarecrow, 2003), p. 105-137.

9 Apr ~ 12. Appraisal, acquisition and ownership

Archivists must have a thorough understanding of the process of acquiring collections to get clear title to records, whether by purchase or donation. They want to ensure that they have rights to properly manage the collection over time.
Students should be able to
· List the essential elements in an effective deed of gift.
· Discuss legal and ethical ramifications of donor restrictions on access or use.
· Explain possible tax considerations.
· Explain why archivists cannot give monetary appraisals.
· Describe how to manage collections for which the repository does not have clear title.
· Explain the process of deaccessioning collections.

In-class discussion
Case study: A rushed donation.

Readings
Danielson ch. 2-3, p. 47-120.
Behrnd-Klodt. ch 4-9.
http://www.clir.org/pubs/reports/pub159/pub159.pdf

16 Apr ~ 13. Reference, access, and use
Access is the ultimate goal of archives. The records have no value, all the work to select, acquire, arrange and describe, store, and preserve the materials is meaningless if the materials cannot be used. At the same time, any number of legal and ethical issues require that the materials be restricted, at least for a period of time.

Students should be able to
· Define third party rights.
· Describe the rights of the press to use public and private records.
· Model releases: publishing photographs of individuals
· Describe the application of the Rehabilitation Act §§504, 508 to reference and access services.
· Explain patrons’ rights to privacy.*
· Explain why some archives charge use fees and the opposing view among some in the profession.
· Describe the role of patron registration
· Set policy for patron requests for photocopies.

Readings
Danielson 4: Equitable Access
“Best Practices for Working with Archives Researchers with Physical Disabilities” (Society of American Archivists, Joint Archives Management/Records

Assignment 4:
Develop a DMCA takedown notice.
Due: 23 Apr
Management Roundtables, 2010).
http://www2.archivists.org/sites/all/files/BestPrac-
Disabilities_Researchers_0.pdf.
“A Chance Meeting in MARBL” (Robert W. Woodruff Library, 14 Dec 2012),
http://old.web.library.emory.edu/blog/chance-meeting-marbl

23 Apr ~ 14. Preservation and online access
Archivists seek to comply, to increase access and facilitate preservation of the
materials. Archivists must address a number of legal and ethical considerations.

Students should be able to
· Discuss factors affecting publication of collections on the web.
· Discuss and apply best practices for the use of orphan works.

Readings
193-214.
Dickson, Maggie. “Due Diligence, Futile Effort: Copyright and the Digitization
of the Thomas E. Watson Papers,” American Archivist 73:2 (Fall/Winter
2010), p. 626-636
(Or Don’t Respond) to Requests to Display Archival Materials Online,”
Archival Science 10:1 (March 2010), p. 45-64.
Harper, Georgia. “Copyright Law and Audio Preservation.” From the
proceedings of Sound Savings: Preserving Audio Collections (Association of
http://www.arl.org/preserv/sound_savings_proceedings/ (checked 4
January 2012).
“The Takedown Project: Collaborative research on Internet takedown law and

Optional
Eschenfelder, Kristin R., and Michelle Caswell. “Digital Cultural Collections in
an Age of Reuse and Remixes.” First Monday 15:11 (1 November 2010).

30 Apr ~ 15. Term project: discussion of papers
All work due.

7 May ~ 16. Final