

**Society of American Archivists  
Council Meeting  
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**Report: Task Force to Review  
*Protocols for Native American Archival Materials*  
(Prepared by Task Force members Frank Boles [Chair],  
David George-Shongo, and Christine Weideman)**

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## **Administrative History**

In August 2007 the Native American Roundtable requested of Council that the Society of American Archivists endorse a document entitled, *Protocols for Native American Archival Materials* (hereinafter *Protocols*). This document is found in appendix 2. The *Protocols* resulted from a meeting in April 2006 of a group of nineteen Native American and non-Native American archivists, librarians, museum curators, historians, and anthropologists gathered at Northern Arizona University Cline Library in Flagstaff, Arizona. The participants included representatives from fifteen Native American, First Nation, and Aboriginal communities. The group met to identify what it believed was best professional practices for culturally responsive care and use of American Indian archival material held by non-tribal organizations.

In response to the request of the Native American Roundtable, at its August 28, 2007 meeting, Council authorized the president to create a Task Force which was given the responsibility to solicit membership opinion regarding the *Protocols* and report the results of solicitation to Council. The Task Force was also authorized to suggest possible next steps Council might take in response to the *Protocols*. The Task Force's full charge is found in appendix 1.

## **Membership**

President Mark Greene appointed vice-president Frank Boles to chair the Task Force. Also serving on the Task Force is David George-Shongo, archivist of the Seneca Nation and a member of the group which drafted the *Protocols*, and Christine Weideman of Yale University.

## **Clarification of Request for Endorsement by Native American Archivists Roundtable**

The Task Force notes that the immediate past chair and current chair of the Native American Archives Roundtable, in the final days before this report was to be forwarded to the Council, have clarified that the Roundtable's request for "endorsement" is not intended to ask the Council to approve the specific language found in the *Protocols*. Rather, the past and current chairs of the Native American Archives Roundtable have clarified that it was and is their intent to request that the Council endorse the "spirit" of the document and the document's call for continuing dialog. Given this additional information, the Task Force members believe that Draft Motion 2 (page 25) would constitute a full, positive response to the Roundtable's request.

## **Methodology**

On November 21, 2007, a letter drafted on behalf of the Council by President Mark Greene was distributed through the SAA leadership list, soliciting official comment from SAA sub-units. A December 17 deadline was established for comments.

On November 26, 2007, a request for individual comments was posted on the homepage of the SAA website. The request included a link to the First Archivists Circle website, which is where the Protocols reside.

Email blasts regarding the request for individual comments were sent to the membership on November 27 and December 11.

When the period for comments ended, Boles drafted a preliminary report that was reviewed by George-Shongo and Weideman. After the Task Force members reviewed the work and agreed upon various changes, Boles, on behalf of the Task Force, submitted the final report to the Council for its consideration.

Upon receiving a request regarding the possibility of comments being submitted after the deadline had passed, the Task Force agreed to accept late comments for inclusion in the appropriate appendix but further agreed that in order to ensure the timely conclusion of its report to the Council, comments received after the deadline would not be given consideration in the Task Force's summary of comments.

Upon submission of the report, the Task Force considered its responsibilities completed unless otherwise directed by Council.

## **Analysis of Comments**

### **Statistical Summary of Comments**

Thirty-nine comments were received in total by the Task Force. Thirty-three comments were received on or before the deadline of December 17. Six of these comments represented official responses from SAA units, while the remainder represented comments submitted by organizations unaffiliated with SAA, by small groups of individuals, or by individuals. In addition, six comments were received after the December 17 deadline had passed, one of which was from an SAA unit. Because of the importance of opinion received from SAA units, the late unit comment has been incorporated into this report. Other comments received after December 17 from individuals or organizations not representing SAA units are included in this report in Appendix 5, but were not considered by the Task Force when drafting this report.

Quantification of the comments is somewhat subjective, since many writers did not specifically call on the Council to endorse/not endorse the *Protocols*. Given this limitation, the Task Force would, somewhat arbitrarily, quantify the comments in the following manner:

Of the total pool of 39 comments:

- Eleven favored endorsement of the *Protocols*
- Two leaned toward endorsement
- Seven offered thoughts on the *Protocols* but were unclear regarding endorsement
- Seven leaned toward not endorsing the *Protocols*
- Twelve opposed endorsement of the *Protocols*

The Task Force notes, however, that this “simple statistic” is somewhat misleading in weighing archival opinion in that eight of the 39 comments received were from non-archivists (primarily archaeologists) and that non-archival commentators were largely negative in their opinions. Of the eight non-archival commentators:

- One favored endorsement
- None leaned toward endorsement
- One offered thoughts but was unclear regarding endorsement
- Four leaned toward not endorsing
- Two opposed endorsement

## **Summary of Comments Received from SAA Units**

The SAA units that offered comments, which are reproduced in Appendix 3, are:

- Acquisition and Appraisal Section
- Intellectual Property Working Group
- Manuscript Repositories Section
- Native American Archives Roundtable
- Privacy and Confidentiality Roundtable
- Standards Committee
- Reference, Access & Outreach Section (received after deadline)

### **Overview**

The seven SAA units that officially responded to the request for comments were sharply divided in their opinions regarding the *Protocols*. Although characterizations are often difficult, the Task Force would divide unit comments in the following manner:

- Two units, the Manuscripts Section and the Native American Archives Roundtable, requested that the Council endorse the *Protocols*.
- The Acquisition and Appraisal Section, while it did not formally request that the Council endorse the *Protocols*, expressed a positive opinion about the document.
- Two units, the Privacy and Confidentiality Roundtable and the Reference, Access, and Outreach Section, expressed no opinion regarding endorsement but raised a number of questions about the document.
- The Standards Committee and the Reference, Access, and Outreach Section, while offering the Council no formal advice regarding endorsement, expressed largely negative opinions and raised various concerns that would, if followed, lead the Council to either delay action or not endorse the *Protocols*.
- The Working Group on Intellectual Property, while clearly supporting continuing dialog, recommended that the Council not endorse the *Protocols* at this time.

### **Comments Arranged by Unit**

#### ***Native American Archives Roundtable***

The Native American Archives Roundtable presented the most complete argument in favor of endorsing the *Protocols*. The Roundtable notes that, with the best of intentions, traditional institutions “often lack training in the many nuances of caring for such collections, including cultural patrimony and sacred ceremonies.” Thus the Roundtable believes that there is a pressing need for the *Protocols* to be endorsed to create an appropriate document through which archival organizations can better understand their responsibilities with regard to Native American material. The Roundtable further suggests that endorsement by SAA of the *Protocols* would forward this understanding of the *Protocols* by spurring discussion in this area. Referring specifically to the Native American Graves Protection and Repatriation Action (NAGPRA) of 1992, the Roundtable sees this law as being key to engendering discussion within the archaeological community regarding Native American material. The Roundtable sees the endorsement of the *Protocols* by SAA as serving the same function within the archival community. The Roundtable further believes the *Protocols* to be a practical document, citing the Cline Library at Northern Arizona University as an example of successful collaboration at the local level that embraces the spirit of the *Protocols* and could serve as a national model.

#### ***Manuscript Repositories Section***

Although the Manuscript Repositories Section does allow that “we believe that many repositories will encounter problems in applying the guidelines retrospectively,” the Section believes that these problems are not of sufficient concern to outweigh what the Section leadership calls “a big step forward” – one that the Section implicitly encourages SAA to take by endorsing the *Protocols*.

### ***Privacy and Confidentiality Roundtable***

The Privacy and Confidentiality Roundtable limited its comments to areas of specific interest to the Roundtable. The Roundtable, without taking a position either for or against endorsement, raises several questions. Among them are:

- The *Protocols* statement that “conditions under which knowledge can be ethically and legally acquired, archived, preserved, accessed, published, or otherwise used change through time” poses serious challenges to archivists. The Roundtable requests clarification of this statement, including such practical advice as how often an institution might need to review its policies and procedures in the light of such changes through time.
- “Representatives” of Native American communities need to be clearly defined, preferably through an easily obtained list.
- The call for consultation over “questionable” use needs a more clearly defined explanation of what would constitute “questionable” use.
- A clear template of when “culturally responsive restrictions” should be applied and to what types of material would fall under this nomenclature.

The Roundtable warmly supports the *Protocols* call for dialog at a variety of levels and notes its continuing interest in supporting such an ongoing discussion.

### ***Reference, Access, and Outreach Section***

The RAO is highly supportive of continuing dialog on the issues raised by the *Protocols* but does not address specifically whether or not this particular document should be endorsed. The Section lists several problems and points about which it would like more information. Among these:

- The Section fears that the *Protocols* would have a “chilling effect” on the collecting and use of Native American material.
- Noting language regarding how the passage of time changes what may be legally or ethically acquired, RAO wonders just how often archivists would be expected to review policies/holdings in order to adequately reflect such changes.
- RAO is concerned about who would be considered an authorized representative for tribal communities and asks SAA or the First Archivists Circle to prepare a list of such individuals.
- Noting the call for consultation when “questionable” use might occur, RAO seeks a definition for the term “questionable.”
- The Section seems to implicitly challenge the statement that Native American interests have an automatic priority over the interests of other stakeholders, writing, “Our goal should be to maintain a balance between protecting Native American privacy and cultural heritage and making the materials available as broadly as possible.”
- The Sections asks for a better definition of culturally sensitive material.

### ***Standards Committee***

The SAA Standards Committee welcomes the call for collaboration found within the *Protocols* and, reduced to its simplest message, calls for extended and continued discussion of the *Protocols* rather than endorsement. The Committee endorses several points within the *Protocols*. These include:

- Collaborative efforts to develop cross-cultural perspectives to enrich the contextual understanding of collections.
- Collaborative efforts to create culturally sensitive lexicons for future use and that would allow for the retrospective conversion of existing catalog terminology.

The Standards Committee identifies several issues raised by the *Protocols* that it believes are problematic. These include:

- The Committee questions the statement that archives should “inform patrons, at the request of a community, of potentially offensive content prior to use by adding a notice to descriptive tool or items...” The Committee notes that archives do not endorse the content of collections and in fact often provide access to material that is commonly viewed as objectionable. The Committee is concerned that informing patrons of concerns at the request of the community could be interpreted as endorsing the perspectives of the community.
- The Committee believes that the call to explain or remove offensive terms is a difficult one to address within the confines of cataloging terminology. The Committee, in particular, believes that offensive terms found in titles should stand, as part of the historical record.
- The Committee is concerned regarding language within the *Protocols* over issues of repatriation and control over access by the community of origin to culturally sensitive material. In particular the Committee is concerned that the term “culturally sensitive” is poorly defined and could be interpreted very broadly. In connection with this concern the Committee asks how the *Protocols* would interact with the ACRL/SAA Joint Statement on Access to Original Research Material.
- The Committee also expresses concern regarding the meaning of endorsement in this situation. The Committee asks if endorsement creates a *de facto* standard that the archival community would be expected to implement and, if so, could other groups with specialized practices and approaches use this precedent to request endorsement of their “Protocols”?

Given these concerns the Standards Committee recommends that more time be taken for careful review and comment before the Council takes action, in general following the outline for standards customarily followed by SAA, or through some additional process that permits broad-based discussion and participation in the standards drafting process.

### ***Working Group on Intellectual Property***

The Working Group “cannot yet endorse” the *Protocols*. Consciously limiting itself to discussing the intellectual property concepts found within the *Protocols*, the Working Group raised a series of

objections to the *Protocols* as drafted. These include:

- *Conflicts between access and community interests.* The Working Group points out that SAA has fairly consistently spoken in favor of open access and against the destruction of important historical documentation, even to the point of championing public access to illegally obtained material when it appeared to be in the public interest (the “Pentagon Papers.”) Thus the Working Group is very concerned that endorsement of the *Protocols* would create third-party rights (in contrast to concerns) in archival material where none is currently recognized to exist.
- *Traditional knowledge.* The Working Group notes that Western concepts of copyright cannot be directly applied to the concept of traditional knowledge. The Working Group further notes that the World Intellectual Property Organization is discussing how traditional knowledge systems and Western notions of copyright can be accommodated. Given these discussions, and the unclear nature of how conflict between the value systems should be balanced, the Working Group believes it would be premature to endorse the concepts of traditional knowledge found in the *Protocols*.
- *Copyright v. ownership.* The Working Group finds some of the language within the *Protocols* on this subject to be poorly chosen and thus confusing.
- *Prescriptive language.* Although noting the *Protocols* call for dialog, the Working group observes that much of the language found within the document is prescriptive in character. The Working Group suggests that prescriptive language should be revisited, with the hope of reframing such language to support dialog.
- *Moral rights.* The Working Group is “at least initially” hesitant to endorse this concept because of its broad, potential impact and questionable legality within current Western legal concepts.

Although the Working Group does not recommend endorsing the *Protocols*, it does believe that continuing dialog would be of great importance. The Working Group suggests, within its comments, various ways in which language could be broadened or changed to support the spirit of ongoing dialog in the hope of finding common ground between the authors of the *Protocols* and the views of the Working Group.

## **Summary of Comments by Unaffiliated Organizations and Individuals**

### **Overview**

Thirty-two comments were received representing unaffiliated institutions, small groups of individuals, or individuals writing on their own behalf. These comments are reproduced in Appendix 4 or Appendix 5, depending on the date received. The Task Force notes, in passing, that a surprising number of archaeologists chose to comment on the *Protocols*.

Categorizing the comments received is somewhat difficult because many individuals reacted to specific parts of the *Protocols* without stating a broader opinion about the overall documents. With this reservation noted, of the thirty-two comments:

- Nine favored endorsement of the *Protocols*
- One leaned toward endorsement
- Five shared thoughts about the *Protocols* but were not clear regarding their opinion about endorsement
- Six leaned toward not endorsing the *Protocols*
- Eleven recommended that the *Protocols* not be endorsed at this time

### **General Comments in Favor of Endorsement**

Those who wrote in favor of endorsing the *Protocols* at this time presented several reasons to support their recommendation. Those most frequently cited included:

- The *Protocols* represent useful guidelines to assist archivists in dealing with Native American material. The *Protocols* will mutually benefit the archival institutions holding relevant material and the Native American community by establishing mutually understood expectations, practices, and policies.
- The *Protocols* offer an important tool for re-examining archival theory and practice through the lens of a multi-cultural society.
- The *Protocols* establish a legitimate, ethical structure to deal with material generated by communities that have, in the words of one critic of the *Protocols*, suffered consistently unfair and frequently genocidal treatment at the hands of the majority culture.
- The *Protocols* establish a basis of mutual respect from which all can move forward. The *Protocols* thus represent an important starting point in bringing healing to two estranged communities.
- Although conceding that the *Protocols* are sometimes incomplete, prescriptive in language, and that the request that SAA “endorse” the *Protocols* is ambiguous and open to interpretation, in spirit the *Protocols* ask institutions only to do what they can, outlining a process and a set of beliefs that are useful in an area in which there is general agreement that legitimate archival concerns arise from issues of cultural sensitivity.

It should also be noted that almost without exception all commentators agreed that the *Protocols*’ call for dialog and discussion is a wise one, and that the document itself does serve as a tool to help sensitize non-Native American archivists to the concerns and issues that are important to the Native American community.

## General Comments Opposed to Endorsement

Those who wrote in opposition to endorsing the *Protocols* at this time presented several reasons to support their recommendation. Not surprisingly, critics of the *Protocols* tended to write at much greater length than supporters of the document. The most frequently cited general objections to the *Protocols* included:

- In general the language and concepts presented are viewed as both overly broad and poorly defined. The term “cultural sensitivity” was often singled out as an example of this problem, with critics asserting that as used in this document it could apply to virtually any document created by or mentioning Native Americans, perhaps even including the *Protocols* themselves.
- The *Protocols* challenge many “bedrock” principles of American archival practice. While acknowledging that past principles may not necessarily be applicable in the future, the changes proposed in the *Protocols* are seen as either unpersuasively or insufficiently argued and thus both too rapid and too sweeping for immediate approval.
- Among the most important critical legal assertions are challenges to the claim of Native American sovereignty. Critics claim that U.S. law treats tribal governments as distinct but dependent legal entities that are not co-equal with the federal government.
- Assuming that the sovereignty argument is legitimate, critics assert that the *Protocols* establish an inequitable relationship between sovereign powers in which Native American communities assert that various rights accrue to them because of their sovereign status and thus should be implemented by U.S. archives, but at the same time decline to recognize the equally valid claim to sovereignty found within the United States government and the laws and rights that therefore accrue to U.S. archival institutions. (Put more simply, France cannot require that French law or custom be instituted in American archival institutions, and thus why would Native American tribal communities have such a right?)
- More narrowly, critics believe that implementation of the *Protocols* could or would lead to violation of current federal laws, and often rely on novel and untested legal theories to justify action.
- Critics particularly single out the area of intellectual property as one in which the *Protocols* offer novel and untested theories that cannot be accommodated within current law. Critics note that under current law, knowledge – whether traditional or non-traditional – cannot be copyrighted and copyright cannot be collectively held.
- Critics are unconvinced by the moral arguments presented in the *Protocols*. Critics ask why, among the many stakeholders involved in archives, Native Americans should be privileged in the manner envisioned in the *Protocols*. Critics uniformly agree that sensitivity to Native American cultural concerns is of importance but draw a sharp distinction between sensitivity, which would be balanced against several other competing considerations, and privilege, which would place Native American concerns and sensitivities above those of other stakeholders. Related to this argument, some critics asked why Native American religious beliefs should, for archival purposes, be privileged over other belief systems. If for whatever reason Native Americans are privileged in U.S. archives, several critics ask how SAA would respond to other racial, ethnic, or

religious minorities who might claim similar special privilege. Critics ask, in essence, what precedent would be created by endorsement of the *Protocols*.

- Critics question whether the *Protocols* violate the current SAA Code of Ethics by allowing for the sequestering or destruction of previously accessible material or by disallowing equal access to material for all researchers. Critics ask how the Council would reconcile the apparent contradictions between SAA's consistently stated interest in open and free access to material with the *Protocols*' call for control of access (including the authority to close material previously open to research and to close material viewed as confidential by a tribal community regardless of the nature of the authorship, to be vested in tribal communities).
- Critics question the representativeness of the group drafting the *Protocols*, asking if the authors believe they accurately represent the views of the 562 tribes currently recognized by the United State government.
- Critics indicate that "boundaries" between Native American and non-Native American material are often indistinct, thus making application of the *Protocols* difficult or impossible.
- Critics challenge the practicality of the *Protocols*. The *Protocols* envision a process of "bridge-building" that, while noble in sentiment, may be unreasonable in practice. The document's call for consensus building is not implementable. Similarly, critics point to Inter-and Intra-tribal conflict and ask how archivists will recognize a "legitimate" tribal voice when tribal communities disagree within and among themselves. Critics point to various SAA sessions in which it was clear that significant variations exist in tribal opinions regarding matters discussed in the *Protocols*. And critics note that implementation would call for financially strapped archives to implement an expensive program of outreach, ongoing discussion, redescription, and redefined access. Resources for this task are simply lacking.
- The approach embedded in the *Protocols* is "flat," rather than "faceted," that is, consideration of all material is controlled by a set of principles and policies designed to avoid the most egregious misuse of the most sensitive material. This, however, creates a process that may unduly hinder the use of material with little potential for misuse or of limited or no cultural sensitivity.

As a footnote, it should be added that archaeologists supplied a surprising number of critical comments and that some archaeologists were explicitly critical of the fact that they had not been called upon as a professional community for comment. Archaeologists requested an extension of the period for comments and a formal request for comments to be placed with the Society for American

Archaeology and the Registry of Professional Archaeologists. Substantively, archaeologists tended to voice fears over the possibility that endorsement of the *Protocols* would lead to material currently available for research becoming inaccessible. A few archaeologists, however, differed from the generally critical comments of their colleagues, and pointed to NAGPRA in particular as a positive experience and noted, "As Native people asked in the case of NAGPRA why only their ancestors' remains were desacralized for the sake of science, they have the right to ask a similar question about other forms of expression acquired under similarly inappropriate circumstances."

The call for an extended period for comments was also received from a few archivists.

# Comments Organized by Sections of the *Protocols*

## Methodological Note

To facilitate a detailed analysis of the *Protocols*, this section of the Task Force Report discusses the *Protocols* by section, and within sections refers to line numbers found in the version of the *Protocols* printed in Appendix 2 of this document.

The connection of comments received to specific line numbers is in some instances arbitrary in that commentators sometimes refer to an idea or phrase found in the *Protocols* but not to a specific line of text. In general the Task Force has assigned such comments to the first place in the *Protocols* where the concept or phrase appears, with an understanding that the comment voiced there would be equally applicable to later references to the idea or phrase.

It should also be noted that, in general, those recommending endorsement embraced the document without discussing specific passages of the text. In contrast, those opposed to endorsement tended to identify specific lines and concepts that they found problematic or objectionable. Because of this the “line-by-line” analysis tends to be largely negative. This negativity does not necessarily reflect the overall balance of comments received, but rather the differing structure of comments for or against endorsement.

## Discussion of Text

### *Introduction*

Line 11: “Native American communities are sovereign governments.”

- Commentators contest this statement, noting that in their understanding the statement does not reflect current American law. Native American sovereignty is “dependent” and is limited in American law and practice. The Task Force notes that, in the context of Native American communities, sovereignty is an issue of great complexity.

Lines 13-14: “Most Native American communities have federal recognition...”

- Without disputing that many tribal communities have federal recognition, commentators wonder how to deal with claims from those that do not, claims from elements within a current tribal community that may be seeking separate federal recognition, or how claims would be made on behalf of tribal communities that no longer exist. In general a thread of criticism exists that sees the document as dealing largely only with federally recognized tribal governments to the practical exclusion of other Native peoples.

Line 15 -16: Discussion of Native Hawaiians

- Commentator views this discussion as overly simplistic because Native Hawaiians do not have the same relationship to the federal government as do federally recognized tribes and would not be able to implement the *Protocols* in the same manner as federally recognized tribal governments.

Lines 29-32 and 79-80: Outlines the methodology by which the *Protocols* were drafted and lists members of the drafting group

- Commentators question the representativeness of the authors and their ability to speak on behalf of the entire group of Native American communities.

Lines 49-50: The Torres Strait Islander *Protocols*

- Favorably cited by the *Protocols* authors, the implementation of the Torres Strait Islander Protocols is offered as an example of how the *Protocols* may raise difficult issues in the United States. Implementation has limited access to material in general and, in particular, denied access to material based on gender. This runs contrary to the archival desire for openness and legal and ethical concerns over gender-based discrimination.

Line 51: Use of the geographical term “North American”

- A commentator from Hawaii objects to the term, noting that Native Hawaiians would not be considered “North American.” More broadly the commentator objects to the term “American Indian” on the same grounds, feeling that the term is not inclusive of Native peoples outside of the continental United States who live under the jurisdiction of the United States government, but whose records would fall under the auspices of the *Protocols*.

Lines 58-59: Allowance for local variation to meet specific, local needs

- Commentators note that while on the surface this appears reasonable, it would create a hodge-podge of rules and regulations that would prove confusing to researchers and might create great inequalities.

### ***Preamble***

Line 84: “libraries and archives”

- Commentators note that while the overall title of the document addresses only archives, the text frequently uses the phrase “libraries and archives” or some variant. It was pointed out that library

material (published) and archival material (unpublished) are very different categories. Concern was expressed about the reach of the *Protocols* over already published, library material.

### ***Building Relationships of Mutual Trust***

Lines 112-115: “Libraries and Archives must recognize that Native American communities have primary rights for all culturally sensitive material that are culturally affiliated with them. These rights apply to issues of collection, preservation, access and use of or restrictions to these materials.”

- Several commentators either question or do not accept this thesis statement. Among those who question but do not necessarily reject the assertion, there are calls for a much clearer understanding of what this statement means. Another labels such privileging of Native American rights a “disaster,” noting that archivists work within a complex web of donor agreements, use agreements, a culture and a code of ethics supporting equitable access, and other limitations. To privilege any one group invites “significant problems,” from bad public relations to lawsuits.

Line 139: “inform Native communities about collections of relevant materials...”

- Commentators question the practicability of this request, noting that relevant materials may not come in discrete and easily classified collections. See also discussion at line 256.

Lines 143-144: Transfer of out-of-scope material to appropriate Native American Archives

- Commentators advise caution, implicitly worrying that material now available for research may become closed. Explicitly commentators ask for an “independent” appraisal of the historical value of the material before transfer, with the apparent implicit thought that material of significant historical value should not be transferred if access to it may be lost.

Lines 150-151: “Be cautious in approving access use requests...”

- It is noted that for this provision to work, tribes must be timely and professional in their responses.

Lines 157-159 regarding material sold at auction houses

- Commentators question how this would be enforced. Archivists may request information regarding provenance and legal ownership from auction houses, but they lack the authority to “require” such information prior to a sale. Beyond this, the level of certification envisioned may simply be unobtainable for many items.

Lines 160-162: Right of first refusal

- Commentators suggest that this text is insufficiently nuanced and ask if such a right should exist if the relevant Native American community cannot supply appropriate archival care for the material, leading the material to end up in “someone’s garage.” Other commentators, however, dispute that Native Americans are entitled to such a right, noting that Native American rights would need to be balanced against the rights of potential donors who might prefer to present Native American material to a non-Native institution.

***Striving for Balance in Content and Perspectives***

Lines 201-206: Secrecy of information within Native American Society

- The analogy made between restricted documents of the United States government and right of Native American tribal communities to close documents is rejected by some commentators. As in many other places, critics assert that proper ethical conduct for archivists is to promote access rather than to restrict material.

Line 214: “Traditional knowledge systems possess equal integrity and validity...”

- Commentators note that while this could be true, to assert it is not to prove it. A commentator notes that in the discussion of creationism v. evolution he would not accept a statement simply because one or the other participant in the debate asserted it, and he respectfully requests much more information.

Line 214-215: Native American approaches to access

- Commentators explicitly note that Native American approaches to access stand in direct contrast to American law and mores. Specifically, in Native American tradition access to some material is restricted based on gender. Such restrictions would likely be viewed as illegal and unacceptable in American law and practice.

Line 219: Records Management

- Commentators note that this appears to be one of the few references to records management within the *Protocols* and suggests that a broader use of the concept would be beneficial.

Lines 220-222: “Some items, such as a photograph of a sacred ceremony, or object, or culturally sensitive documentation of a burial, should not be preserved forever or may need to be restricted or repatriated to the culturally affiliated group.”

- A commentator called the implication of this passage “staggering.” The idea that items not created by tribal members could be restricted, repatriated, or conceivably destroyed was very worrisome and troubling to some.

### *Accessibility and Use*

Line 238: “Control over information...”

- Commentators have great difficulty accepting this concept, raising a variety of concerns. For example, commentators ask how a Native American community could legally or ethically assert control of material not created by the community. Other commentators ask how archives would deal with situations in which legal rights held by American citizens came into conflict with tribal definitions of appropriate access. For example, how would an archives balance a woman’s claim that she was being treated in a discriminatory manner if she were denied access to material based on tribal value systems that did not allow women to share certain information? Similarly, how would access be granted in cases in which tribal definitions of access state that only members are allowed to see material, but disputes exist over claims of membership?

Lines 247-248: “Common ownership of original source information”

- Although conceptually clear, commentators question if there is a practical way to define commonly owned material. Although a body of core documentation may be “commonly owned” by common consent among a tribal community, there may also be bodies of material over which the validity of common ownership is disputed within the tribal community. Commentators assert that the concept needs both more careful definition and to be operationalized in a way that does not hold access and use hostage to intra-tribal disputes.

Line 254-255: Precedence must be given to rights of Native American communities over all other stakeholders in matters of accessibility and use

- A number of commentators object to this portion of the *Protocols*. Philosophically commentators do not accept the automatic privileging of Native American concerns over the concerns of other groups. Commentators believe that discussion is needed in order to balance tribal wishes with the traditional archival desire for openness and equal access. Legally commentators suggest that such privileging would violate various laws or institutional policies.

Line 256: “Seek active consultations with authorized Native American representatives...”

- Several commentators question the viability of this recommendation, pointing out that it is difficult to “seek” communities that institutions may be unaware of and asking what exact mechanism would be used to assess if specific individuals may or may not be “authorized Native American representatives.” Commentators would prefer a process in which a dialog is initiated

by authorized Native American representatives who would contact the archival institution on behalf of their tribal community.

Lines 264-265: Rethink the need for patron credentials

- Commentators are uncertain regarding the meaning of this provision. They express a concern, however, that it may mean that only Native Americans of a specific tribal community might be authorized to see specific documents. Commentators also express concern that some aspect of “credentialing” (requesting identification) is closely linked to security, while other aspects of credentialing may involve documenting legitimate access to collections closed to the general public (in part by the request of tribal governments) or to material closed on a “need to know” basis by federal law, such as exact location of burial sites, or prior permission to reveal archaeological sites located on private land.

### *Culturally Sensitive Materials*

Line 282: Privacy Rights

- Commentators note that while the authors of the *Protocols* might like to see such rights extended to groups, it is not clear that current American law reflects this aspiration.

Lines 288-289: “Consult with culturally affiliated community representatives...”

- Comments on these lines are largely identical to those raised regarding line 256. Commentators complain that the *Protocols* place the burden of proof regarding matters of sensitivity on the archives. Several commentators question the viability of this recommendation, pointing out that it is difficult to “seek” communities that institutions may be unaware of and asking the exact mechanism through which to assess if specific individuals may or may not be “authorized Native American representatives.” Commentators would prefer a process in which a dialog is initiated by authorized Native American representatives who would contact the archival institution on behalf of their tribal community. In addition, commentators are concerned about process should more than one “culturally affiliated community” exist. How would the archival institution determine which community has precedence?

Lines 290-291 & 297: Restriction of access at the request of appropriate tribal community

- Commentators react negatively to this passage based on arguments similar to those used regarding line 255. Philosophically commentators do not accept the automatic privileging of Native American concerns over the concerns of other groups. Legally commentators suggest that such privileging would violate various laws or institutional policies.

## *Providing Context*

Line 334: Archaeological data

- Commentators with an archaeological background express concern that in the context of this section, all such material might be restricted. One archaeologist commentator found the implications of this section potentially “devastating to disciplines such as archaeology and history.”

Lines 351-352: “Inform patrons, at the request of the community, of potentially offensive content...”

- Commentators note that this is a major deviation from current library theory and practice, which maintains that libraries and archives must remain neutral and objective in the presentation of information. Commentators assert that the request violates current American Library Association policy regarding labeling library material. Commentators also are concerned about the precedent established, asking if Native Americans are to be accommodated in this manner, what of other political, economic, or religious groups that might prefer other terminology and would characterize descriptions/language about them as offensive?

Lines 356-359: Revisit Indexing Terminology

- Commentators express concern about the cost of such extensive projects.

Lines 360-365: Explain or Remove Derogatory Language

- Commentators express concern that while the terms can be seen as objectionable, nevertheless they represent the historical record. As such, removal would be a form of censorship. Although some commentators accept the notion of including explanatory notes with such terms, others worry about the practicality of identifying and explaining each use of the terms, the possibility of dispute over which terms are objectionable, as well as the problem created by changing social mores through time, such that the work might never be finished. How, ask commentators, would archivists keep track of “current” notions of sensitivity among a large number of tribal communities and individuals, and who, within the Native American community, would be specifically authorized to choose between terms and to identify which terms might be “sensitive”? Commentators point to the use of Indian mascots in sports as an area that documents how tribal communities themselves can be divided over the legitimacy of language and use.

## *Native American Intellectual Property Issues*

Lines 388-393: Copyright

- Commentators note that while the *Protocols* outline how Native American concepts do not fit well with current United States copyright law, nevertheless current copyright law is in place and enforced. Archivists cannot arbitrarily abandon it in favor of some different concept.

Line 401: “Right of Possession”

- If such a right exists, commentators note that the *Protocols* require an archives to document not only that the material was obtained by the archives in a legal and ethical manner but also that the person or agency who or which originally collected the data did so in appropriate ways. With the passage of time, such information may be simply unobtainable.

Line 412: Moral rights

- Commentators see great difficulty in incorporating moral rights into the American legal framework and would like to see considerable research regarding how this could be done.

## *Copying and Repatriation of Records to Native American Communities*

Line 427: Cultural Patrimony

- Commentators find the definition of this term in the *Protocols* overly broad and so sweeping as to seemingly include everything written by and about Native Americans in the United States.

Lines 433-433: Native American Graves Protection and Repatriation Act (NAGPRA)

- Commentators question the applicability of a NAGPRA-like model to most Native American documentation. Commentators note that NAGPRA was tightly focused and also funded through federal appropriation, which made possible the creation of a substantial implementation infrastructure. In contrast, commentators believe the *Protocols* create a vague, unfunded mandate that would largely have to be implemented by institutions already strapped for resources. Commentators are also divided about the assertion in the *Protocols* that the impact of NAGPRA has been “largely positive.”

Lines 442-447: Applicability of NAGRPA to Archival Records

- Commentators challenge the *Protocols* implication that the question of NAGPRA’s legal applicability to documentary materials is still in question because the federal courts have never

ruled on this matter. Commentators note that within the legislative history of NAGPRA, categories of items included were carefully defined and it was consciously decided to exclude archival documentation from the law's purview. Archival documentation was excluded with the explicit goal that "enduring knowledge" of sacred items would survive after repatriation and likely reburial.

## Recommendations

### Introduction

The Task Force notes, as do several commentators, that the *Protocols* were not developed by an SAA body or by a body jointly created by SAA and some other organization. The *Protocols* are “owned” by its authors and only they are capable of definitively modifying it. Thus the SAA Council, although it may take many actions, may not endorse and promulgate an amended version of the document without clearly identifying that the amended document is issued by SAA and is something different from and not endorsed by the authors of the *Protocols*.

### Possible Actions Consistent with This Report

The Task Force offers seven possible motions for Council consideration:

- Endorse the *Protocols* (Draft Motion 1).
- Endorse the “spirit” of the *Protocols* and the call for ongoing dialog but not the specific language found in the document presented to the Council (Draft Motion 2).
- Endorse the “spirit” of the *Protocols* and the call for continuing dialog, with additional language submitted by Task Force member David George-Shongo (Draft Motion 3).
- Endorse the need for dialog, using the document presented to the Council as the basis for discussion (Draft Motion 4).
- Defer a decision to gather additional data and comments (Draft Motion 5).
- Decline to endorse the *Protocols* but establish an SAA process to develop a best practices document for dealing with Native American archival material (Draft Motion 6).
- Decline to endorse the *Protocols* and take no further action (Draft motion 7).

Support for each of these courses of action can be found within the comments that the Task Force has received. The Task Force has prepared a draft motion, with supporting statement, for each possible action.

**The Task Force notes that the immediate past chair and current chair of the Native American Archives Roundtable, in the final days before this report was to be forwarded to the Council, have clarified that the Roundtable’s request for “endorsement” was not intended to ask the Council to approve the specific language found in the *Protocols*. Rather, the past and current chairs of the Native American Archives Roundtable have clarified that it was and is their intent to request that the Council endorse the “spirit” of the document and the document’s call for continuing dialog.**

**Given this additional information, the Task Force members believe that Draft Motions 2 or 3 would constitute a positive response to the Roundtable’s request. Draft Motion 2 was drafted**

**by Frank Boles; Draft Motion 3 was drafted by David George-Shongo, who served both on the Task Force and as one of the authors of the *Protocols*.**

We note, however, that this clarification has occurred late in the process and that some commentators have asked the Council to endorse the *Protocols* without this more subtle understanding of the Roundtable's intent. In addition, this clarification might have reduced the number of commentators who either leaned toward not endorsing the *Protocols* or opposed endorsement entirely. Because of this confusion, we include Draft Motion 1 in this report, which goes beyond the request of the Roundtable and endorses the document in full, as written.

**DRAFT MOTION 1: Endorse the *Protocols*.**

**THAT the SAA Council endorses the *Protocols for Native American Archival Materials* presented to the Council by the Native American Archives Roundtable.**

**Support Statement:** The *Protocols* as written are strongly supported by a minority of respondents to SAA’s call for comment who call upon the SAA Council to take a “progressive” view of this issue and, in essence, lead rather than follow the membership. This call to lead springs from a global concern regarding the control of documents relating to the history of indigenous peoples. This call reflects current discussions and ideas that could change both ethical and legal concepts embedded in western thought and legislation regarding this material.

**Fiscal Impact:** None.

**DRAFT MOTION 2: Endorse the spirit of the *Protocols* but not the specific language, and call for continued dialog.**

**THAT the SAA Council endorses the spirit found within the *Protocols for Native American Archival Materials* presented to the Council by the Native American Archives Roundtable; and**

**THAT the SAA Council, noting the call within the *Protocols* for ongoing dialog, expresses the Society's willingness to enter into formal discussion with the authors of the *Protocols* with the hope of developing a document that resolves the many issues raised by the comments found in the report of SAA's Task Force to Review the *Protocols for Native American Archival Materials*.**

**Support Statement:** This action reflects a strongly held view by many of those who commented on the document that the *Protocols* represents a vision of the future that should be embraced; reflects the clear majority of comments received that accept the need for sensitivity regarding some Native American material; and endorses the desire for professional discussion regarding the ideas raised in the *Protocols*. This action also allows the SAA Council to honor the large number of questions and clarifications raised regarding some of the specific ideas included in the *Protocols* and the practicality of actions referred to in the *Protocols*. The Council's action reflects the importance that the Council places on this topic and on encouraging ongoing discussion of the matter within the profession. This action requires development of a specific mechanism to promulgate further discussion within SAA.

[NOTE: The Task Force notes, by way of example, that the Northwest Archivists have formally adopted a plan to discuss the *Protocols* at each of that group's next five annual meetings.]

**Fiscal Impact:** Unclear in that the resolution calls for ongoing discussion but does not specify the details of how the conversation will take place.

### **DRAFT MOTION 3**

**THAT the SAA Council, noting the call within the *Protocols for Native American Archival Materials* for ongoing dialog, expresses the Society willingness to enter into formal discussion about the ideas in the *Protocols* but at the same time hopes that archivists and Native American communities can take what they need out of the *Protocols* to enhance their understanding of each other.**

**Support Statement:** This action reflects the clear majority of comments received from those who reviewed the *Protocols* in accepting the need for sensitivity regarding some Native American material. In addition, it acknowledges the desire for professional discussion regarding the ideas raised in the *Protocols* and the importance that the SAA Council places on this topic and on ongoing discussion of the matter within the profession. This action requires development of a specific mechanism to promulgate further discussion within SAA.

[NOTE: The Task Force notes, by way of example, that the Northwest Archivists have formally adopted a plan to discuss the *Protocols* at each of its next five annual meetings.]

**Fiscal Impact:** Unclear in that the resolution calls for ongoing discussion but does not specify the details of how the conversation will take place.

**DRAFT MOTION 4: Endorse the *Protocols*' call for dialog without reference to the document's "spirit."**

**THAT the SAA Council acknowledges that, in a multicultural society, there is a need for ongoing dialog regarding matters of cultural sensitivity between and among archivists and the many and varied cultures represented within the United States; and**

**THAT the SAA Council, noting the call within the *Protocols for Native American Archival Materials* for ongoing dialog, expresses the Society's willingness to enter into formal discussion with the *Protocols* authors to examine the comments found within the report of the Task Force to Review *Protocols for Native American Archival Materials* with the hope of developing a mutually agreeable document.**

**Support Statement:** This action reflects the clear majority of comments received from those who reviewed the *Protocols* in accepting the need for sensitivity regarding some Native American material. In addition, it acknowledges the desire for professional discussion regarding the ideas raised in the *Protocols* and the importance that the Council places on this topic and to ongoing discussion of the matter within the profession. This action requires development of a specific mechanism to promulgate further discussion within SAA.

[NOTE: The Task Force notes, by way of example, that the Northwest Archivists have formally adopted a plan to discuss the *Protocols* at each of their next five annual meetings. This draft motions differs from Draft Motion 2 in that it is silent regarding the Council's support, or lack of support, for the "spirit" of the *Protocols*.]

**Fiscal Impact:** Unclear in that the resolution calls for ongoing discussion but does not specify the details of how the conversation will take place.

**DRAFT MOTION 5:**

**Defer a decision regarding endorsement of the *Protocols* in order to gather additional information.**

**THAT the SAA Council, noting in the report of the Task Force to Review *Protocols for Native American Archival Materials* the call to allow time for additional comment, reconstitutes the Task Force and directs it to seek additional comments on the *Protocols*. A revised report, including all additional comments received, shall be submitted to the Council for consideration at its May 2008 meeting.**

**Support Statement:** According to the Task Force report, a significant number of those responding to the call for comments requested that the Council allow additional time for comment on the *Protocols*.

[NOTE: Although extending the comment period may result in additional comments that simply elaborate on points already made in the Task Force report rather than offering fresh perspectives and new ideas, the Council cannot know this. Further, although the Task Force has been charged to solicit the opinions of archivists, clearly there are user communities (such as archaeologists and historians) who may have strong opinions regarding this document. Council may wish to direct the Task Force to solicit (explicitly) the comments of user communities whose points of view may differ from that of the archives community. In the spirit of obtaining the fullest possible discussion of the *Protocols*, the Council may choose to select this option.]

**Fiscal Impact:** None.

**DRAFT MOTION 6: Initiate an SAA-sponsored process to develop a best practices guideline on care of Native American archival material.**

**THAT the SAA Council resolves to initiate a process to develop a document to describe the appropriate procedures for the care of Native American archival material; and**

**THAT the SAA Council charges the President to identify (or create) an appropriate body within SAA to undertake this task, to draft an appropriate charge, and to report to the Council at its May 2008 meeting regarding the mechanism selected, the composition of the group appointed (or pending) to undertake this task, the timeline for the group, the fiscal impact of the process, and the desired final product.**

**Support Statement:** This approach, although it reflects the belief that a document for the care of Native American material is needed, allows SAA to manage the creation of such a document through the normal channels employed by SAA to develop such documents. It also frees SAA to move forward at a pace it sets and without constraints that might be imposed by an outside partner. A possible model might be the *Aboriginal Archives Guide*, issued by the Association of Canadian Archivists Public Awareness Committee in 2007. This 60-page document outlines a broad array of issues that touch upon Native material, including, in a much briefer manner, most of those found in the *Protocols*.

However, the Task Force notes that such an approach would forfeit the valuable expertise already developed by the authors of the *Protocols* and might be viewed as an affront to the *Protocols* authors or more broadly to members of the Native American community.

**Fiscal Impact:** Unclear in that the resolution calls for the creation of a document but does not specify the details of how the document creation process will take place.

**DRAFT MOTION 7: Decline to endorse the *Protocols* and take no further action.**

**THAT the SAA Council declines to endorse the *Protocols for Native American Archival Materials* as requested by the Native American Archives Roundtable and charges the President to forward the report of the Task Force to Review the *Protocols for Native American Archival Materials* to the chair of the Native American Archives Roundtable for the information of the Roundtable.**

**Support Statement:** The Task Force notes that a significant minority of commentators reacted negatively to the *Protocols* document. Just as a strong minority calls for the document's endorsement based on "progressive" thought, a strong minority calls for the *Protocols* to be rejected because the respondents believe that the *Protocols* implicitly or explicitly ignore existing laws and call for a significant change in contemporary archival practice that they consider unwise. The Council could decline to endorse the *Protocols*, forwarding this report to the Roundtable as a means of explaining the reasons for the Council's decision.

The Roundtable and, of course, the *Protocols* authors would be free to consider and act on the comments within this report and, if they choose, submit at a later time a revised document for endorsement, or in some other way seek to engage SAA in the process of drafting a revised version of the *Protocols*. The responsibility for future action would then be placed on the Roundtable and the *Protocols* authors.

**Fiscal Impact:** None.

## **Appendix 1: Task Force Charge**

### **Native American *Protocols* Review Process Task Force Charge October 2007**

#### **Goal**

Obtain widespread public comment on “*Protocols* for Native American Archival Materials” (a draft document developed by a group of Native American and non-Native American archivists, librarians, museum curators, historians, and anthropologists gathered for a conference at Northern Arizona University in April 2006) and prepare for the Council’s consideration a summary of public comments, which Council will also share with the Native American Archives Roundtable. The “*Protocols*” were presented to the SAA Council for endorsement at its August 28, 2007, meeting.

#### **Members**

Frank Boles, Chair  
David George-Shongo Jr  
Christine Weideman

#### **Tasks**

1. As soon as possible, but not later than December 1, 2007, the Task Force will contact all SAA unit leaders and ask them to comment on, and/or circulate to their unit members for comment, “*Protocols* for Native American Archival Materials.”

**Deadline for comments from unit leaders and/or members: December 17, 2007.**

2. As soon as possible, but not later than December 7, 2007, the Task Force will post the draft “*Protocols*” document to the SAA website with an invitation to all SAA members to comment on the document. **Deadline for comments: December 17, 2007.**

3. The Task Force will review and summarize (without recommendations for action) the comments received by the deadline, and prepare a summary report for the Council’s consideration at its Winter 2008 meeting. The report will also include recommendations of the next steps Council might take in considering the possible endorsement of the *Protocols*. The report will be posted to the SAA website two weeks prior to the Council meeting.

**Deadline for submission of report: January 8, 2008.**

At its Winter 2008 meeting the Council will discuss the Task Force summary report and consider what actions, if any, to take.

**Appendix 2:**  
**Native American *Protocols***  
**As Submitted for SAA Council Endorsement**

*Protocols for Native American Archival Materials*

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*The archives, the record, can provide not only our people but all people enlightenment, and hopefully a better humanity will result.*

Kathryn “Jody” Beaulieu (Anishinabe/Ojibwe)

## **Introduction**

[Native American](#) communities are sovereign governments. Tribes had their own traditional governments prior to European invasion. These governments maintain their own territories, their own laws, and their own legal restrictions surrounding cultural issues. Most Native American communities have federal recognition, while others hold state recognition. In Canada, many Native American communities have a similar status through federal treaties or provincial acknowledgement. Native Hawaiians are accorded special status by both federal law and state law. A number of federal laws in the United States specifically address both cultural and human rights of Native Americans and their communities. While we share a common commitment to the preservation and dissemination of knowledge, archivists and librarians should understand and respect Native American rights and laws, which are recognized in the United States Constitution. These statuses and associated rights form the basis of the principles behind the *Protocols for Native American Archival Materials*.

Over the past decade, tribal leaders, archivists, and librarians in the United States and Canada have expressed an interest in improving existing relationships and developing new relationships with non-tribal institutions which hold American Indian archival material. Numerous professional groups support this goal, such as the Society of American Archivists, the Council for the Preservation of Anthropological Records, the American Indian Library Association, the International Indigenous Librarians Forum, and the American Association for State and Local History. These *Protocols* outline many opportunities for collecting organizations to cooperate with Native communities.

In April 2006 a group of nineteen Native American and non-Native American archivists, librarians, museum curators, historians, and anthropologists gathered at Northern Arizona University Cline Library in Flagstaff, Arizona. The participants included representatives from fifteen Native American, First Nation, and Aboriginal communities. The group met to identify **best professional practices** for [culturally responsive](#) care and use of American Indian archival material held by non-tribal organizations.

35 Human rights themes, such as understanding Native American values and perspectives and providing  
36 contexts for Native American archival materials, repeatedly emerged in the discussions. Related  
37 policy and legal topics included:

- 38 • the importance of consultation with and concurrence of tribal communities in decisions and
- 39 policies
- 40 • the need to recognize and provide special treatment for [culturally sensitive](#) materials
- 41 • rethinking public accessibility and use of some materials
- 42 • the role of intellectual and cultural property rights
- 43 • the need to consider copying, sharing, and/or [repatriation](#) of certain materials
- 44 • the recognition of community-based research protocols and contracts
- 45 • reciprocal education and training
- 46 • raising awareness of these issues within the profession

47 The *Protocols* build upon numerous professional ethical codes (Society of American Archivists,  
48 American Association for State and Local History, American Anthropological Association, and the  
49 Oral History Association); a number of significant international declarations recognizing Indigenous  
50 rights, including several now issued by the United Nations; and the ground-breaking *Aboriginal and*  
51 *Torres Strait Islander Protocols for Libraries, Archives, and Information Services*.

52 The contributors to these North American best practices hope that the lines of communication opened  
53 by this work will serve as the genesis for an ongoing national discussion around different approaches  
54 to the management, preservation, and transmission of Native American knowledge and information  
55 resources. These Protocols urge archivists and librarians to consider Native American perspectives  
56 on professional policy and practice issues.

57  
58 The proposed standards and goals articulated in *Protocols for Native American Archival Materials* are  
59 meant to inspire and to foster mutual respect and reciprocity. Institutions and communities are  
60 encouraged to adopt and adapt the culturally responsive recommendations to suit local needs. New  
61 issues for consideration will undoubtedly arise as the best practices are debated and implemented.  
62 The contributors intend this document to be a work in progress—subject to revision and  
63 enhancement.

64  
65 North American libraries, archives, and American Indian communities will benefit from embracing  
66 the power of conversation, cooperation, education, negotiation, and compromise. As Sven  
67 Haakanson, Jr., (Alutiiq/Sugpiaq) reinforces in *Caring for American Indian Objects: A Practical and*  
68 *Cultural Guide*, “. . . it takes human connections to make positive changes happen.”<sup>1</sup>

69

## 70 **Acknowledgements**

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75

76 The contributors wish to thank the Aboriginal and Torres Strait Islander Library and Information  
77 Resource Network for permission to draw upon the language and ideas presented in the *Aboriginal*  
78 *and Torres Strait Islander Protocols for Libraries, Archives, and Information Services*.

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81

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83  
84

## **Preamble**

85 These *Protocols* are presented to guide libraries and archives in engaging in culturally responsive care  
86 of Native American archival materials and in providing culturally appropriate service to  
87 communities. Librarians and archivists should be aware that each tribe, band, and community is  
88 unique. The recommended best practices will need to be interpreted and applied by each collecting  
89 institution and community.

90 The *Protocols* address:

- 91 • The recognition of the sovereign governments and associated rights of Native American  
92 communities.
- 93 • Issues in the collection, ownership, preservation, handling, access, and use of American Indian  
94 archival resources.
- 95 • The importance of building relationships, balancing different approaches to knowledge  
96 management, and mutual respect.
- 97 • The need to expand the nature of the information professions to include Native American  
98 perspectives and knowledge.

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## **Building Relationships of Mutual Respect**

111 Native American communities have had extensive first-hand experience with the ways that  
112 information resources held in distant institutions can impact their quality of life, their practice of  
113 religion, and their future as a people—sometimes with disastrous consequences, sometimes to their  
114 benefit. Libraries and archives must recognize that Native American communities have primary  
115 rights for all culturally sensitive materials that are culturally affiliated with them. These rights apply  
116 to issues of collection, preservation, access, and use of or restrictions to these materials.

117 Collecting institutions and Native communities are encouraged to build relationships to ensure the  
118 respectful care and use of archival material. Meaningful consultation and concurrence are essential to  
119 establishing mutually beneficial practices and trust. Through dialogue and cooperation, institutions  
120 and communities can identify mutually beneficial solutions to common problems and develop new  
121 models for shared stewardship and reciprocity or for the appropriate transfer of responsibility and  
122 ownership for some materials.

123 *Archives and libraries guidelines for action:*

- 124 • Seek opportunities for Native American community consultation by contacting the chair's office  
125 of each tribe that is or may be culturally affiliated with collections held by the archives or library.  
126 Consultation may involve more than one person. As a professional courtesy, also contact the  
127 community's cultural center, library, or archives and/or the cultural preservation office.  
128 Appropriate personnel will appreciate being included in external discussions with mainstream  
129 archives and libraries. See:

130 Bureau of Indian Affairs *Tribal Leaders Directory*

131 <http://www.doi.gov/leaders.pdf>

132 *National Directory of Tribal Archives, Libraries and Museums*

133 [www.statemuseum.arizona.edu/aip/leadershipgrant/directory/directory.shtml](http://www.statemuseum.arizona.edu/aip/leadershipgrant/directory/directory.shtml)

134 *American Indian Resource Directory*

135 <http://www.indians.org./Resource/FedTribes99/fedtribes99.html>

136 National Association of Tribal Historic Preservation Officers

137 [www.nathpo.org](http://www.nathpo.org)

138 Aboriginal Canada Portal

139 <http://www.aboriginalcanada.gc.ca/>

- 140 • Inform Native communities about collections of relevant materials and explain the nature of the  
141 materials. Use the model summary or inventory letters required by the Native American Graves  
142 Protection and Repatriation Act of 1990, with a follow-up telephone call. More than one contact  
143 may be necessary. See: National Park Service, NAGPRA <http://www.cr.nps.gov/nagpra>
- 144 • Evaluate institutional holdings and if a Native American collection is out of scope, transfer the  
145 collection to the community or the closest archives at the tribe or band's request.
- 146 • Ensure equitable treatment in negotiations, whether a collection is culturally affiliated with one or  
147 more than one community. Offer comparable arrangements and agreements regarding access and  
148 use to all communities.
- 149 • Document agreements with communities, through formal [Memoranda of Agreement](#) and/or other  
150 contracts, and honor commitments.
- 151 • Be cautious in approving access or use requests, if the requests appear to conflict with the  
152 *Protocols*, until appropriate tribal community representatives can be consulted and have had  
153 ample time to consider these issues for culturally affiliated materials.
- 154 • Appreciate that in most instances it will take years for institutions and staff to develop essential  
155 trust relationships with a community. Weeks, months, or longer may be required to gain an  
156 understanding of Native American perspectives on issues and to work through solutions and  
157 approaches to problems, in consultation with communities.
- 158 • Require that auction houses and other sources certify that materials were acquired properly and  
159 that the possessor obtained the legal rights of disposition and any associated rights of copyright  
160 from any previous source(s).

161 • Allow Native communities the right of first refusal for collections with strong cultural affiliation  
162 or sensitive content and act as a pass-through agency from the source to the community for such  
163 collections.

164 • Respond to requests for assistance from tribal archives, libraries, and cultural organizations.

165 *Native American communities guidelines for action:*

166 • Publicize who may speak for them, by informing archives and libraries of the individuals who  
167 will act as community representatives for these matters, i.e. a tribal archivist, historic preservation  
168 officer, cultural liaison, records manager, etc.

169 • Identify and contact collecting institutions which hold relevant materials, if possible. To access  
170 collection-level records and/or archival finding guides, see:

171 WorldCat OCLC [www.oclc.org/worldcat](http://www.oclc.org/worldcat)

172 RLIN [www.rlin.org](http://www.rlin.org)

173 OAIster <http://oaister.umd.umich.edu/o/oaister/>

174 California Digital Library [www.cdlib.org](http://www.cdlib.org)

175 The Online Archive of California [www.oac.cdlib.org](http://www.oac.cdlib.org)

176 Arizona Archives Online <http://aao.lib.asu.edu/index.html>

177 Online Archive of New Mexico [elibrary.unm.edu/oanm](http://elibrary.unm.edu/oanm)

178 Texas Archival Resources Online <http://taro.lib.utexas.edu/>

179 Mountain West Digital Library [www.lib.utah.edu/digital/mwdl](http://www.lib.utah.edu/digital/mwdl)

180 Galileo [www.peachnet.edu](http://www.peachnet.edu)

181 • Understand that while the *Protocols* encourage a library or archives to be wary of providing  
182 access or use until tribes can be consulted, a collecting institution may proceed with providing  
183 access to and use of material as it deems appropriate, but only if a community fails to respond to a  
184 good-faith effort to request consultation.

185 • Endorse partner collecting institutions; that is, establish formal relationships through memoranda  
186 of agreement with archives or libraries and recognize those partnerships publicly.

187 • Offer expertise to institutions interested in developing culturally responsive archival  
188 management policies as well as exhibits, lectures, storytelling, teaching, workshops, and other  
189 forms of public education.

## 190 **Striving for Balance in Content and Perspectives**

191 *We're not looking at an issue paper by paper or record group by record group. It's a whole system*  
192 *of a way of life. Our knowledge systems don't make sense without spirituality. We are asking for*  
193 *respect for a system of knowledge.*

194 Kim Lawson (Heiltsuk Nation)

195 Native American communities and collecting institutions share a desire to preserve cultural heritage  
196 and to serve as a bridge between the past, present, and future. However, differences exist in values,

197 culture, knowledge systems, and approaches to learning. How should the needs of North American  
198 Indian tribes be balanced with a democratic society as a whole?

199 Archivists and librarians taught to champion intellectual freedom and unfettered access to resources  
200 may be troubled by the notion that in Native American and other Indigenous communities knowledge  
201 can be collectively owned and that access to some knowledge may be restricted as a privilege rather  
202 than a right. These views of information are not irreconcilable, given that archives and libraries often  
203 contain restricted materials, classified materials, [secret](#) materials, or materials that may not be  
204 accessed until some future date. Native American communities and individuals may also need to  
205 achieve an appropriate balance of rights and understandings with respect to archival materials and  
206 [traditional knowledge](#). Archives and libraries should work with Native American communities on  
207 these issues as they apply to the general public.

208 *Archives and libraries guidelines for action:*

- 209 • Strive to develop institutional holdings that are comprehensive, inclusive, and reflect all key  
210 perspectives on Native American issues. Make an effort to collect resources created by rather  
211 than just about Native Americans. Consultation with members of the American Indian Library  
212 Association can be valuable to identify contemporary and appropriate resources, including lists of  
213 reference and other titles.
- 214 • Respect and act on both Native American as well as “Western” approaches to caring for archival  
215 collections. Traditional knowledge systems possess equal integrity and validity. Actions and  
216 policies for preservation, access, and use based on Native American approaches will in some  
217 cases be priorities, as a result of consultations with a tribal community.
- 218 • Examine assumptions about established library and archives practices which directly contradict  
219 Native American principles and practices.
- 220 • At the request of a Native American community, avoid artificially prolonging the life cycle of  
221 sensitive documentary material. Some items, such as a photograph of a sacred ceremony, or  
222 object, or culturally sensitive documentation of a burial, should not be preserved forever or may  
223 need to be restricted or repatriated to the culturally affiliated group.
- 224 • Respect traditional and customary practice. Some documentary collections may need to be kept  
225 together based on content, rather than segregated by format as often occurs in archival facilities,  
226 or have access restrictions based on a variety of culturally appropriate considerations.

227 *Native American communities guidelines for action:*

- 228 • Ask questions about and understand the ways in which archives and libraries manage collections  
229 that contain important Native American heritage to facilitate dialogue.
- 230 • Recognize that libraries and archives can help preserve documentary materials, promote  
231 revitalization, and support community goals for the continuation of a positive culture based on  
232 strong cultural heritage.

- 233 • Search for balance between long-standing, powerful oral traditions and the Western emphasis on  
234 the written word. Native American communities, as well as tribal archivists, must continually  
235 find ways to come to terms with relatively new Western archives concepts and practices. Many  
236 of the contemporary information resources about a community will arrive in written as well as  
237 aural or visual recording formats.

238 **Accessibility and Use**

239 Native American requests for increased access to and sometimes control over information resources  
240 found in non-tribal collecting institutions is in keeping with current professional codes of ethics.  
241 These ethical codes (i.e., Society of American Archivists, American Library Association, American  
242 Association for State and Local History) instruct librarians and archivists to practice neutrality and to  
243 strive toward open and equal access for all patrons, in accordance with the law, cultural sensitivities,  
244 and institutional policy. Restrictions may be placed on a collection for reasons of group and  
245 individual privacy, confidentiality, or security. (See *Culturally Sensitive Materials*.)

246 Questions of access, ownership, and control of Native American archival material can prompt  
247 philosophical and practical concerns, particularly when there is inadequate information about  
248 community [sovereignty](#) and associated legal rights, community ownership of original source  
249 information, initial community restrictions on information sharing and distribution, and other related  
250 issues.

251 *Archives and libraries guidelines for action:*

- 252 • Recognize that the conditions under which knowledge can be ethically and legally acquired,  
253 archived, preserved, accessed, published, or otherwise used change through time. Some materials  
254 may have been collected or later restricted by a donor in contravention of community rights and  
255 laws or of contemporary federal laws or professional ethics. In all of these cases the rights of a  
256 Native American community must take precedence.
- 257 • Seek active consultations with authorized Native American community representatives to review  
258 culturally affiliated collections in order to determine whether problems of original collection and  
259 ownership should lead to access and use restrictions being placed on some materials, whether  
260 some collections should be repatriated, (returned) or whether some materials should be available  
261 for access only with prior community review and approval.
- 262 • Require researchers and collection sources to provide copies of any initial research contracts,  
263 agreements, or other comparable documents between themselves and a Native American  
264 community that pertain to the collection.
- 265 • Involve communities in creating welcoming and comfortable spaces for Native American visitors  
266 and rethink the need for “credentials” from patrons.
- 267 • Determine the types of resources and services Native communities want.
- 268 • Offer to share a portion of commercial use fees derived from Native American collections with or  
269 otherwise provide copies of the final publications to the community of origin. Consult with  
270 communities if the proposed commercial use is questionable.

- 271 • Consider the potential impact of worldwide digital access to resources once only available onsite  
272 at the collecting institution. Will the information be presented with sufficient context?
- 273 • Honor access and use restrictions requested by tribes in the same manner when multiple  
274 institutions hold similar or identical materials.

275 **Culturally Sensitive Materials**

276 Most archives and libraries hold information of a confidential, sensitive, or sacred nature. The  
277 amount of this material may constitute a small percentage of the entire collection. For Native  
278 American communities the public release of or access to specialized information or knowledge—  
279 gathered with and without informed consent—can cause irreparable harm. Instances abound of  
280 misrepresentation and exploitation of sacred and secret information. Each community will  
281 understand and use the term “culturally sensitive” differently, although there are broad areas of  
282 common agreement for Native Americans about this issue.

283 Privacy rights extend to groups in some situations. The limited right of organizations, governments,  
284 and families to associate in confidence may apply to American Indian tribes who wish to minimize or  
285 prevent intrusion into their practices. Tribal groups have societies, bands, and clans that may be  
286 privileged vis-à-vis information. Archivists and librarians should understand that “the privacy of the  
287 information itself may be more paramount.”<sup>2</sup>

288 *Archives and libraries guidelines for action:*

- 289 • Consult with culturally affiliated community representatives to identify those materials that are  
290 culturally sensitive and develop procedures for access to and use of those materials.<sup>3</sup>
- 291 • Request that researchers obtain clearance from Native American communities before accessing  
292 sensitive materials. A tribal community endorsement will strengthen the value of a research  
293 publication. In 1991, the Cline Library at Northern Arizona University and the Hopi Tribe agreed  
294 that sensitive ceremonial images would not be reproduced (or digitized for Internet access)  
295 without written permission from the Hopi Cultural Preservation Office. Access is still provided  
296 onsite. Other institutions have comparable policies; some institutions will not provide any access  
297 without prior written community authorization.
- 298 • Respect a community’s request to restrict access to and use of materials that describe and  
299 represent esoteric, ceremonial, or religious knowledge that is significant to the community.  
300 Protecting certain kinds of secret information may be a matter of “national security” for sovereign  
301 tribal governments.
- 302 • Review acquisition policies and forms with Native American community representatives in order  
303 to share suggestions for culturally responsive restrictions on deeds of gifts with potential donors.
- 304 • Ensure that any restrictions or agreed upon procedures are fully implemented and observed.
- 305 • Refrain from attempting to perform specialized care, such as smudging, offering corn pollen, or a  
306 general blessing, for sacred or spiritual items that have been removed from original contexts.  
307 Rituals or ceremonies should only be conducted by religious or cultural practitioners.

308 Accommodate the needs of such practitioners (i.e. temporary suspension of a fire suppression  
309 system) as local circumstances permit.<sup>4</sup>

310 Examples of the kinds of archival materials—both human readable and digital—which may be  
311 culturally sensitive from a Native American perspective include:

312 **Still and Moving Images (Photographs and Films)/Graphic Art**

- 313 • human remains
- 314 • religious or sacred objects
- 315 • ceremonies of any kind
- 316 • burials, funerals
- 317 • archaeological objects (especially if from burials)
- 318 • hospitals, churches, cemeteries, kivas, sacred places

319 **Recordings/Transcripts**

- 320 • songs, chants
- 321 • music
- 322 • religious practice
- 323 • healing, medicine
- 324 • personal or family information
- 325 • oral histories
- 326 • community histories
- 327 • "myths," folklore

328 **Cartographic Materials**

- 329 • sacred sites or areas
- 330 • religious sites or areas
- 331 • village sites, territories, use areas

332 **Records/Documents/Ephemera/Grey Literature/Theses and Dissertations/Published Texts**

- 333 • personal or family information
- 334 • archaeological data
- 335 • religious materials
- 336 • ethnobotanical materials
- 337 • genealogical data

338 **Providing Context**

339 A primary task for libraries and archives is to organize and describe information resources for  
340 efficient and effective retrieval. Collecting institutions also wish to share as much context as possible  
341 to enhance the value of resources for patrons. However, the use of outdated, inaccurate, derogatory,  
342 or Eurocentric language impedes access. Descriptive information can be improved with the addition  
343 of culturally appropriate and accurate language—from original titles through finding aids. Native

344 American communities should be aware that offensive language or other injurious perspectives and  
345 information may be inherent in the content of some of the original materials.

346 *Archives and libraries guidelines for action:*

- 347 • Encourage culturally affiliated communities to provide context for the collections from their  
348 perspective. Supplement descriptive materials with cultural sensitivity statements. The Peabody  
349 Museum at Harvard has developed statements which inform researchers of community concerns  
350 and the existence of research protocols.
- 351 • Inform patrons, at the request of a community, of potentially offensive content prior to use by  
352 adding a notice to descriptive tools or items such as “The [tribal name] finds information in this  
353 work inaccurate or disrespectful. To learn more contact . . .” Amelia Flores, the Colorado  
354 River Indian Tribes Library/Archive Director, applies a disclaimer to problematic publications  
355 acquired for the library, which states: *We do not endorse this publication.*
- 356 • Work with community representatives to revisit indexing terminology, *Library of Congress*  
357 *Subject Headings*, *Anglo American Cataloging Rules* (second edition), and classification  
358 schemes. Indigenous and non-Indigenous librarians in Australia, for instance, have compiled a  
359 national thesaurus for describing Aboriginal and Torres Strait Islander records.<sup>5</sup>
- 360 • Promote changes to established lexicons to allow retrospective conversion or enhancement of  
361 antiquated or inadequate catalog records to include contemporary, culturally responsive  
362 language. In consultation with communities, add cultural identifiers and information about  
363 language and geography.
- 364 • Add explanations of derogatory words to original titles (e.g., [title created by xxxx in xxxx year])  
365 or remove offensive terms from original titles and provide substitute language (e.g., replace  
366 “squaw” or “buck” with [woman] or [man]).
- 367 • Actively gather metadata to accompany Native American archival collections to reflect the  
368 relationship between the creator or researcher and the community of origin.

369 *Native American communities guidelines for action:*

- 370 • Provide reviews of archival holdings in order to determine whether or not contextual issues exist  
371 in collections.
- 372 • Assist, based on consultation reviews, in providing preferred language, in identifying people,  
373 places, and events, and in sharing additional context for archival materials.

#### 374 **Native American Intellectual Property Issues**

375 *We belong to the “property;” it doesn’t belong to us. We (my people-Onkwehonwe) belong to our*  
376 *land, our medicines, our communities, our philosophies, and our way of life. All these elements*  
377 *endure over time; we come and go.*

378 Sheree Bonaparte (Mohawk/Akwesasne)

379 *What is required at this moment is a fundamental acceptance that [intellectual property](#) and most*  
380 *especially esoteric knowledge are vital components of the living cultural heritage of Native American*  
381 *communities. . . . a way must be found to acknowledge and implement appropriate Native American*  
382 *controls over such knowledge.*

383 James D. Nason (Comanche)  
384 *Borrowed Power: Essays on Cultural Appropriation*  
385

386 Numerous international declarations, many of which have been adopted by the United Nations, state  
387 that protection of cultural heritage and traditional knowledge is a right of Indigenous peoples. As  
388 Australian solicitor Terri Janke (Meriam, Wuthathi and Yadaighana Nations) observes, one problem  
389 with copyright from an Indigenous perspective is that it expires and protects authors and publishers  
390 but not the interests of those whose culture is described or depicted. Indeed, Western copyright laws  
391 are based on principles which are diametrically opposite to Indigenous legal approaches to  
392 knowledge. Virtually every Indigenous society has traditions and laws regarding specialized  
393 knowledge, yet these practices are not recognized by Western law.

394 Existing copyright legislation does not address issues of significance to Native American  
395 communities such as: community ownership of works and management of rights; community  
396 interests in public disclosure of religious or sensitive information; protection of older or ancient  
397 works (e.g., rock art); the antiquity and accumulative nature of traditional knowledge; and the  
398 protection of oral traditions, songs, and other culturally sensitive intangible property. In some cases,  
399 Native American knowledge has been copyrighted by outsiders without appropriate permissions or  
400 approval.

401 *Archives and libraries guidelines for action:*

- 402 • Recognize that the “right of possession”<sup>6</sup> to some Native American materials may be held by  
403 communities of origin. Issues of “right of possession” are affected by previous original collecting  
404 that may have been carried out with deception, duress, subterfuge, and other unethical or illicit  
405 means. In other instances, someone in a community who did not have the right of disposition to  
406 Native American materials may have misappropriated the knowledge and/or materials. Under  
407 any of these circumstances, issues of title, copyright, and authorship are suspect. Only  
408 consultations with culturally affiliated communities can determine whether or not materials in  
409 archives are there illegally or unethically.
  
- 410 • Appreciate that discussing property in Native American communities can be antagonistic from  
411 the perspective of community members—based on the Western legal interpretation that only one  
412 person or entity can own it.
  
- 413 • Consider expanding the idea of moral rights (droit moral) to protect Native American cultural and  
414 intellectual property. The European notion of the droit moral, which exists to only a limited  
415 degree in countries with common law such as the United States, extends beyond copyright and  
416 specifies that a creator enjoys the right to attribution and to maintain the integrity of the work (no  
417 defamatory use, modification, or distortion). The droit moral is perpetual. American creators of  
418 visual art are entitled to the right of attribution and integrity under 17 USC Section 106A, known  
419 as the Visual Artists Rights Act of 1990. Other moral rights of authorship recognized by some  
420 nations include: the right of disclosure, the right to withdraw and retract, and the right to reply to  
421 criticism. Consult *Art and Museum Law* (Robert C. Lind, et al. Durham, NC: Carolina Academic

422 Press, 2002), or the *Model Law for the Protection of Traditional Ecological Knowledge,*  
423 *Innovations, and Practices* [http://www.grain.org/brl\\_files/brl-model-law-pacific-en.pdf](http://www.grain.org/brl_files/brl-model-law-pacific-en.pdf).

## 424 **Copying and Repatriation of Records to Native American Communities**

425 The draft U.N. Declaration of the Rights of Indigenous Populations and the 1993 *The Mata'atua*  
426 *Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples* recognize a  
427 fundamental right to protect traditional knowledge. [Cultural patrimony](#) is understood to mean any  
428 property (tangible or intangible) that is owned by a community as a whole, or by a group which holds  
429 such property in trust for the community, is inalienable except by community consent, and which may  
430 be fundamental elements of a community's cultural identity and heritage.<sup>7</sup>

431 In the United States, a network of laws addresses cultural heritage protection, notably the 1966  
432 National Historic Preservation Act and the 1990 Native American Graves Protection and Repatriation  
433 Act (NAGPRA). The impact of NAGPRA has been largely positive as institutions and communities  
434 engage in conversations and often rewarding partnerships. NAGPRA not only recognized the  
435 sovereignty of tribes but also:

- 436 • established community legal rights and protection for key types of cultural materials, including  
437 funerary objects, sacred objects, and cultural patrimony as well as human remains.
- 438 • acknowledged special powers of individual and community ownership and control of cultural  
439 property, with the right to repatriate such property and human remains.
- 440 • determined that cultural patrimony is inalienable and corporate and placed the burden of proof  
441 with regard to “right of possession” on institutions.

442 Does the NAGPRA definition of “cultural patrimony” apply to culturally sensitive archival  
443 materials? The national NAGPRA committee and state and federal courts have yet to review a case  
444 involving documentary materials as opposed to objects. NAGPRA does not reference archival  
445 records or traditional knowledge. Some institutions have voluntarily, in the spirit of NAGPRA,  
446 offered to repatriate culturally sensitive archival materials as sacred and/or patrimonial objects,  
447 including images and recordings.

### 448 *Archives and libraries guidelines for action:*

- 449 • Respond cooperatively to requests for copies of records for community use and retention.  
450 Resources held at a distance may become estranged from the people to whom they are most  
451 relevant.
- 452 • Understand that some materials were originally collected on the basis of a trust relationship  
453 between the community and the collector. These materials were assumed to remain under the  
454 control of responsible community representatives, or essentially “held in trust” for the  
455 community. These trust holdings can and should revert to community control upon request.
- 456 • Repatriate original records when the records have been obtained through theft or deception and/or  
457 the collecting institution cannot prove “right of possession” “Replevin,” an action by the legal  
458 authority to recover records, may also apply. (See *Native American Intellectual Property Issues*.)

- 459 • Recognize that archived materials may be associated with other cultural materials (including  
460 archaeological collections of human remains or associated funerary objects). When the latter are  
461 repatriated through federal law and revert to the control of a Native American community, a  
462 collecting institution should also consider transferring primary physical ownership and all  
463 copyright or literary rights for those archived materials.
- 464 • Request permission to hold copies of repatriated records. Institutions may need to keep copies to  
465 prove former ownership.
- 466 • Anticipate that communities may ask a collecting institution to retain records in trust or under a  
467 co-custody agreement until such time as a tribal archives or library requests a return of the  
468 original documents for long-term preservation and local access.
- 469 • Participate in “knowledge repatriation.” Who is the information intended to serve? What is the  
470 natural life cycle of the information?

471 *Native American communities guidelines for action:*

- 472 • Provide in-depth consultation and review of archival collections in order to establish which  
473 materials may have been acquired inappropriately or require special conditions for handling,  
474 access, and use.
- 475 • Conduct research to establish which archival collections were acquired without right of  
476 possession.
- 477 • Consider in-trust holding agreements and other arrangements with archives and libraries, in the  
478 event the no proper tribal facility exists or other conditions.
- 479 • Ensure that copied and repatriated materials are properly cared for and managed. The state-of-  
480 the-art Seneca Nation Archives—the “Caretakers of the Old Words”—and the Mashantucket  
481 Pequot Archives and Special Collections serve as a model repositories.
- 482 • Request copies of legal agreements for copied and returned collections.

### 483 **Native American Research Protocols**

484 Collecting institutions are dedicated to public education, research, and service. Just as many  
485 collecting institutions operate under the oversight of an institutional review board for the protection of  
486 human subjects, an increasing number of Native American tribes have developed formal research  
487 policies and procedures which may require legal contracts or agreements with individual researchers  
488 to defend against misappropriation and abuse of traditional knowledge.

489 Institutions and communities benefit when research is conducted in accordance with the highest  
490 possible ethical and legal standards. Community research protocols cover topics such as: intellectual  
491 property rights, ownership of data and subsidiary products, research controls, risks, informed consent,  
492 community rights, access, right of review, confidentiality, deposit with a tribally-designated  
493 repository, preference in employment and training, and safeguarding individual and communal  
494 privacy.

495 *Archives and libraries guidelines for action:*

- 496 • Consult with Native American communities regarding research protocols and adhere to existing  
497 community research and cultural property protocols, as related to archival and documentary  
498 materials.
- 499 • Encourage patrons doing research on Native American cultures to inform the relevant community  
500 of their research and direct researchers to community protocols so that they may understand tribal  
501 concerns. A community will often endorse a project which complies with tribal guidelines.
- 502 • Direct researchers to the collecting institution's human subject protocols when research involves  
503 the privacy of individuals depicted in records.
- 504 • Acquire copies of and respect agreements made between communities and researchers who  
505 donate their collections.
- 506 • Ask potential donors if they have entered into such an agreement with a community.
- 507 • Share information about existing agreements between institutions and communities for culturally  
508 responsive care and use of Native American archival collections with potential donors.

509 *Native American communities guidelines for action:*

- 510 • Provide archives and libraries with copies of their research protocols.
- 511 • Review research protocols with archival or library staff.
- 512 • Develop research protocols if they have not already done so and consider community-based  
513 agreements for specialized or traditional knowledge.
- 514 • Provide names and contact information for the designated tribal representatives that collecting  
515 institutions can share with researchers.

516

## 517 **Reciprocal Education and Training**

518 *It is much easier to teach someone library and archives skills than to try to teach them a culture.*  
519 Lotsee Patterson (Comanche)

520 The nature of our society and the information professions is dynamic. Archivists and librarians need  
521 to accelerate the acceptance of different approaches to designing and deploying knowledge  
522 management systems and to welcome Native American practitioners as equal partners in caring for  
523 cultural heritage. Cross-cultural training and exchange will enrich collecting institutions,  
524 communities, and academia. Organizations should strive to build a staff and governing structure that  
525 reflect the composition of communities served.

526 *Archives and libraries guidelines for action:*

- 527 • Acknowledge, respect, and learn from the valuable knowledge of tribal archivists and librarians  
528 and other tribal specialists and elders. Appreciate that individuals are recognized within a tribal  
529 society as caretakers and knowledge workers. Many tribal archivists, historians, storytellers,  
530 teachers, orators, and others possess a unique understanding of their communities, their culture,  
531 and their oral and written traditions.
- 532 • Insist on cross-cultural training in information science programs and courses at all levels.
- 533 • Support Native American students in education and training programs—from recruitment to  
534 mentoring and study leave.
- 535 • Request assistance from tribal archivists, librarians, and communities in designing and  
536 implementing training for non-tribal archivists and in improving services. Orientation and  
537 training will allow staff to address the culturally specific needs of Indigenous patrons. Follow up  
538 by reviewing staff performance as it relates to practicing culturally respectful behavior.
- 539 • Invite Native American community members to participate in hiring processes, as appropriate,  
540 and employ American Indian staff in visible positions.
- 541 • Ensure diverse community representation on advisory bodies or boards but avoid tokenism.

542 *Native American communities guidelines for action:*

- 543 • Encourage Native American archivists and cultural preservation staff to serve as mentors to a new  
544 generation of archivists and librarians and ensure that community personnel have appropriate  
545 archival training.
- 546 • Develop and maintain community archives and libraries and become familiar with specialized  
547 educational opportunities for undergraduate and graduate students.  
548 Examples include:

549 The *Knowledge River* program (<http://knowledgeriver.arizona.edu/>) at the University of  
550 Arizona

551 *Honoring Generations: Developing the Next Generation of Native Librarians*  
552 (<http://www.ischool.utexas.edu/~hg/index.html>) at the University of Texas at Austin  
553 The School of Library and Information Studies ([www.ou.edu/cas/slis](http://www.ou.edu/cas/slis)) at the University of  
554 Oklahoma.

555 For scholarships and American Indian college resources, see:  
556 American Library Association *Spectrum Initiative*  
557 (<http://www.ala.org/ala/diversity/spectrum/spectruminitiative.htm>)  
558 Index of Native American College Resources  
559 (<http://www.hanksville.org/NAresources/indices/NAcollege.html>)  
560

- 561 • Actively participate in regional and national professional organizations to represent and raise  
562 awareness of Native American concerns.

- 563 • Consider joining regional and national library and archives networks that offer opportunities for  
564 sharing resources, problem-solving, and cross-cultural training.

565 **Awareness of Native American Communities and Issues**

566 Most archivists and librarians in the United States and Canada are well-intentioned and want to “do  
567 the right thing” when it comes to culturally respectful care and use of Native American archival  
568 materials. Who do you ask? How do you know? What if “I can’t do that!” is the initial reaction?  
569 As *Protocols* contributor Richard Pearce-Moses (Arizona State Library, Archives, and Public  
570 Records) joked, “Our hearts are in the right place, but maybe not our heads.”

571 The *Protocols for Native American Archival Materials* are intended to assist in answering these  
572 questions. All parties are encouraged to keep in mind the power of building relationships of mutual  
573 respect between collecting institutions and communities and the advantages to be derived from  
574 balancing different approaches to the collection, preservation, and transmission of knowledge. Non-  
575 tribal archivists and librarians should also remember the unique status of Native American  
576 communities as sovereign governments with associated rights.

577 *Archives, libraries, and Native American communities guidelines for action:*

- 578 • Become aware of issues surrounding the collection, ownership, preservation, handling, access,  
579 and use of physical and digital American Indian archival resources held in tribal and non-tribal  
580 repositories.
- 581 • Educate others about Native American archival issues and concerns and opportunities to improve  
582 traditional and contemporary practices.
- 583 • Cooperate to gather archival materials which contribute to a better future.
- 584 • Create and implement policies to identify and archive important community records.
- 585 • Promote the vitality of communities and collecting institutions through an array of joint public  
586 programs—tours, exhibitions, lectures, storytelling, publications, formal and informal workshops  
587 and classes, and celebrations.
- 588 • Collapse boundaries between libraries, archives, and cultural organizations to further life-long  
589 learning and better connect people to the human experience.
- 590 • Arrange for reciprocal visits to weave a stronger community fabric and establish long-term trust  
591 relationships. Archivists and librarians need to “get out from behind the desk.”

592 **Brief Glossary of Terms**

593 *Cultural patrimony*

594 Any property (tangible or intangible) that is owned by a community as a whole, or by a  
595 group which holds such property in trust for the community, is inalienable except by  
596 community consent, and which may be a fundamental element of a community's cultural  
597 identity and heritage.

598 *Culturally responsive*

599 Tailored actions which demonstrate awareness and appreciation of the needs of a  
600 particular group, community, or nation.

601 *Culturally sensitive*

602 Tangible and intangible property and knowledge which pertains to the distinct values,  
603 beliefs, and ways of living for a culture. It often includes property and knowledge that is  
604 not intended to be shared outside the community of origin or outside of specific groups  
605 within a community. (See the list of information that is potentially cultural sensitive.)

606 *Memorandum of Agreement*

607 A formal written document between two parties (a Native American community and a  
608 collecting institution) which may or may not be binding regarding a course of action or  
609 activities.

610 *Native American*

611 Refers to Indian (First Nations), Eskimo (Inuit), and Aleut individuals and  
612 communities in the United States and Canada as well as to Native Hawaiians.

613 *Property*

614 Anything that can be possessed or disposed of in a legal manner.

615 *Intellectual (Intangible) property*

616 Personal property, including Native American cultural heritage, that could be subject to  
617 copyright, patents, trademarks, franchise agreement, business goodwill, and *droit de*  
618 *suite*.

619 *Tangible property*

620 Personal property in the form of any physical object with intrinsic value that is not real  
621 property (land, buildings, minerals, etc.) or intangible property.

622 *Repatriation*

623 In the United States, the transfer of all legal rights to and physical custody of Native  
624 American cultural materials to lineal descendants, culturally affiliated Indian tribes, and  
625 Native Hawaiian organizations.

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*Secret*

This term refers to tribal community information or knowledge that is kept from general public knowledge and is held in trust or owned by individuals or groups within the community. No single English word has the range of meanings associated with this kind of information or knowledge as it is meant in communities, and different communities may also have different perspectives on this. Such information or knowledge might be thought of as privileged or confidential, and may have restricted access, for example.

*Sovereignty*

Supremacy of authority or rule; independence and self-government. A territory existing as a separate state.

*Traditional knowledge*

Valued knowledge which is individually or communally owned in accord with established community rules of ownership; often sacred or sensitive and requiring specialized training or status for inheritance or use; often held in trust for a community by an individual; may include songs, oral traditions, customs, and specialized knowledge.

- 641 **Bibliography**
- 642 *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives, and Information*  
643 *Services* <http://www.cdu.edu.au/library/protocol.html>
- 644 Aboriginal and Torres Strait Islander Library and Information Resource Network  
645 (ATSILIRN) <http://home.vicnet.net.au/%7Eatsilirn/>
- 646 American Anthropological Association *Code of Ethics*  
647 <http://www.aaanet.org/committees/ethics/ethcode.htm>
- 648 American Association for State and Local History *Code of Ethics*  
649 <http://www.aaslh.org/ethics.htm>
- 650 American Library Association *Code of Ethics*  
651 <http://www.ala.org/ala/oif/statementspols/codeofethics/codeethics.htm>
- 652 Assembly of First Nations and the Canadian Museums Association “Task Force Report  
653 on Museums and First Peoples” *Museum Anthropology* June 1992, Vol. 16 (2)
- 654 Australian Institute of Aboriginal and Torres Strait Islander Studies [www.aiatsis.gov.au](http://www.aiatsis.gov.au)  
655 *Guide to Ethical Research in Indigenous Studies*  
656 [www.aiatsis.gov.au/corp/docs/EthicsGuideA4.pdf](http://www.aiatsis.gov.au/corp/docs/EthicsGuideA4.pdf)
- 657 Brown, Michael F. “Can Culture Be Copyrighted?” *Current Anthropology* April 1998
- 658 \_\_\_\_\_. “Cultural Records in Question: Information and Its Moral Dilemmas”  
659 *Cultural Resource Management National Park Service Vol. 21 (6) 1998*
- 660 \_\_\_\_\_. *Who Owns Native Culture?* Cambridge, Mass: Harvard University Press, 2003
- 661 Byrne, Alex, Alana Garwood, Heather Moorcroft, and Alan Barnes. *Aboriginal and*  
662 *Torres Strait Islander Protocols for Libraries, Archives, and Information Services*  
663  
664 Deakin, ACT: Australian Library and Information Association, 1995
- 665 Calliou, Brian. “Methodology for Recording Oral Histories in the Aboriginal  
666 Community” *Native Studies Review* Vol. 15 (1) 2004
- 667 Coffey, Wallace and Rebecca Tsosie. “Rethinking the Tribal Sovereignty Doctrine:  
668 Cultural Sovereignty and the Collective Future of Indian Nations” *Stanford Law*  
669 *and Policy Review* Vol. 12 (2) 2001
- 670 Cooper, Amy. “Issues in Native American Archives” *Collection Management* Vol. 27 (2)  
671 2002

- 672 Copyright Basics (U.S. Copyright Office) [www.loc.gov/copyright/circs/circ1.html](http://www.loc.gov/copyright/circs/circ1.html)
- 673 Council for the Preservation of Anthropological Records (CoPAR)  
674 <http://archaeology.la.asu.edu/copar> and *Ethical Use of Anthropological Records*  
675 (*CoPAR Bulletin 10*) <http://www.nmnh.si.edu/naa/copar/bulletin10.htm>
- 676 Fleckner, John A. *Native American Archives: An Introduction* Chicago: Society of  
677 American Archivists, 1984
- 678 Freedom of Information Act <http://www.usdoj.gov/04foia/foiastat.htm> and [www.aclu.org](http://www.aclu.org)
- 679 Greaves, Tom, ed. *Intellectual Property Rights for Indigenous Peoples: A Source Book*  
680 Oklahoma City, Okla: Society for Applied Anthropology, 1994
- 681 \_\_\_\_\_. "Examining Indigenous Rights to Culture in North America" *Cultural Dynamics*  
682 Vol. 14 (2) 2002
- 683 Gulliford, Andrew. *Sacred Objects and Sacred Places: Preserving Tribal Traditions*  
684 Boulder: University of Colorado, 2000
- 685 Hendry, Joy. *Reclaiming Culture: Indigenous People and Self-Representation*  
686 Palgrave Macmillan, 2005
- 687 Hopi Tribe Research Protocols <http://www.nau.edu/~hcpo-p/hcpo/index.html>  
688
- 689 Indigenous Knowledge Systems and Intellectual Property Rights: An Enabling Tool for  
690 Development with Identity  
691 [http://www.un.org/esa/socdev/unpfii/documents/TK\\_Paper\\_VSimIFAD\\_English.pdf](http://www.un.org/esa/socdev/unpfii/documents/TK_Paper_VSimIFAD_English.pdf)  
692
- 693 Janke, Terri. *Our Culture, Our Future: Report on Australian and Indigenous Cultural*  
694 *and Intellectual Property Rights* Surrey Hills, N.S.W.: Michael Frankel, 1998
- 695 Lawson, Kimberley L. *Precious Fragments: First Nations Materials in Archives,*  
696 *Libraries, and Museums* Vancouver: University of British Columbia, 2004
- 697 Lind, Robert C. *Art and Museum Law* Durham: NC: Carolina Academic Press, 2002
- 698 Lomawaima, K. Tsianina. "Tribal Sovereigns: Reframing Research in American Indian  
699 Education" *Harvard Educational Review* Spring Vol. 70 (1) 2000
- 700 *The Mata'atua Declaration on Cultural and Intellectual Property Rights of Indigenous*  
701 *Peoples* <http://aotearoa.wellington.net.nz/imp/mata.htm>
- 702 Model Law for the Protection of Traditional Ecological Knowledge, Innovations, and  
703 Practices [http://www.grain.org/brl\\_files/brl-model-law-pacific-en.pdf](http://www.grain.org/brl_files/brl-model-law-pacific-en.pdf)

- 704 Nakata, Martin et. al. *Mapping the Aboriginal and Torres Strait Islander Protocols for*  
705 *Libraries, Archives, and Information Services* University of Technology Sydney,  
706 2005
- 707 Nakata, Martin and Marcia Langton. *Australian Indigenous Knowledge and Libraries*  
708 Canberra: Australian Academic & Research Libraries, 2005
- 709 Nason, James D. "Native American Intellectual Property Rights: Issues in the Control of  
710 Esoteric Knowledge" in Bruce Ziff and Pratima V. Rao, ed. *Borrowed Power:*  
711 *Essays on Cultural Appropriation* New Brunswick, N.J.: Rutgers University  
712 Press, 1997
- 713 \_\_\_\_\_. "Traditional Property and Modern Laws: The Need for Native American  
714 Community Intellectual Property Rights Legislation" *Stanford Law and*  
715 *Policy Review* Spring Vol.12 (2) 2001
- 716 \_\_\_\_\_. "Tribal Research: Tribal Models for Controlling Research" *Tribal College*  
717 *Journal* Fall Vol. 8 (2) 1996  
718 <http://www.fdl.cc.mn.us/tcj/summer97/NASON.html>
- 719 National Museum of the American Indian "Native Languages Archives Repository  
720 Project, Reference Guide" (Unpublished) March 11, 2005
- 721 Ogden, Sherelyn. *Caring for American Indian Objects: A Practical and Cultural Guide*  
722 Minnesota Historical Society Press, 2004
- 723 Oral History Association *Evaluation Guidelines*  
724 [www.dickinson.edu/oha/pub\\_eg.html](http://www.dickinson.edu/oha/pub_eg.html)
- 725 Patterson, Lotsee. *Native American Libraries and Resources*  
726 [http://faculty-staff.ou.edu/P/Lotsee.F.Patterson-](http://faculty-staff.ou.edu/P/Lotsee.F.Patterson-1/nalib.htm#Articles%20&%20Reports)  
727 [1/nalib.htm#Articles%20&%20Reports](http://faculty-staff.ou.edu/P/Lotsee.F.Patterson-1/nalib.htm#Articles%20&%20Reports)
- 728 Society of American Archivists *Code of Ethics*  
729 [http://www.archivists.org/governance/handbook/app\\_ethics.asp](http://www.archivists.org/governance/handbook/app_ethics.asp)
- 730 Sullivan, Lawrence E. and Alison Edwards. *Stewards of the Sacred* Washington, DC:  
731 American Association of Museums, 2005
- 732 Tuhiwai Smith, Linda. *Decolonizing Methodologies: Research and Indigenous Peoples*  
733 London: Zed Books Ltd, 1999
- 734 UNESCO. Convention for the Safeguarding of the Intangible Cultural Heritage  
735 <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>

736 United Nations. Draft Declaration on the Rights of Indigenous People  
737 <http://www.cwis.org/drft9392.html>

738 Sherelyn Ogden. *Caring for American Indian Objects: A Practical and Cultural Guide*  
739 (Minnesota Historical Society Press, 2004): 15.

740 James D. Nason. "Native American Intellectual Property Rights: Issues in the Control of  
741 Esoteric Knowledge" in *Borrowed Power: Essays on Cultural Appropriation*  
742 Bruce Ziff and Pratima V. Rao, ed. (New Brunswick, N.J.: Rutgers University, 1997), p.  
743 252.

744 The Provost at California State University at Chico formed a 12-member committee,  
745 composed of university personnel, members from the Maidu, Pomo, and Wintun tribes,  
746 and the Dorothy Moorehead Hill family for an item-by-item review of an ethnographic  
747 collection. See Taran March. "A Legacy in Trust: The Dorothy Moorehead Hill  
748 Collection" *Chico Statements* Spring 2002. Accessed online April 23, 2006 at:  
749 [http://www.csuchico.edu/pub/cs/spring\\_02/site\\_map.html](http://www.csuchico.edu/pub/cs/spring_02/site_map.html)

750 For a full discussion of this recommendation, see Alyce Sadongei's observations in Sherelyn  
751 Ogden, *Caring for American Indian Objects: A Practical and Cultural Guide*  
752 (Minnesota Historical Society Press, 2004), pp. 18-19.

753 Heather Moorcroft and Alana Garwood. *Aboriginal and Torres Strait Islander Thesaurus*  
754 (Canberra: National Library of Australia, 1997).

755 The "Right of Possession" refers to possession obtained with the voluntary consent of an  
756 individual or group that had authority of alienation. An individual, agency, or institution  
757 that claims right of possession should be able to provide evidence that the prior Native  
758 American owners and the appropriate authority voluntarily agreed to the transfer of  
759 ownership.

760 Other international agreements have also recognized the importance of archival materials.  
761 The 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit*  
762 *Import, Export and Transfer of Ownership of Cultural Property* Article 1(j) states that  
763 cultural property includes "archives, including sound, photographic, and cinematographic  
764 archives." This Convention urges states to take appropriate action to legally protect and  
765 recover misappropriated materials.

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**Appendix 3:  
Comments Received from SAA Units  
Arranged by Date of Receipt**

**Editor's Note**

For the sake of consistency and ease of manipulation within this report, all received comments have been placed in Microsoft Word format and have been edited to create the same typeface and type size. Excess lines between paragraphs have also been removed. This protocol has changed the appearance of many of the comments, however, no language has been changed.

Because of the importance placed on comments from SAA units, late responses from units have been incorporated into this appendix, whereas other late responses have been placed in a separate appendix (Appendix 5).

Comment 1: *Received December 17, 2007 representing the opinion of the Manuscripts Section Steering Committee*

Hi Frank:

Thanks for providing a venue for comments on this document and below are comments from the Manuscript Respositories Section Steering Committee:

We think the document is a big step forward, as it states the issues clearly, and gives guidance for how Native American communities and archivists can work together, both in response to the issues, and proactively. The document itself is an example of this collaboration, as it represents a consensus of the Native American archivists and other leaders in archival and related professions who contributed. We feel the guidelines for action will assist repositories in establishing policies for current collection development. However, as the tensions between intellectual property and open access are more complex when dealing with backlog and retrospective materials, we believe that many repositories will encounter problems in applying the guidelines retrospectively.

In addition to endorsing the protocol document, can SAA offer further assistance to archivists who have questions about applying the guidelines, maybe through the Native American Archivists Roundtable, or through a separate group dedicated to this task?

Again, thanks for the chance to comment. If you have any questions, or need further clarification, please contact Section chair Karen Spicher at [karen.spicher@yale.edu](mailto:karen.spicher@yale.edu). (She will, however, be away from email until after the holidays.)

Happy holidays!

Beth Bensman  
Section past chair

Comment 2

RESPONSE OF THE WORKING GROUP ON INTELLECTUAL PROPERTY TO THE  
*PROTOCOLS FOR NATIVE AMERICAN ARCHIVAL MATERIALS*

17 December 2007

The Working Group on Intellectual Property welcomes the opportunity to read and comment on the *PROTOCOLS FOR NATIVE AMERICAN ARCHIVAL MATERIALS*. This is an important document that is worthy of consideration by all archivists.

While there is much in this document for archivists to ponder, we have elected to limit our comments to the issue of intellectual property rights. The Protocols call for a reexamination of those rights in light of Native American concerns.

There is no question that Native American interests in archival materials need to be taken seriously by non-native repositories when acquiring, preserving, and making material available. The Protocols document some of the concerns of the Native American community. Historically, some repositories have been (and some may still continue to be) insensitive to the needs and concerns of Native American communities. All archivists should want to ensure that, whenever possible, materials in their repositories are managed and used in a respectful way that does not unknowingly or inadvertently offend third party groups.

The Working Group thus endorses the Protocols' recommendations that Western archivists should learn more about Native American concerns and archival practices. We suspect that common ground can be found on many issues.

There are elements in the discussion of intellectual property in the protocols, however, that would be difficult for Western archives to adopt and implement (just as there are Western archival practices that Native American archivists have chosen not to accept and follow). We have identified the following major issues with the protocols:

1. Conflicts between access and community interests.

While archives may wish to be respectful of the concerns of Native American communities, these can sometimes be at odds with traditional archival commitment to equal and open access. While archives respect, as the protocols note on page 8, third party rights of privacy and contractual agreements created at the time of acquisition, archivists also try to limit the application of such restrictions as much as possible. For example, SAA has also spoken out against the extension of privacy rights beyond the death of individuals, attacked the destruction of important historical documentation, and even championed public access to materials that may have been acquired illegally (such as the "Pentagon Papers") when it is in the best interest of the general public. The SAA/ALA Statement on Access to Research Material makes the importance of equal and open access to research materials clear. While acknowledging that archivists need to be sensitive to the concerns of groups

represented in our holdings, SAA should be wary of endorsing the creation of third-party *rights* in archival materials where none currently exist.

## 2. Issues of traditional knowledge

The clearest example of where the protocols call for new third-party rights in cultural materials is in the discussion of intellectual property issues. Western copyright is based on the idea of individual authorship, rather than cultural traditions. It protects specific expression, but not knowledge. That protection is for a limited period of time, creating along the way a limited monopoly often described as a form of property. Proponents of traditional knowledge, as the protocols indicate, argue the concept of copyright may be extended to tradition, knowledge, and indefinitely.

The discussion about whether a traditional knowledge can be commoditized and become an intellectual property regime running in parallel with traditional Western notions of copyright is being played out in treaty negotiations currently underway at the World Intellectual Property Organization. The implications of such a system for traditional archival values of openness and equal access to archival materials are profound.

Because it is unclear what the proper balance between the two value systems should be, the Working Group believes that it is too early for the profession to adopt a position on traditional knowledge, and in particular whether the owners of traditional knowledge should be able to exert copyright-like exploitation rights over it.

## 3. Issues of copyright versus ownership

When discussing intellectual property, it is very important that archivists be precise in their terminology. For example, there is nothing inappropriate about archivists considering privacy rights or cultural sensitivity issues/rights, but these should be kept clearly distinct from copyright law. There are places where the protocols, while expressing concerns that are legitimate and worth discussing, confuse the issues by using inappropriate terminology. Two examples from its discussion of intellectual property illustrate this:

- "In some cases, Native American knowledge has been copyrighted by outsiders without appropriate permissions or approvals." Only the author of a work can copyright it, and only the original expression added by the author may be copyrighted. It is possible that outsiders may have used other types of intellectual property to control Native American creations, such as by trademarking Native American symbols or by attempting to patent Native American discoveries, but in principle it is impossible to copyright *knowledge*.
- The section on intellectual property includes a discussion of a "right of possession," and later in the protocols this right is equated with the principle of replevin. While the repatriation of looted cultural objects is clearly often desirable, most Westerners would not think of this as being a component part of an *intellectual* property policy.

### *Recommended response*

The protocol identifies many actions that libraries and archives should follow when working with Native American materials. Some encourage a dialog over the issues of concern to Native Americans; we think all archivists can endorse learning more.

The introduction and tone of many recommendations in the Protocols *suggest* dialog and a variety of responses an archives *may consider*. Other recommendations, however, use *prescriptive* language that *requires* action that may not currently be compatible with standard Western archival practice. Unfortunately, the languages in these recommendations may trigger a defensive response rather than dialog.

Before SAA endorses these recommended actions, we would encourage SAA to revisit each of the proposed guidelines for action by libraries and archives in the protocols to ensure that each fosters dialog. We hope that the Native American protocols group, in the interest of fostering discussion and learning, would be willing to reframe the recommendations.

The section on “Native American Intellectual Property Issues” presents a good example of how the protocols could be redrafted to encourage dialog. The first guideline states that libraries and archives should "recognize that the 'right of possession' to some Native American materials may be held by communities of origin." SAA cannot in good conscience say that a “right of possession” exists, or that communities of origin own it. The protocols *could* say instead that libraries and archives should "recognize that some communities believe that the 'right of possession' to some Native American materials may be held by communities of origin." The second bullet asks us to "appreciate" that there are different notions of property. This is good – it helps facilitate the learning process.

The third bullet asks us to "consider" expanding the idea of moral rights. At least initially, the Working Group would be hesitant to endorse such an idea, as the entire Continental tradition of moral rights as part of copyright is clearly at odds with both the historical tradition of American copyright law and also with the underlying archival concerns for records, manuscripts, and their use. However, out of respect for the Protocols’ call for a discussion of different notions of property, the Working group believe SAA should discuss this idea. The goal over the next few years should be to see if our community can address the valid concerns raised by the protocols without having to turn to inappropriate legal concepts such as “moral rights.”

The point is that with just a few small modification, the Intellectual Property section of the protocols becomes a document that opens a dialog, rather than being an assertion of principles that we cannot yet endorse.

Comment 3: *Received December 17, 2007*

**Protocols for Native American Archival Materials  
Comments from the SAA Standards Committee**

In response to the call for comment on the Protocols for Native American Archival Materials, the SAA Standards Committee has done a brief review of the document and submits the following for consideration by the SAA Task Force on the Protocols.

The Protocols document addresses a wide variety of issues relating to archives and cultural heritage. It speaks to: the role of archives and history, uses of documentary resources and historical objects, respect for the peoples and cultures that created them, and the function of archival resources as historical evidence. Segments of the Protocols will challenge traditional views of archives and the role of archivists. There is also the potential for significant impact on long standing archival best practices and professional standards as it touches on nearly every facet of archival practice. While the Standards Committee is sensitive to the needs of those managing Native American cultural and primary source materials, the Committee is concerned about the overall impact of such a document on the profession and what it may mean for the consideration of other such documents that urge specialized treatment of archival resources. The Committee recognizes that these are not easy issues and they require thoughtful deliberation.

The Standards Committee acknowledges some positive aspects of the Protocols statement. First, the recognition of the need for collaboration within the document is a welcome one. In the "Providing Context" section of the Protocols for Native American Archival Materials under the "Archives and libraries guidelines for action," the first bullet point, "Encourage culturally affiliated communities to provide context for the collections from their perspective," seems sensible. It is important for the responsibility to lie with the native community to provide context from their perspective, but it should also be the responsibility of the professional archival community to reach out and solicit that perspective. Second, working with native communities to revise indexing terminology is a great idea. Third, the bullet point, "Promote changes to established lexicons to allow retrospective conversion or enhancement of antiquated or inadequate catalog records to include contemporary, culturally responsive language," is also an excellent suggestion. The final bullet point, "Actively gather metadata to accompany Native American archival collections to reflect the relationship between the creator or researcher and the community of origin," is a good suggestion. An alternative way to express it might be to say that in the case of native materials the archival notion of provenance should be expanded to include cultural ownership over time, in addition to source of acquisition and chain of custody.

On the other hand, Standards Committee members express concern over other suggestions in the document. For example, see the second bullet point under the "Archives and libraries guidelines for action," segment of the "Providing Context" section, "Inform patrons, at the request of a community, of potentially offensive content prior to use by adding a notice to descriptive tools or items..." In our view, archives and libraries do not endorse the contents of the materials in their collections and

believe that libraries and archival repositories leave the evaluation of the contents of the materials in their collection to their users. Archivists are all aware of a myriad of materials in collections the contents of which we would never endorse, yet we provide access and let the user make up his or her mind about them. Also, by stating that archivists do not endorse the contents of a particular work, the implication is that by default they are endorsing the perspective of those who disagree with it, which seems equally problematic, regardless of whether or not one agrees.

Also, in the fifth bullet point in the same section, "Add explanations of derogatory words to original titles (e.g., [title created by xxxx in xxxx year]) or remove offensive terms from original titles and provide substitute language (e.g., replace "squaw" or "buck" with [woman] or [man])," is problematic. We do not necessarily endorse the idea of substituting offensive words in original titles. Titles should stand as is to preserve the historical record, regardless of which community may find the language offensive. Adding explanations like the example provided could be a potential solution, but the issues of derogatory language may be too complex to address in cataloging and may need to be addressed at a higher level.

Standards Committee members also expressed a concern about the issues of repatriation and access restrictions in the Protocols document. We are aware of the need to provide appropriate controls over culturally sensitive documentation, and believe archivists must consult with members of the native communities to identify such materials and develop policies regarding them. At the same time, approach the document takes is problematic. The key concepts, such as 'culturally sensitive' are not clearly defined and they seem to reserve to the community a right to withdraw or restrict many types of documentation within broad, format based categories. At the same time, we note that all archivists should be sensitive to issues surrounding culturally sensitive materials. We think that the document would be strengthened, if the term itself, as well a set of responsibilities and expectations around such materials were more clearly defined.

### **Recommendations:**

1. *More time for careful review and comment on the Protocols document.* The members of the Standards Committee submit that the turnaround time for comment on this important document is very brief and does not permit in depth consideration and discussion of the wide variety of issues contained in the Protocols. The Standards Committee is concerned in general that the document could have precedent setting significance for the profession and as such sufficient time should be devoted to a thorough review of the Protocols document.
2. *SAA Council Consider the Potential Impact/Meaning of Endorsement of the Protocols.* Standards Committee members expressed concern about other groups that may come to SAA for formal endorsement of specialized practices and approaches. By endorsing the document, will Council in essence be creating a de facto standard? If so, would all archival repositories be expected to follow the protocols? The Standards Committee would suggest that a group might be appointed (perhaps the same Task Force Council has charged with gathering comment on the Protocols) to examine document and perhaps work toward a true joint statement (co-authored

with representatives of the group that authored the protocols) on Native American Archives. Hopefully, this would create a much broader dialogue on the myriad of archival issues present in the document.

3. *How does the Protocol Statement relate to the Task Force created to work on the ACRL/SAA Joint Statement on Access to Original Research Materials?*
4. *The Standards Committee would urge careful consideration of those aspects of the document that do impact professional best practices. If the intent is to create best practices and standards, they should be developed with broad deliberation and consideration for review, comment, and consensus building which is reflective of standards development. The Committee does not mean to suggest that best practices should not be evaluated and potentially revised, but it is concerned that a process be established that permits broad based discussion and participation in the process.*
5. *Finally, in the course of discussing this document it has been pointed out that there are no minorities or Native Americans on the Standards Committee. We would urge that the next round of appointments to the Standards Committee include consideration for cultural diversity.*

Thank for the opportunity to comment.

Prepared by Nancy Kunde, Chair-SAA Standards Committee

December 17, 2007

*Comment 4: Comments of the Acquisition and Appraisal Section received December 17, 2007*

The Acquisitions and Appraisal Section believes that the Native American Protocols document is a valuable tool in making archivists aware of issues relative to Native American archival materials. While the protocols do challenge some of our traditional assumptions and practices in handling archival records, it is appropriate for archivists in today's society to engage in a discussion about other ways of understanding the world and constructing knowledge and to establish working relationships with members of Native American communities. Both archivists and native communities share responsibility for culturally responsible care of Native American cultural collections and the document serves as a resource to steer both parties toward best practices while providing resources for so doing.

As much emphasis as there is on differences between traditional archival work and Native American values and perspectives, many of the suggestions for working with Native communities will be familiar to those who are responsible for dealing with donors. This statement is not meant to characterize Native American groups as donors but merely to show that some of the skills and attitudes needed, as suggested by the Protocols, are extensions of many of our traditional responsibilities and activities: showing sensitivity to the donor's circumstances and experience, respecting requests to restrict access and use to sensitive materials, considering creators' concerns and understanding of intellectual property and negotiating an agreement suitable to all involved, evaluating out-of-scope collections for transfer to more appropriate repositories, documenting agreements through formal means, questioning sellers and dealers about the provenance and circumstances of acquisition, collaborating and partnering with community representatives to collect materials, striving for balance in documentation of an issue or group, and understanding the legal, ethical, and cultural environment in which you are acting as a collecting repository.

Going forward, a useful exercise would be a workshop or annual meeting session in which "Western" archivists and tribal archivists and Native community representatives apply the protocols to case studies. Such a forum would provide practical examples of the implementation of these ideas, as well as give traditional archival practitioners and their Native American counterparts an opportunity to discuss issues and concerns and to shape further this living document.

Comment 5: *Comments of the Native American Roundtable received December 17, 2007*

December 17, 2007

Dear SAA Task Force,

The Native American Archives Roundtable (NAAR) fully supports the discussion, adoption, and implementation of the *Protocols for Native American Archival Materials*. Many of our members participated in the conference that drafted the document at Northern Arizona University in April 2006, including the current and past Chair.

The *Protocols* were drafted to provide a common framework of ethical "best practices" for handling Native American archival collections held at non-tribal repositories. There are hundred of organizations in the United States that hold archival collections documenting Native American life ways. While some collections have been gathered with informed consent of the tribal communities, a large majority have not. Furthermore, although well-intentioned non-Indian archivists in traditional institutions often lack training in the many nuances of caring for such collections, including cultural patrimony and sacred ceremonies.

Over the past decade, tribal leaders, archivists, and librarians in the United States and Canada have expressed increasing interest in exploring ways to engage in joint stewardship with non-tribal institutions which hold extensive American Indian collections. We have seen such collaboration beginning as institutions such as Northern Arizona University where the Cline Library has enjoyed a close relationship with the Hopi Cultural Preservation Office, as well as the Navajo Nation. However, more must be done to ensure that collaboration and communication continues across the United States, not just in small sectors. As archivists, librarians, and historians, we understand and are committed to intellectual freedom. While committed to academic freedom and equal access, many archivists also want to respect culturally sensitive material. The *Protocols* establish the foundation for this important practice.

We are aware that the discussion and later implementation of the Protocols is both challenging and frustrating as they question established traditional Western norms of study and knowledge that many archivists have practiced for years. However, this topic and discussion have been dormant for far too long. Changes have surged ahead in the museum community with the adoption and implementation of the Native American Graves Protection and Repatriation Act (NAGPRA) established in 1992, yet the archival community has lagged behind in the development of similar principles for the respect and care of archival materials. While some professional organizations have revised ethical codes to include cultural sensitivity and respect, there still remains no established ethical "best practices" and procedures for handling Native American archival collections held in the United States. Indigenous peoples in Australia, Canada, and New Zealand have all produced protocols and guidelines for handling native records, with specific statements regarding cultural and intellectual property rights. We need to follow in their footsteps and give the indigenous peoples of the United States the same respect and regard for their lifeways. The Protocols provide such a document and can be implemented in various institutions across the United States.

If anything, this discussion and process will help archivists, at all levels of expertise, come away with a better understanding of the *Protocols for Native American Archival Materials* and the varying perspectives associated with implementing them at their institutions. Moreover, they should gain

ideas for working with communities of origin who may be challenging the care of materials housed in their institutions. Furthermore, archivists should also have a broader knowledge of how and when to apply the *Protocols* to their collections.

Sincerely,

Jennifer R. O'Neal  
Chair Native American Archives Roundtable  
[jenniferoneal@gmail.com](mailto:jenniferoneal@gmail.com)

Dear Mr. Boles:

On behalf of the Privacy & Confidentiality Roundtable, I am pleased to submit the following comments on the *Protocols for Native American Archival Materials*. We decided to address those aspects of the protocols that pertain to access and culturally sensitive materials as they are most relevant to our interests.

One of the most significant premises of this document is that “conditions under which knowledge can be ethically and legally acquired, archived, preserved, accessed, published, or otherwise used change through time.” This poses challenges for administering access to collections. How often do we need to revisit our policies? In order to implement the recommendations in the protocol, it would be helpful for SAA to provide guidance in the form of sample policies and procedures.

#### Consultation and Digital issues

- Seek active consultations with authorized Native American community representatives to review culturally affiliated collections... SAA or the First Archivist’s Circle should provide an up to date list of authorized representatives.
- Involve communities in creating welcoming and comfortable spaces for Native American visitors. We should be doing this anyway.
- Consider the potential impact of worldwide digital access to resources once only available onsite at the collecting institution. Will the information be presented with sufficient context?  
The impact of digitization and worldwide digital access is an area of concern for members of the Privacy & Confidentiality Roundtable. We need to consider the impact when deciding what to make available online with all of our collections.
- Consult with communities if the proposed commercial use is questionable. It would be helpful to have a “definition” of questionable use otherwise this could up the interpretation of the individual archivist.

#### Acquisition of collections

- Require researchers and collection sources to provide copies of any initial research contracts, agreements, or other comparable documents between themselves and a Native American community that pertain to the collection. This is a great idea as it not only gives us more background on our collections but will also assist in determining what restrictions if any are appropriate.
- Review acquisition policies and forms with Native American community representatives in order to share suggestions for culturally responsive restrictions on deeds of gifts with potential donors. This is another area where SAA and the First Circle could be invaluable. They could create templates for policies for different types of materials which could be the basis of the discussions between archivists and the Native American communities.

#### Access and Use Restrictions

- Consult with culturally affiliated community representatives to identify those materials that are culturally sensitive and develop procedures for access to and use of those materials. Our goal should be to maintain a balance between protecting Native American privacy and cultural heritage and making the materials available as broadly as possible. We may need to have a dialogue as to what is appropriate on a case by case basis. We want to avoid blanket decisions as they could lead to mass restrictions which aren't always necessary.
- Request that researchers obtain clearance from Native American communities before providing access to sensitive materials. It is important to work out these procedures in advance so researchers know what they need to do especially if travel is involved. Archivists will need to consult with the appropriate communities to determine where access requests should be sent and a timetable for them to be processed.
- Respect a community's request to restrict access to and use of materials that describe and represent esoteric, ceremonial, or religious knowledge that is significant to the community. This is another area where definitions and consultation are crucial so archivists aren't left to determine what is culturally sensitive and what isn't. These policies need to be consistent so they can be carried out fairly.
- Ensure that any restrictions or agreed upon procedures are fully implemented and observed. We should be doing this anyway. All restrictions and procedures should be implemented equitably as well.

The Privacy & Confidentiality Roundtable was an early supporter of discussing these issues. It sponsored a panel session at SAA's Annual Meeting in Los Angeles to address some of the issues relating to Native American authority and control over their cultural patrimony. This panel raised many of the concerns identified in the protocols. We are in full support of continuing this conversation to ensure that all aspects of these issues are covered. Some of them are more complicated than others and will require more dialogue. For example, are there instances where access restrictions are more appropriate than repatriation? Does the format matter? Should vocabulary lists and grammars collected by anthropologists be accorded the same respect as recordings of Native American speakers?

If there is a role that the Privacy & Confidentiality Roundtable can and should play in this conversation, please let me know.

Best,  
 Susan McElrath  
 Chair  
[P&C Roundtable](#)

Susan McElrath  
 Team Leader for University Archives and Special Collections  
 American University Library  
 Ph. (202) 885-3255  
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[mcelrath@american.edu](mailto:mcelrath@american.edu)

Hi Frank -

I had thought that I had sent you these comments already, but see through checking my sent box they did not make it out. I hope that these will be appended to the final report.

The bulk of the comments are from Shannon Bowen with others' thoughts interspersed.

Overall, the implementation of these protocols, as they stand now, will have a chilling effect on repositories' willingness to acquire Native American holdings. The American Heritage Center typically shies away from any acquisition that involves co-custody or trust agreements, extensive and complicated restrictions on access, and/or the high degree of oversight on archival operations recommended in this document. I wonder about the availability of tribal liaisons to act as consultants and the cost involved in securing their services, as well as the time involved in determining who to contact. The protocols cite an item-by-item review by a 12-member committee of an ethnographic collection conducted at Cal State-Chino; this would not be feasible, financially or otherwise, at many, if not most, repositories. Following are some specific comments:

1.) The language in the protocols is very legal in nature - could this be used to support litigation. I don't think it is in the interest of archives to expand their vulnerability to lawsuits. Examples of this are:

p.7: "...a collecting institution may proceed with providing access to and use of material as it deems appropriate, but only if a community fails to respond to a good-faith effort to request consultation."

p.14-15: "Recognize that the 'right of possession' to some Native American materials may be held by the community of origin....Only consultations with culturally affiliated communities can determine whether or not materials in archives are there illegally or unethically."

p.15: "Consider expanding moral rights (droit moral) to protect Native American cultural and intellectual property."

2.) The document recommends uneven (or contradictory) access standards.

p.6, 5th bullet - the invocation for caution on the repository's side is the opposite of how we professionally deal with requests.

p.10: "Require researchers to provide copies of any initial research contracts, agreements, or other comparable documents between themselves and a Native American community....." and then in the next guideline for action, ".....rethink the need for 'credentials' from patrons."

If there is a need for review by the tribal authority, this should be stated up front and there should be equal need for permission granted rather than anything on a case by case basis dependent upon a staff worker's assessment of interest. The tenet in the library community of providing equal and consistent access to everyone is a cornerstone to our work and is necessary for the protection of both

patron and materials.

The document returns repeatedly to the need for formal, documented permission from tribal authorities for access to American Indian- related collections. Under any circumstances, obtaining this kind of permission is very time-consuming but is especially so in this instance. This would definitely discourage research by many classes of patrons, including under-graduates, K-12 students, and the general public, groups who perhaps would benefit most from access to such collections.

3.) How are repositories to resolve potential conflicts between donors and American Indian communities claiming ownership or other rights over American Indian- related materials? The suggestion seems to be that we need to nullify and re-negotiate all deeds of gift for current Native American holdings, or at least evaluate them for this action, and again, this seems unrealistic, given the availability of resources. (See p.9, under "Accessibility and Use", and p.11)

4.) p.17: "Participate in 'knowledge repatriation.' Who is the information intended to serve? What is the natural life cycle of the information?" Archives primarily collect documentation in the service of posterity, and only secondarily to serve the interests of the records creators. Those described by or associated with a given group of records are the documented; the authenticity of the records themselves is predicated on the assumption that those documented have not tampered with them.

These protocols call for allowing Native American communities to control what is studied and subsequently written about them, and we must consider how to limit this at the same time that we are working out how to administer it, just as we do with classified records of government operations.

5.) The protocols appear to substitute Native American ways of understanding and managing information for the methods we "traditionally" use, rather than melding the two. This may be appropriate for materials created by American Indians, but I am not sure that it is appropriate for all materials that document American Indians. The need for education on both the archival and Native American communities is apparent. p. 8 "Examine assumptions about established library and archives practices which directly contradict Native American principles and practices." I don't agree that archival practices are based on assumptions. There are reasons for these practices in providing service to the community at large.

These protocols appear to be striving to set up private collections with specific rules within open institutional settings based on the legality, accessibility and review elements of the document. I don't believe that is a healthy option, for either the archival or Native American communities.

6.) A priority list of which elements are most essential would be very helpful.

I wholeheartedly agree with consultation with tribal representatives to identify and manage sensitive materials, with cultivating sensitivity to multiple perspectives, and with promoting diversity within archives and libraries, both terms of their holdings and in terms of their staff. That said, I think that many of the recommendations in these protocols are asking too much and potentially open archives and libraries to an unacceptable level of legal risk.

Thank you for your time, Frank, in reviewing all of the comments. I hope you have a happy holiday.

Sincerely,

Lynn Eaton

Reference, Access, and Outreach Chair, 2007-2008

**Appendix 4:**  
**Comments Received from Individuals or Institutions**  
**Arranged by Date of Receipt**

**Editor's Note**

For the sake of consistency and ease of manipulation within this report, all received comments have been placed in Microsoft Word format and have been edited to create the same typeface and type size. Excess lines between paragraphs have also been removed. This protocol has changed the appearance of many of the comments, however, no language has been changed.

Where comments are not initially clear regarding the author or date received, this information has been inserted (printed in italics) at the beginning of the individual comment.

Please note that one person (entry of December 1) requested of the Task Force that his/her name not be included in the report. This request has been honored.

*Comment 8: November 26*

I read with interest the Native American Protocols document and found it quite well argued. Am very thankful that I have no such records. My only criticism is that it may be unrealistic to require repositories to identify and contact tribes which are "culturally affiliated" with its collections. It seems quite reasonable to expect repositories, when contacted, to work with those tribes as described in the protocols. Allowing tribes to restrict access to previously collected [and probably referenced] materials seems problematical.

In a follow-up message, on November 28

Please count me as a supporter of the Protocols in general, with the caveats previously given.

Herb Hartsook

*Comment 9: Received Nov. 28, 2007*

TO: Frank Boles

FROM: DeSoto Brown  
Collection Manager, Bishop Museum Archives  
Honolulu, HI

SUBJECT: Comments on “Protocols for Native American Archival Materials”

I am DeSoto Brown, the Collection Manager of Bishop Museum Archives in Honolulu. I’ve been employed at Bishop Museum for twenty years. I am in charge of the care and handling of the various collections in this Archive, which includes manuscripts, photos, artwork, moving images, audio recordings, and maps. I am of Native Hawaiian ancestry.

Bishop Museum has had extensive NAGPRA dealings, and while I did not directly participate in most of them, I did eventually have tumultuous and strongly emotional involvements in the public debate over how they were handled. While NAGPRA does not directly address archival materials, as your “Protocols” draft states, there are parallels.

I’ll reference specific paragraphs and pages in the document in my comments.

p. 1, 3<sup>rd</sup> paragraph: The status of Native Hawaiians should probably have a bit more explanation in this discussion. Native Hawaiians are “accorded special status by both federal and state law” but do not have federal recognition as native people. The effort to attain this status is continuing, but faces significant opposition. This is very important because it means, for one thing, that there is no central Native Hawaiian governing body which can make decisions in the way that a tribal government can, nor is there any central authority which can pass judgment on (for example) public access to certain information. There no Native Hawaiian archive either. Thus the concept of repatriating Hawaiian materials is not viable in the same way as it could be for other native groups in the USA.

Bishop Museum, by virtue of its age (118 years) and collecting goals has long served as the main repository for Native Hawaiian artifacts and information, and therefore is usually seen as the de facto Hawaiian archive. But it is not under the control of a Native Hawaiian government, and it would never be in the position to request that archival materials be repatriated to it. At the same time, there is no other institution or organization which would be able to request that Hawaiian documents be released from Bishop Museum to it, either.

So the situation of Native Hawaiians at this time is such that a good deal of what is written in this Protocols draft cannot directly be applied.

p. 2: Not being a resident of North America, I'd ask that the terms "North American" and "American Indian" that are used on this page be changed. Those outside the continent who are under US jurisdiction need to be included too, of course.

p. 6, "Evaluate institutional holdings...": From an archival viewpoint, when considering the breakup or dispersal of materials, thought should also be given to the provenance and completeness of any single collection. I agree that native needs are of great importance, but the removal of anything from an existing collection also must be treated thoughtfully. Deleting significant things, or removing things in a patchwork manner, might considerably reduce the research value or usefulness of a collection.

p. 6, "Be cautious in approving...": This situation must be approached cautiously to insure that archivists are not put in the position of being censors. I'd say that the final authority for any denial of access or use must always clearly and undeniably be the native people themselves, and this needs to be communicated to any user. (It also means, as the Protocols state elsewhere, that tribes must be professional and timely in their handling of any requests which are forwarded from archives.)

We've been through this dilemma at Bishop Museum Archives. Initially, in the early days of public use and commercial licensing (primarily of photos), there was language in our forms which stated that we had the right to refuse any uses which we chose to. We no longer say this, and I personally am not comfortable in judging the value of anyone's project or work. As an example, one of the primary defenders of the overthrow of the Native Hawaiian monarchy in 1893 is a descendant of the central figure in this action. He published a book in the 1990s which described the entire process positively. In this book, he reproduced a number of Bishop Museum photos, having followed our normal procedures to do so. I disagree strongly with much of what he asserts, but even so, I do not feel it's my place to refuse him access to what we have in our collection.

As I said earlier, however, I understand that Bishop Museum's position is not directly analogous to that of a Native American tribe. Nonetheless, the considerations are similar.

p. 6, "Require that auction houses...": This is an admirable requirement but realistically, I feel it's simply not going to be possible. The provenance of so many things is untraceable (as archivists know) that trying to require proof of legal rights of disposition and associated rights of copyright is not going to occur. I have no legal training but I have the suspicion that attempting to put this burden on any source would just be refused.

p. 6, "Allow Native communities...": Applicable in this situation, and many others, is the necessity for archivists to always be thoughtful of preservation. I feel this in myself very strongly and I'd think many others in this field do too – we do this job because we want things to survive and be cared for. Therefore, any referrals of donations to other locations should always be on the basis of being sure that the materials will be going to professionally administered conditions. If boxes end

up piled in someone's garage, it is not proper for an archivist to bear part of the responsibility for putting them there.

- p. 9, 4<sup>th</sup> paragraph: "Community ownership of original source information" can be a very difficult or impossible concept to achieve agreement on. It would be very tough in some cases to get people even in a fairly small group to define what constitutes knowledge known to the entire membership, or only to selected people, or just one person. I can see major arguments occurring which might make consensus impossible.
- p. 10, 2<sup>nd</sup> paragraph: I would hope that restrictions on researchers using libraries and archives would be, across the board, minimal to nonexistent. Bishop Museum Library evolved from only allowing access to staff and visiting researchers and scientists, to being completely open to all during our public hours. While it's beyond the scope of just this document, I'd hope that SAA would be promoting this level of openness for all who possibly can do it.
- p. 12, under "Cartographic Materials": Bishop Museum has long had an archeological department and has produced hundreds of site reports since the 1950s. These archeological reports sometimes have included detailed descriptions of burial sites showing locations and even diagrams of buried people. We have instituted copying restrictions on such information, but I bring this up to add such publications or reports to this list.
- p. 13, third paragraph: I advocate for the replacement, wherever possible, of English terms with those from native languages for objects or concepts which are unique (or important) to that culture. Some Hawaiian words have always been used here, partly because (as with all languages) there are terms for which there are no close equivalents in English. Furthermore, Hawaiian words are continuing to come back into use; this shows that people can switch to native words if they're exposed to them.

I also would say that adhering very strictly to LOC or AARC II rules or subject headings can become very difficult or impossible when dealing with native materials. We briefly attempted to standardize our computer records here in the 1990s by switching to the Library of Congress, but it was impossible and completely unrealistic to think this could happen when we would be prevented from using the word "hula", as an example. This is because hula-related images and documents are of great importance in our collections, and are seen in the community as of great significance. While a national authority file of approved native terms is not realistic, archives should establish their own for the materials that they hold (in tandem with the native advisors).

- p. 15, first paragraph: The question of right of possession is a bit murky when seen strictly from the archives' standpoint. There are many items which an archive may hold for which no ownership of the information can be ascertained, and for which the archive does not make a claim itself. In such cases, I think it's questionable that the archive could be held accountable for the circumstances under which the information was obtained. Does owning the physical pieces of

paper which carry the information make the archive liable for claims regarding the conditions at the time it was collected?

- p. 17, 3<sup>rd</sup> paragraph: As I wrote earlier, I believe an archive has a duty to be aware of the physical conditions that materials will be stored in, before it releases them. I think an archivist might correctly not deaccession items if he/she considers their survival to be endangered if allowed out. In such cases, the archivist should then assist as much as possible (with advice or guidance) to create the proper storage conditions or facility.
  
- p. 17, 7<sup>th</sup> paragraph: Holding materials in storage for other owners is a good community service, but archives must insure that the conditions of this action are clearly spelled out in a written agreement. Most archives do not have the space, funds, or staff time to indefinitely carry this out, nor should they be expected to. A defined time limit, for example, is one condition to consider. Meanwhile, the tribe or native group should be actively working to take on the responsibility for the material, which ultimately (and properly) is theirs.
  
- p. 21, paragraphs 5 through 7: I am pleased to be able to say that Native Hawaiian usage of the information in Bishop Museum Archives is extensive. In surveys of our patrons, the majority identify themselves as Native Hawaiian. I think this is because we have no restrictions on who can visit, and that we are known in the community as a very valuable resource. I think this can be true for other archives as well which hold important native materials, depending of course on different factors in their locations.

*Comment 10*

**From:** Stankrauff, Alison Harper [astankra@iusb.edu]  
**Sent:** Monday, December 03, 2007 11:20 AM  
**To:** Boles, Frank J.  
**Subject:** RE: RMRT comments solicited

Hello Mr. Boles –

Thanks so much for contacting me – I appreciate this very much.  
And absolutely – yes, do share my comments with the Task Force and with SAA Council. I'm definitely comfortable with that.  
The Protocols represent some very interesting possibilities for the profession on many levels.

My Best,

Alison Stankrauff

**From:** Stankrauff, Alison Harper [mailto:astankra@iusb.edu]  
**Sent:** Friday, November 30, 2007 11:05 AM  
**To:** 'Russell D. James'  
**Subject:** FW: RMRT comments solicited

Hi Russell –

I've finally been able to carve out a chunk of time and really give the Protocols my real attention... I kept beginning and kept getting interrupted with "ASAP" matters several times...

In terms of my comments, please feel free to attach my name and title and institution, etc.... Here they are:

I am of the view that the Protocols for Native American Archival Materials represent an important step for archival repositories, libraries, and museums to take. I think that the Protocols help guide archival repositories, libraries, and museums to be at once mindful of, respectful of, and sensitive to Native American cultures and traditions.

Further, I think that they forge helpful and useful practices for repositories, libraries, and museums. They create guidelines that archivists, librarians, and history professionals and staff can refer to.

I think that the collaborative guidelines that are outlined in the Protocols represent partnerships and collaboration, while some institutions have indeed already undertaken, that ought to happen more – and to an increasing level.

I feel that everyone will benefit from these Protocols – Native American communities, archival repositories, libraries, museums – and the communities that those institutions serve – and wide public.

Alison Stankrauff  
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*Comment 11: Received December 1, 2007*

## **Comments on the Native American Protocols Document**

Diane Vogt-O'Connor

The Native American Protocols Document is a provocative work that raises many issues for the professions of archives and library science that are worth much greater exploration and deeper study. Archivists and librarians more than most Americans acknowledge that American Indian tribes—like the Africans, Armenians, Cambodians, and Jewish peoples—have experienced genocide. As professionals we are aware of the profoundly unfair treatment that has driven American Indians from their land, used their culture as a commodity, and treated them as an exotic “other” for purposes of drama, music, and study rather than as equal citizens with equal rights to privacy and respect. We look back in shame at this pattern of first European and later American behavior, wanting not to perpetuate this cycle of abuse.

In our own professional realm, we realize that tribes have been studied by scholars and tourists without informed consent. We know of archives and libraries that have acquired such collections. We know that archival collections have been acquired by mainstream archives and libraries that contain knowledge that some tribes (but not necessarily all) consider tribal property under systems of belief and practice not recognized by mainstream culture in the US. We understand that tribes have hard fought for autonomy as separate nations under the law with rights and privileges to control their land and their possessions.

We have taken good faith first steps towards figuring out how to deal with some of these issues. We have begun better contextualizing our collections and teaching others how to do so. We have set up protocols for consultation in our handbooks. For example in SAA's 2006 handbook, ***Photographs: Archival Care and Management***, the chapter on legal and ethical issues addresses these issues explicitly stating “*Seek informed consent by identifying the associated groups that have an interest in your repository's photographic collections. If no stakeholders exist or if the stakeholder group has no interest in how members are represented to the public, the access issues diminish. Work with the associated groups to identify their concerns and to honor those concerns to the fullest extent allowed under the law and your repository's policies. Many groups have valid concerns about how their cultural heritage material is used commercially by others. Responsible repositories take the time and effort to deal sensitively with these issues and to involve the stakeholder communities in the discussion process....For more information see Appendix VI, Sensitive Photographs and Research Access.*” Elsewhere in the same volume it states, “*Some of these issues require balancing the public's right to know and the repository's ethical responsibilities to provide equitable access to all*

*researchers against the wishes of a travel, religious, or other cultural group. Cultural groups may wish to preserve privacy, maintain local ownership of the culture's intellectual property (e.g., designs, imagery, songs, stories, and traditional knowledge) and to be granted the right of informed consent. Some groups may wish to restrict all general public access to historical documentation made without informed consent. The presence of sensitive visual information may not always be obvious, particularly with unidentified photographs. Being aware of the issues will help you respond effectively should concerns be raised about open access to photographs held by your repository."*

Our profession has shown openness to change and a willingness to be involved in dialogue over time. We need to discuss these issues further and develop best practices and protocols that work with our code of ethics, our agreed upon relationships with our stakeholders, and U.S. law.

However, our archival profession is built on certain bedrock principles that the Protocols (as written) pose significant challenges to, including:

1. **Relationships and Responsibilities:** by preserving our professional relationships with each other, stakeholders, and the public and meeting our responsibilities to our employing institutions particularly in terms of our mission statement and collecting policy;
2. **Standards and Best Practices:** by following best professional standards and practices in acquisitions, appraisal, preservation, description, and access procedures;
3. **No Conflicts of Interest:** by not personally benefiting from special access to or control of records or documentary materials;
4. **Integrity and Authenticity:** by meeting our responsibility to protect and preserve the physical integrity and authenticity of the records we hold, ensuring they are not altered, manipulated, or destroyed to distort evidence or conceal facts.
5. **Equitable Access:** by providing open and equitable access to our records without discrimination or preferential treatment.
6. **Personal Privacy:** by protecting the personal privacy rights of donors and subjects of records;
7. **Following U.S. Law and Archival Ethics:** by upholding U.S. federal, state, and local law (e.g., copyright, privacy, publicity, etc) and the principles in the Code of Ethics for Archivists rather than the laws of other sovereign nations.

**Relationships and Responsibilities:** Archives run on negotiated relationships and agreements with a complex web of stakeholders all of whom have some level of rights in an archival collection. This group includes:

- donors with whom we have agreements as to how and when their collections will be described, used, and preserved that may not be ignored or denied;
- copyright holders, who are often the records or personal papers creator or the creator's heirs or employer (if the records were created on work time by an employee) with whom we have agreements that specify how we may use collections;
- living individuals who are documented in collections who have certain privacy rights under law with whom we may have agreements on how our collections will be used and when;
- communities, cultures, and families of the donor, the copyright holder, the individuals documented; or even the researcher; who may have interests or concerns—although not necessarily any legal rights under U.S. legal codes as a result this tends to be a group we consult with but not necessarily a group with whom we have previously had written agreements;

- researchers who want access to collections; and
- archival professionals, who have an ethics statement requiring them to provide

To give privilege one of these stakeholders over all others invites disaster, particularly since American archives are operating under a complex web of donor agreements, already approved usage agreements, copyright transfers; records of historical access and usage of collections via publications; freedom of information and sunshine legislation, and our archival ethics statement, which we may not disregard or toss aside. Archivists also must be sensitive to ethics statements of related professions, such as historians, archeologists, and other scholars, all of which stress equitable access to all. Ignoring this policy to privilege one group as the protocol suggests poses significant problems, including potentially lawsuits and very very bad publicity with our stakeholders.

**Professional standards and best practices:** Archives operate under professional standards and best practices of long standing linked back to European archival traditions. These standards are taught internationally at graduate programs, enforced through extensive networks of internships and fellowships, and applied pretty much wherever archives are found. Our stakeholders understand and honor these principles.

As a model for changing all archival operations, the Protocol proposes NAGPRA. NAGPRA was a targeted piece of legislation that was funded by Congress; enforced by a professionally trained staff, legal deadlines and national reporting requirements, and tightly targeted towards repatriation of very specific and limited categories of museum objects (e.g., sacred items, human remains) and repositories. As the Protocol notes NAGPRA purposefully did not focus on collection, ownership, preservation, handling, access, and use of American Indian archival resources, nor was NAGPRA an unfunded mandate with loose guidance focused all Native American materials in museums. NAGPRA’s tight focus, legislation, and funding allowed it to be done. I worked closely with the NPS Office responsible for NAGPRA. The similarities between NAGPRA and the Protocols are operationally and functionally few, particularly in terms of resource needs. NAGPRA required relatively little in comparison to the Protocols demands.

**Conflicts of Interest and Judgment:** This protocol insists that because Native Americans are sovereign nations with different cultures and laws that this special status grants them poorly defined “primary rights” or “moral rights” to archival collections legally owned by non-Native American archives. There is no legal justification for this belief under U.S. law, archival practices and traditions, or precedent. How this principle might be applied is unclear, as is the cost and impact of such application.

The definition by the protocols of what is “culturally sensitive” and what should be repatriated is comprehensive. Models, standards, and detailed explanations of how this process might work are not provided in the Protocols. Instead the Protocols attempt to place the burden of proof on the non-Indian archives that they have the “right of possession,” rather than following traditional custody and ownership as defined under U.S. law.

The Protocols' restriction and repatriation recommendations are made despite the fact that the collections were not created or owned by Native Americans, nor were they preserved, described, or made accessible at great effort by Native Americans over time. Donors, copyright holders, other subjects, and the repository staff and researchers all have vested interests in this material, which represents their lives and work as well as American Indian lives.

There is no attempt to strike a balance between these stakeholders' interests within the protocol, simply a demand. These donors, creators, researchers, and rights holders will fight at least some of the proposed actions in the Protocol in U.S. courts I would imagine. Without any legislation to back it up, courts are unlikely to support the claim of a protocol over the claim of U.S. law and long professional precedent.

This proposed protocol needs to better think through the concerns of ALL stakeholders, not just the Native American component. There may also be some concern that the costs and resources necessary to meet the goals of this protocol would largely be absorbed by already struggling U.S. archives. Significant Native American investments of effort or resources are largely not described. This is particularly disturbing in areas where as the protocol states only Native Americans can do the work (e.g., development of an approved Human Relations Area File or subject heading list for tribes so that LC Subject Headings can use tribally approved language). If tribes are the only ones who can be said to fully understand these areas, then tribal cultural representatives have a responsibility to step up to the plate and do this work. It would be seen as a good faith effort.

**Cultural Commons:** Under this same argument for repatriating collections that document Native Americans, may all Norwegians claim any materials in which they are described or shown? What about the French? Greeks? Shall we keep the Elgin marbles in England, but send all Greek records back to Greek archives? The logical conclusion of this is the deconstruction of libraries and archives nationwide—the loss of the cultural commons in which we learn about each other, grow, and share. How such decisions might be made is unclear. I can imagine fights over Longfellow's *Hiawatha* by the English and the tribes, as although the topic is an American Indian, the author is not.

The Protocol demands legal rights that are not recognized under US law, such as cultural copyright and cultural privacy. The *U.S. Constitution* sets the framework for copyright in our nation, stating that a democratic society's need to have rapid and unlimited access to creative works and inventions to inspire new works and as key resources for public betterment must be balanced with the creators' (authors, artists, inventors) needs to control how their works are used and to make money. Copyright was set up to address these issues.

The Protocols deconstruct the constitution and attempt to go outside U.S. law by claiming "primary rights" and "moral rights" including the "rights" to:

- censor how materials may be described in captions and finding aids,
- use the facilities and staff of non-Indian archives as a "pass-through" to locate and obtain collections,
- label works found in non-Indian archives as "endorsed" or "not endorsed,"

- deny equitable access to collections found in non-American Indian archives (Note: This access may be required by ethics policies and FOIA/sunshine law),
- refuse to preserve collections as was agreed to in donor agreements, and
- remove collections from non-Indian archives to American Indian ownership based not on who funded the records creation, or who created the records, or who has ownership of the records, but rather on current judgments of how well the historical records creator practiced informed consent (i.e., historicism).

**Protect and preserve the physical integrity and authenticity of the records:** The archival code of ethics states we are to protect the physical integrity and authenticity of the records we hold, ensuring they are not altered, manipulated, or destroyed to distort evidence or conceal facts. The Protocols seem to seek the destruction of some records, the alteration of finding aids and descriptive systems, and potentially major damage to the integrity of collections by making huge amounts of previously accessible materials inaccessible.

**Provide open and equitable access to our records without discrimination or preferential treatment.** It has previously been a principle and practice of archives, that once a collection is open to one researcher, a collection remains open to all. The protocol clearly limits or stops access to significant bodies of records legally owned by western repositories and previously made accessible. These records would henceforth be available only after negotiation or by permission of the tribe or tribes involved. Clearly materials will be made available to some tribal researchers, but not to all public citizens who have paid for their care and management. If several tribes are involved, since access rules are not uniform among the tribes, conceivably what one tribe might permit, another might disallow.

The level of work involved in sorting these approvals and negotiations out and managing such systems of MOUs and concurrences will result in the unintended affect of repositories not collecting Native American related materials as they have in the past. This complexity of implementation makes it likely, even practically guaranteed, that the history of tribes will be lost as a result of the Protocols, as archives stop collecting in this area due to the sheer cost and complexity.

**Protect personal privacy rights of donors and subjects of records:** The U.S. legal system does not recognize cultural copyright or cultural privacy, although it has long recognized copyright and individual privacy issues for living individuals. Many public records can be requested by anyone and must be provided according to FOIA and state sunshine laws with very limited restrictions. For example, if we withheld a federal record due to the protocol, a FOIA request could require us to provide it.

U.S. law does recognize the need for a cultural commons to stimulate creativity and learning in the U.S. Constitution. The natural way to address this issue of cultural copyright and cultural privacy is by legislative reform and public discussion, rather than by fiat or declaration that American Indian law and interests somehow trumps U.S. law and interests within mainstream U.S. repositories. That is what was done with NAGPRA. That is how archeologists have worked to protect archeological

sites and how the historic preservation community has flourished. Why was this more productive method of reaching American Indian goals ignored?

**Who Does This Protocol Actually Represent?** Native Americans are not necessarily of one mind on these issues. As presented it is unclear how many of the 562 federally recognized tribes and the many state-recognized tribes and what percentage of the 2.5 million Native Americans in the U.S., have endorsed, discussed, or even read this protocol. Who has agreed to the statements here? Which tribes' thoughts and ideas are actually represented here? Just because several individuals or tribes agree to something does not mean all individuals or tribes will do so. Who selected them to speak for all Native Americans and how? To what extent are they authorized to speak for other tribes? To what extent does this document, which purports to speak for Native Americans nationwide, actually do so? None of these issues are addressed in this document.

**SAA Standards Process Not Respected:** This document was not created following the widely publicized and clearly spelled out policies and standards required by the SAA Standards Committee to become a professional standard. It is unclear how representational the members of the committee are or even how they were selected. Nor is it clear what comment or review process was followed. This is a bit troubling since this group is asking the Society to respect and adopt the Native American Protocol. Why was a process of transparent review and comment not followed? This lack of respect for existing SAA standards process is perhaps not the wisest way to start a proposed dialog that requests substantial changes in law, professional practice, and resource allocations by a profession. The implication is the group making the request lacks courtesy or has little respect towards the profession. This is not a good way to request collaboration and significant resource appropriations to serve a limited interest.

**Summary:** This document, while a worthy first attempt, requires much discussion, revision, and reworking if it is to serve the purposes it was planned to serve. Comments from the archival, stakeholder, and research communities should be summarized and discussed. A range of options and solutions with appropriate publications, legislative solutions, and educational programs should be developed. Practical models of how the process might work should be created as should case studies. This process will take time, but is worth doing well.

*Comment 12: Received December 1, 2007*

COMMENTS ON  
Protocols for Native American Archival Materials

Name withheld at request of author

I question some of the proposed tenets of these Protocols based on legal and ethical considerations for libraries and archivists, for librarians, records managers, and archivists.

First, I do not believe that if a donor has legally and ethically donated a collection to a library or archives and has not broken any laws in doing so, that a Native American community should be able to control access, use, or reproduction restrictions that are in conflict with the restrictions stated in the deed of gift between the donor and the library or archives. If this is a possibility, then we must also respect the wishes of African Americans to restrictions to such things as photographs of lynchings or oral histories of African American sharecroppers.

Second, if a set of donated materials pertains to Native Americans but is not created by one of their number (such as paintings of Native Americans), should the Native American community be able to claim cultural ownership of those materials? I think not. If so, then we need to also afford ownership rights for Irish and Scottish persons for sound recordings of bagpipe music, or of Food Network cookbooks of Italian or Polish or German cooking. This does not make sense and is contrary to the archival principle that ownership belongs to the donor and then to the library or archives to which the materials are donated, provided that no laws have been broken. In such cases, who owns the rights to the materials? If it is the donor and then the receiving institution, why should Native American materials be given precedence over others, especially if the Native American community never owned the materials before the donation.

Third, religious practices of other religions are not reasons for someone requesting restrictions to the access or use of materials pertaining to Christianity, Islam, Judaism, or any other religion and I don't believe that Native American religious and cultural practices should be elevated above those of other religious communities or denominations.

Fourth, the right of first refusal being given to a Native American community is also a violation of basic business practices. If the materials belonged to the community, then it is theirs. But if it legally belonged to an individual person who wishes to donate the materials to a particular library or archives, then why should that library or archives give the right of first refusal to a Native American community. The donor's wishes should be respected in the donation process. If the donor wants to donate the materials to the library or archives, then intervention by the Native American community is tantamount to a third party interference in a contractual negotiation.

Fifth, who speaks for Native American communities which no longer exist or that have not been legally recognized by a state/province or a national government?

*Comment 13*

**From:** Russell D. James [rjames8@lsu.edu]  
**Sent:** Tuesday, December 04, 2007 9:52 PM  
**To:** Boles, Frank J.  
**Subject:** FW: RMRT comments solicited

Here's another!

**From:** [Name withheld at commenter's request]  
**Sent:** Tuesday, December 04, 2007 1:51 PM  
**To:** rjames8@lsu.edu  
**Subject:** RMRT comments solicited

Russell,

I read the Protocols for Native American Archival Materials. It is very good and comprehensive however, I wish there were more references to records management. Or a nod to the fact that permanent records sometimes are only permanent because of a retention schedule. I often think that some archivists really pay no attention, or have no education, in records management. They are unaware of the life cycle of a record and the fact it is very pertinent to their work. Unfortunately, as I read the protocols, I felt the same thing: that records management is once again not considered part of the archival world. I find two vague references to records management. One on page 4 and one on page 17. Perhaps there are more that I just missed.

The Protocols are a very good document and greatly needed. However, the absence of records management concepts in relationship to archival records is an error that I'd like to see corrected.

How you received many comments so far? Feel free to do what you wish with these comments.

Thanks,

[Name withheld at commenter's request]

*Comment 14*

From: Dr. Peter Whiteley [whiteley@amnh.org]  
Sent: Wednesday, December 05, 2007 9:53 AM  
To: Boles, Frank J.  
Subject: Comments re Proposed SAA Protocols

Archives are libraries, containing the precious raw material for the development of historical understanding - within and across disciplinary boundaries, and within and across cultural boundaries. While it is entirely appropriate to guard against commercial exploitation of religiously sensitive materials, the present protocols are questionably protectionist, and suggest the possibility that ordinary historical and ethnohistorical scholarship -- as well as ordinary archival access by Native and non-Native people -- may be restricted, prevented, or censored.

While Native American communities are sovereign entities vis-a-vis the national government, that sovereignty is limited ("dependent") in both law and fact. Most Native Americans are also U.S. citizens (many are veterans), whose rights are (at least in law) protected like those of other U.S. citizens. The protocols appear to assume a single voice and a single interest in Native communities, rather than a diversity and multiplicity of perspectives and interests (a good example of which are the greatly varying -- indeed, legally adversarial -- perspectives of Native Hawaiians on the Bishop Museum repatriation of archaeological materials).

If archival materials are to be "repatriated," and if access to other archival materials is to be restricted, does this mean that some Native Americans (presumably appointed officials in Tribal governments charged with adherence to the policy) will prevent other Native Americans (women? members of minority clans? members of an opposing faction or religious denomination? non-members of the "right family"?) and non-Native Americans from seeing records they might, as American citizens, expect to have rights of access to had the materials not been repatriated or restricted? What about people of mixed Native and non-Native descent who are not enrolled members of Federally or State-recognized Tribes? Will their access to parts of their own history be eliminated? The implications seem to oppose the spirit of constitutional protections for all U.S. citizens.

Most archival material on Native American histories and cultures, by its very nature, is hybrid: it required a hearer as well as a speaker, a record maker as well as a reporter. The protocols seem to set up a limited view of the inferred conditions, intentions, and rights of the speaker/reporter, without acknowledging the intentions and rights of the (frequently though by no means always non-Native) hearer/recorder. The apparent blanket assumption that the making of those records was illegitimate and exploitative is highly questionable; in many instances, willing participation by Native reporters derived from an interest in cultural preservation for posterity: are their historical voices and interests to be denied legitimacy? The presence, for example, of Native anthropologists in the late 19th and early 20th century in making some of those records (e.g., Francis LaFlesche, J.N.B. Hewitt, Arthur C. Parker, Ella Deloria, William Jones) is one piece of evidence to that end. In instances where individual Native reporters knowingly departed from tribal custom in revealing aspects of tradition, it is well-known that some did so as intellectual critics -- oral scholars and objective appraisers of their own traditions. As well as presuming no diversity of opinion within Native communities, the protocols appear to project a stereotypic insentience and lack of reflexivity to Native thinkers and actors of the past.

Histories and cultures are, of their very nature, contested ground. Denial of access to historically valuable materials may promote or enable certain points of view but it will prevent or block others. These protocols seem profoundly opposed to the freedom of intellectual inquiry that is the very basis of an open society. Moreover, lest we forget, the constitutional origins that underwrite that openness, and our very democracy -- values cherished in Native and non-Native quarters alike -- may indeed have found inspiration in the principles of the Hodenosaunee Confederacy.

Peter M. Whiteley  
Curator of North American Ethnology  
Division of Anthropology  
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*Comment 15*

**From:** Thiesen, John [jthiesen@bethelks.edu]  
**Sent:** Wednesday, December 05, 2007 12:48 PM  
**To:** Boles, Frank J.  
**Subject:** Comments on Native American protocols

This document was of great interest to me, since our small church-denominational archives has several significant Native American collections (Hopi and Cheyenne) and I've been fairly actively reading over the years in issues related to the ethics of dealing with such materials. Our collections result from the work of Mennonite missionaries starting in the 1880s, working with Cheyenne and Arapaho in Oklahoma and Montana, and Hopi at Oraibi in Arizona. The Hopi materials, particularly the photos and ethnographic notes of H. R. Voth, are particularly sensitive, since there is quite a bit of ceremonial material and the Hopi Cultural Preservation Office would really be happier if these materials simply never existed.

With that background, here are my comments after reading the new protocols document:

- My main questions or criticisms revolve around the idea that the protocols assume that the boundaries defining various categories are sharp rather than fuzzy. First example: the document is based on the idea that there are Native American archives/groups/interests and that is contrasted with mainstream/American archives/groups. My perspective is that the picture is more complicated—many Mennonites would see themselves as having a distinctive identity (with various ethnic and religious components) other than simply mainstream. So it feels to me like there are more categories than just the binary opposition of Native American vs. mainstream.
- A second boundary example: The protocols seem to assume that a particular archival collection or series could be clearly bounded as Native American material or not. But the kinds of collections we have would be much fuzzier, reflecting activities of missionaries, of Native Americans who interacted with them, and of the broader Native American local communities who might have been indifferent or opposed to them. Even a single photo, for example, might well show mission activities and something of Native American traditional knowledge.
- A third boundary example, sort of: the protocols seem to assume that Native American communities are united in how they want to deal with archival materials, but my experience is that there are a lot of conflicting interests within Hopi and Cheyenne communities (the two with which I've had some contact) about issues of traditional knowledge, historical materials, etc. Within each of these groups one might find traditionalists (of various kinds), Christians (Mennonites and others), secularists, Mormons, etc., and these people have diverging interests with respect to the archival collections.
- Overall, because of these various fuzzy categories, I would worry that complying fully and literally with the protocols would end up giving someone else veto power over telling parts of our own (Mennonite) story.

I'd be interested to hear your responses, if you have time.

John D. Thiesen  
Archivist and Co-director of Libraries

Mennonite Library and Archives  
Mennonite Church USA Archives  
Bethel College  
North Newton, KS

<http://people.bethelks.edu/jthiesen>

*Comment 16*

**From:** Chip.C-C@dmns.org  
**Sent:** Monday, December 10, 2007 3:08 PM  
**To:** Boles, Frank J.  
**Cc:** Kris.Haglund@dmns.org; Stephen.Nash@dmns.org;  
Kelly.Goulette@dmns.org  
**Subject:** Comments on Protocols

Dear Dr. Boles,

Below is a digital copy of the letter we are putting in the mail today. Please do let us know if you have any questions or comments.

Sincerely,

Chip

Chip Colwell-Chanthaphonh, PhD  
Curator of Anthropology & NAGPRA Officer  
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December 10, 2007

Frank Boles, PhD  
Central Michigan University  
Clarke Historical Library  
Park 142  
Mt Pleasant, MI 48859

Dear Dr. Boles,

We write in response to the Society of American Archivists (SAA) Council's request for comments on the "Protocols for Native American Archival Materials" (hereafter the Protocols). As an archivist and a curator at a major regional museum caring for important Native American archival materials, we strongly urge the SAA to endorse this important document.

We understand the Protocols to be a more detailed, even procedural, document that resonates with and reflects the spirit of the SAA's Code of Ethics for Archivists. The Protocols advance the positive

changes that many archives and museums have already begun to undertake. For example, the Denver Museum of Nature & Science first established its Native American Resources Group in the early 1970s to provide guidance for more culturally sensitive and accurately documented collections. More recently, we have revised our collection policies, plans, and programs to be more explicitly engaged with Native American communities. The American Ethnology Collection's four guiding principles are now respect, reciprocity, dialogue, and justice, and the Library and Archives Collection policy will soon point to the Protocols for guidance on best practices.

We interpret the Protocols, at base, to effect two kinds of collections: new collections and existing collections. For our institution, we now strive to only accept those archives that can be widely disseminated with the general public. That said, we can envision special partnerships with tribes in which archives will be housed at our institution, based on our responsibility to preserve archival records while at the same time striving to be culturally sensitive. The Protocols provide an excellent mechanism to guide conversations at the outset with potential donors, as well as Native American communities that have a vested interest in the collections.

For existing collections, the key question is: should they stay or should they go? The answer, or rather answers, to this question will need to be worked out on a case-by-case basis. But again, the Protocols will be exceedingly useful in thinking through procedures—and arriving at sound decisions that, fundamentally, fulfill our professional obligations and at the same time are respectful to Native publics. One unresolved ethical dilemma for us concerns how to deal with problematical materials that have already been made public. Should these now be restricted? And if so, under what terms, with what goals in mind? Our institution aims to establish formal policies on this and other complex questions, in consultation with tribes and the Museum's NARG committee, using the Protocols as a guide.

Another dilemma that our institution needs to address is the ethical and legal difference between institutional records, which the organization itself produces in its daily work, and donated and acquired documents. We would encourage the SAA, should revisions of the Protocols take place, to address this difference more explicitly.

We concur with the Protocol's call for institutions to recognize the sovereignty of Native American tribes and nations, as well as the document's broad thinking about intellectual property issues. We believe it would be useful to have an annotated database of all laws, treaties, conventions, etc. that address, in the broadest sense, Native American intellectual property and sovereign rights.

We recommend that the SAA encourage archives and museums to create Native American advisory groups to help facilitate dialogue and to help guide culturally sensitive policies and program. This will allow each institution to truly make the Protocols a living document, addressing global problems with local and workable solutions.

Ultimately, we deem the Protocols to be a thoughtful and careful document that accomplishes what it sets out to do: it is not a suite of absolute laws, but a vehicle to think about best professional practices. It has spurred us to begin discussion on these important issues, to contemplate how to "foster mutual respect and reciprocity." These are the key principles we admire and believe should lay the foundation for the future of professional archivists and museum professionals.

Sincerely,

Kristine Haglund  
Archivist & Chair Bailey Library & Archives  
Denver Museum Nature & Science  
Chip Colwell-Chanthaphonh, PhD  
Curator of Anthropology  
Denver Museum Nature & Science

*Comment 17*

Kathleen T. Burns, Archivist  
Beinecke Rare Book and Manuscripts Library, Yale University  
P.O. Box 208240  
New Haven, CT 06520

December 14, 2007

Task Force on Native American Protocols Review  
Society of American Archivists

Dear Task Force:

I am writing in response to your call for comments on the Protocols for Native American Archival Materials. I have great interest and enthusiasm for the Protocols as a practicing archivist who works with American Indian collections in the Yale Collection of Western Americana. I am Nlaka'pamux/Scots-Irish, and am one of the first graduates of the University of British Columbia's First Nations Core Curriculum program. A number of the drafters of the Protocols are personal friends, and others are respected colleagues who I have worked closely with as a member of the American Indian Library Association. The aim and purpose of the Protocols—to build mechanisms to protect and repatriate American Indian archival materials, to create respectful relationships between non-Native institutions and Native American communities—are goals I whole-heartedly and thoroughly support, as both a First Nations advocate and an archival professional.

The Protocols are a wonderful starting point for conversation between two historically estranged communities, and a progressive step towards action. I applaud the Society of American Archivists for taking formal steps to ask archivists across the country to consider the document and its implications, and for urging membership to reflect on the Protocols. This alone is a tremendous first step, moving these issues firmly into the profession's discourse.

However, I have significant concerns about the Protocols themselves, fearing that the guidelines create unreasonable expectations for non-Native repositories to fulfill, creating a situation which will ultimately strain relations between Native peoples and these institutions further when the best hopes of the Protocols cannot be achieved. The Protocols do an excellent job of describing the complexity and richness of tribal communities, and the importance of reaching out to the appropriate tribe(s) culturally affiliated with a collection. However, without a formal apparatus in place to fund this bridge-building effort and assist with identifying and communicating with tribes for each manuscript and archival collection under the Protocol's purview, it is highly unlikely that any repository—even one as well-funded as the Beinecke, and certainly not small underfunded historical societies—would be able to take on the administrative and personnel overhead that would follow compliance with even a portion of the guidelines. It would be disastrous for SAA to endorse Protocols that non-Native institutions would be unable to enact, raising the expectations of tribal communities about what they

can expect from non-Native archival repositories while simultaneously ignoring the unreasonable burden on institutions.

The Protocols seek to create positive relationships between Native communities and non-Native repositories as well as recognize Native American rights over Native American archival materials, mirroring and informally extending the 1990 Native American Graves Protection and Repatriation Act. The success of NAGPRA is that it is a legislated federal act that created a formal infrastructure, supported by the appropriation of millions of dollars of funding from the President and Congress. NAGPRA created a legal mandate for institutions to comply, and a massive infrastructure to assist both tribes and institutions in their efforts. Without a similar centralized and well-funded infrastructure, it seems unlikely that the Protocols could successfully pattern themselves on NAGPRA.

Before endorsing the protocols, I would urge that the Society of American Archivists work with the drafters of the Protocols, members of SAA's Native American Archives Roundtable, the American Indian Library Association, major institutions holding Native American archival materials, as well as IMLS and other potential funding sources, to begin to formally examine how a centrally funded clearinghouse and resource center might be supported in order to assist tribes and non-Native institutions. Without such architecture in place, I believe an endorsement of the Protocols would be akin to an empty promise to Native peoples.

I would like to end by mentioning that it has been incredibly hard for me to write this letter. I would have liked to be able to completely endorse the Protocols, without reservations or concerns. I do endorse what the guidelines stand for. But having tried to implement them at my home institution, and struggled personally with lack of institutional support—even when directing supervisors and other staff to the Protocols—I can only note that without an incentive or mandate, without auxiliary assistance in the form of a centralized clearinghouse, the Protocols are still a starting point for discussion and action.

Thank you for giving me the opportunity to share my thoughts. I appreciated this opportunity to address Task Force members.

Best wishes,

Kathleen T. Burns (Nlaka'pamux)

*Comment 18*

**From:** Peter Hirtle [ <mailto:pbh6@cornell.edu> ]  
**Sent:** Friday, December 14, 2007 11:10 AM  
**To:** Boles, Frank J.  
**Subject:** Native protocols document

Frank:

The Working Group on Intellectual Property is submitting some comments on the Native American protocols which I endorse, but I have some more general comments that I can share with you.

Like your task force, I found the protocols to be a valuable introduction to the archival approaches of indigenous groups, and thus are an important learning tool. Western archivists may not want to adopt the archival principles that are followed in the sovereign tribal areas, but all archivists could benefit from, as the protocols suggest, examining "assumptions about established library and archival practices which [sic] directly contradict Native American principles and practices" in order to determine if Western practices should be in any way altered. If, as the protocols suggest, "Traditional knowledge systems possess equal integrity and validity," the implications for Western archival practice could be immense.

I did find that at times the language in the protocols is demanding and worry that it may alienate archivists who may not understand (or be sensitized to) the issues raised in the protocols.

Here are some examples of assertions found in the protocols that may be true for Native American archival practice, but are not currently accepted by Western archivists or may not be true under our operative legal environments. Western archivists may wish to learn more about these issues, discuss them, and may even come to accept them, but their assertion in the protocols now could be viewed as confrontational, not instructive:

- "Libraries and archives must recognize that Native American communities have primary rights for all culturally sensitive materials that are affiliated with them."

What does this mean? Could the protocols themselves be considered to be culturally sensitive materials - and therefore I have to defer to Native American interpretations of them? What does "affiliated" mean? Is a history written by our campus Iroquis historian "affiliated" with them?

- "Traditional knowledge systems possess equal integrity and validity."

This is an approach that I would be willing to learn about and discuss, and I may eventually accept it. But I wouldn't accept this statement if we were discussing creationism versus evolution, and I cannot now accept this at face value.

- "In all these cases the rights of a Native American community must take precedence."

Here is the key question - the one they raise on page 8, and which needs to be discussed. How do you balance respect for tribal wishes with the traditional archival desire for openness and equal access to information?

- "Privacy rights extend to groups in some situations."

This group might like to see privacy rights extend to groups, and there may be situations in which it is justified, but I am not sure that current Western law reflects that position. We would not ask Native American jurisdictions to abandon their sovereign practices in order to defer to Western approaches.

- "Some items, such as a photograph of a sacred ceremony, or object, or culturally sensitive documentation of a burial, should not be preserved forever or may need to be restricted or repatriated to the culturally affiliated group."

This statement is staggering in its implications for 3rd party archival practice. If the photograph was somehow acquired illegally, there may be an argument. But what if the photograph was taken by a western photographer and with the approval of the tribe and/or chief at the time? What about the long-standing archival practice of trying to remove or limit restrictions, in spite of the objections of family members? (I can't even discuss the idea that we would allow archival material to be destroyed...) What about the recognition that sometimes it is important to preserve archival records even if they were generated under extreme conditions (I am thinking, for example, of the Stasi records in the former DDR)?

#### Conclusion

You write that SAA has been invited to "endorse" the protocols. I do not feel that at this point Western archivists can accept all of the guidelines for libraries and archives as acceptable "best practices" for the management of Native American materials that have entered their collections. I would hope that the Native American protocols group would be willing to edit the document to ensure that it opens a dialog, rather than trying to impose practices at odds with fundamental Western archival principles. Most of all, I am appreciative of their efforts to raise within our community the important issues surrounding the management of the records of indigenous populations. I have much to learn, and they are helping.

Best,  
Peter

-----  
Peter B. Hirtle  
Member, SAA IP Working Group  
Technology Strategist and  
CUL Intellectual Property Officer  
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*Comment 19: Received via email on December 16 from Richard Pearce-Moses*

The *Protocols for Native American Archival Materials* offers the Society of American Archivists an important opportunity to demonstrate its commitment to diversity. Over the past several years, several presidents of the Society, including myself, have worked hard to make Native Americans feel welcome and equal members in the profession.

The response of Council is of critical importance. First, it should set the tone for discussion of the Protocols. Second, it may be essential to demonstrate that the Society respects Native Americans' concerns in a way that serve as essential counterpoint to some intolerant statements that will almost certainly – and regrettably – be made by individual members and others.

Affording the Protocols respect and tolerance does not mean accepting them part and parcel. To the contrary, we can demonstrate our acceptance of Native American archivists as equals in the profession by engaging them in sincere, honest discussion. Failure to take those differences seriously will almost certainly be seen as simplistic at best and patronizing at worst.

The Protocols address a wide range of complex issues. They challenge some of the fundamental assumptions of the Euro-American archival tradition, often because they challenge non-Native understandings the concepts of privacy, property, tradition, and knowledge. The Protocols call on the profession to “recognize that the conditions under which knowledge can be ethically and legally acquired, archived, preserved, accessed, published, or otherwise used change through time.” To do that may require that centuries of tradition (especially legal tradition) be changed.

Given the Protocols' complexity, I believe it will be very easy to misinterpret them. I see a number of likely stumbling blocks. I trust the leadership of the Society will recognize and address these issues diplomatically. However, I encourage the Society to address those issues explicitly with members to help frame the discussion and minimize intolerant statements.

Possibly the first challenge results from the Council being asked to “endorse” the Protocols. What does endorsement mean? It's a loaded word because it's open to so many different interpretations. I do not believe that SAA can encourage the profession to adopt the Protocols as they stand. However, I believe that there is much good in the Protocols that should be recognized as worthwhile. I hope that SAA will endorse the spirit of the Protocols and encourage examination of archival practice in light of the Protocols' ideas.

The Protocols call for dialog and discussion. They were not intended to be demands. Unfortunately, some of the language in the Protocols is prescriptive, rather than suggestive. As a result, archivists with Native American materials in their collections may become defensive. I believe this language highlights particular issues about which Native Americans are very concerned. I encourage SAA to carefully review the Protocols for language that runs counter to dialog and to encourage the First Archivists Circle to consider revising the language or developing a codicil that addresses these issues.

Discussion of the Protocols is complicated because it is very easy to take portions out of context. I hope that SAA will take the lead in discussing the spirit of the Protocols. Some points that I think are particularly important include:

1. First and foremost, a recurring theme within the Protocols is that archives with Native American materials should build relationships with the tribes those materials document. This recommendation is nothing more than good outreach. The Protocols are realistic in that they recognize that it takes time to build a trust relationship.
2. The Protocols note, “The recommended best practices will need to be interpreted and applied by each collecting institution and community.” The authors of the Protocols recognize that different repositories work under different mandates and missions. The Protocols are practical, calling for repositories to do what they can.
3. Archivists should remember that any given recommendation in the Protocols is not necessarily intended to cover all tribal materials. Calls for restricted access and repatriation are directed to these very sensitive materials, not the whole of tribal collections. The Protocols call for archives and tribes to work together so that, through that relationship, the archives appreciate which materials the Tribes are concerned about.
4. The Protocols are not directed solely at non-Tribal archivists. The Protocols should be lauded for recognizing that the Tribes play a role in the care and use of Native American materials. Tribes are expected to be responsive to requests for information from other repositories. That includes tribal archives with archival materials relating to other tribes.
5. The Protocols can be a great benefit to archives. By building strong relationships with tribes, the repository can solicit significant information to place Native American collections in context. This additional information enhances our understanding of the cultures and past by bringing in additional points of view.

I hope that the discussion of the Protocols will not focus on some of the more extreme guidelines that run counter to Euro-American archival tradition, such as restricting access or repatriation. Those guidelines are a very small part of the whole and should not be allowed to distract from the many areas of common ground. Although the Protocols argue that such actions are appropriate in some cases, these actions would likely be relevant to only a small portion of a repository’s holdings. Further, the Protocols, as noted above, recognize that such actions not appropriate for all repositories.

Discussion of the Protocols is a wonderful opportunity to continue strengthening the relationships between SAA and the Native American archival community. I suggest focusing first on those guidelines where agreement is easy to engender trust on between all sides. Once that bond of trust is in place, we can begin to tackle discussion of the more difficult issues.

Richard Pearce-Moses (personal account) [pearce-moses@cox.net](mailto:pearce-moses@cox.net)

Dear Frank Boles, dear SAA Council

Dec. 16, 2007

In response to your call for comments on the proposed NA protocols, I am hereby sending you my brief comments.

Let me first explain that I wrote my PhD dissertation about Native American representations and museum objects at the Field Museum of Natural History, Chicago and completely sided with Native American positions regarding the Native American Graves Protection and Repatriation Act. At the time, I was up to date with the museum object related debate and the Native American and professional literature. I also participated at the SAA Workshop, Ethnographic Archives, Communities of Origin, and Intangible Cultural Heritage, Washington DC., August 2, 2006, and had heard then already about the proposed NA protocols. Consequently, I included a discussion about the upcoming Native American protocols in a conference paper at the annual conference of ICA-SUV, Iceland 2006, and argued that we better be very concerned and careful in considering and responding to this effort.

Given that background, I want to remind SAA that this particular protocol was prepared by a non-SAA body and SAA therefore cannot demand any changes to its content nor should it propose adopting it as guidelines or protocols. Because we 'normal' SAA members have been given so little time to consider, study, and comment on the protocols, I also do not have the time for a line-to-line rebuttal or analysis. But I would like to make just a couple points and, given the lack of time, apologize if my writing is less than polished.

- (1) The protocol makes arguments by association, i.e., by citing and relying on museum related literature they implicitly create the impression that Native American created objects are identical to documents written about Native Americans by Euro/Euro-American researchers and then they argue that agreement exists about how to treat both. No such agreement exists nor much literature that actually addresses the issues of ownership and the content of such documents.
- (2) Their main argument completely undermines current copyright laws and definitions of who is an 'author' of a document or record. And related to this, what would happen to our donor agreements with the original researchers and authors if we were to agree to the protocol?
- (3) Their definition of cultural patrimony includes almost everything written about and in the US and will grant special access and ownership control over all these types of materials.
- (4) As the Australian example has shown (Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services, [www.cdu.edu.au/library/protocol.html](http://www.cdu.edu.au/library/protocol.html)) the protocols have been used to limit access to documents to particular tribes or individuals after intertribal political fighting and to dictate that e.g. female archivists are not allowed to handle and manage certain types of records. This not only raises the question of uniform archival practices but also about who represents a particular Native American community at any point in time given the huge political debates and disagreements within each and between their on and off-reservation, their traditionalist and modern members.

- (5) While universities have human subject review boards for research and many tribes legitimately have research protocols for scientists wanting to carry out research on the reservation, it is impossible – as suggested by the protocols- that archivists can enforce, supervise, or track any such research protocols vis-à-vis researchers as suggested by the protocols.
- (6) How will we archivists differentiate some or all of these practices from censorship as usual which as a profession we oppose.

Assuming SAA and the American archival community would go along with such a protocol, how are we going to respond to the next group, let us say a religious group, which will put forth similar arguments as to the sacred, restricted, religious nature of records and demand similar rights and restrictions – in general and not just for their own private archives?

I am delighted that Native American nations are encouraging and developing their own archives and their own practices and I am encouraged that more Native Americans are joining the archival professions. The issues raised are interesting ones and discussion about them can be fruitful. However, I also urge the Council to (1) state clearly that this is forwarded by a non-SAA body and can thus neither function as guidelines, protocols or rules nor be amended; (2) to salute the effort but to reject the protocols.

Regards,  
Susanne Belovari, PhD  
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Digital Collections and Archives, Tufts University  
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**University Library**

University Archives  
Room 19 Library  
1408 West Gregory Drive  
Urbana, IL 61801

December 16, 2007

Central Michigan University  
Clarke Historical Library  
Park 142  
Mt Pleasant , MI 48859 USA  
via e-mail to: [boles1Fj@cmich.edu](mailto:boles1Fj@cmich.edu)

Dear Frank:

We have been mulling over the *Protocols for Native American Archival Materials* for the last two weeks or so, and the more we have looked at the document and the more we have thought about it, the more we believe that Council should not "endorse" the document as it stands. Instead, Council should use the occasion as a call to accountability to engage in an effective dialogue on the many serious issues of concern to Native American archivists and the Native American communities.

The document, as it is currently drafted, is a good first step for developing greater sensitivity, understanding, and revised practices for the profession when handling Native American archives and collections. However there is still much work that must be done before such a document could serve the profession, SAA, and the Native American communities as a set of guiding principles for how to preserve and provide access to sensitive cultural materials. It is almost certainly not in everyone's best interest to provide a point by point evaluation of what does and does not work in this document presently. Such an approach would clearly blur the important distinction between the forest and the trees of this important discussion.

There are many individual points within the document that do not provide a solid basis for policy or action (e.g. the idea it might be possible for knowledge to be covered by current U.S. copyright law), and this suggests to us that as important as the document is for opening dialogue, it is not ready to function as protocols or guidelines. Furthermore, since the document is not the creation of an SAA entity, we do not believe that Council is in a position of sending it back to one of its constituent group and say that x, y, or z revisions would make it something SAA could adopt. All of this points to the fact that its most valuable and feasible function is to lay the basis for expanded dialogue.

Thus, the appropriate agenda item for the winter 2008 Council is to consider whether the document can be used as it is to begin a dialogue on the need for greater sensitivity to a broad array of Native American concerns or whether a different document, one created by an SAA

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entity would be a more effective tool for framing dialogues. Either way, dialogue must precede any outline of guidelines for practice.

Taken head on (or in any fashion that can be written down) a number of the concerns and perspectives articulated here are irreconcilable with principles SAA has been articulating for decades, often in a spirit of advocacy for open records, accountability of government, and promotion of citizen rights. Before offering further comments, we believe, however, it is important to identify some fundamental principles that guide our thinking and which we think might be of value to the profession as a whole in working on the issues.

#### GENERAL PRINCIPLES

1. The *Protocols for Native American Archival Materials* is not an SAA document, and thus Council is not in a position to call for specific revisions and send it back for amendments. Council needs to recognize that it is essentially in a position of “take it or leave it,” which certainly is not a comfortable one. However, from the standpoint of recognizing the limits of SAA’s authority, Council should not shy away from saying it cannot endorse the *Protocols* as they have been presented. At the same time, the Native American Roundtable is an interest group recognized by Council, and its concerns and interests are legitimate areas for Council attention and action.

2. The document is titled *Protocols* which the dictionary defines as “the official procedure or system of rules governing affairs or state or diplomatic occasions; the accepted or established code of procedure or behavior in any group, organization or situation.” The document includes sections of background on issues of concern and guidelines for action by Native American communities and by archives and libraries. The logic for this structure is reasonable enough, but given ambiguities in the document and given the unfortunate lack of awareness in the non-Native archival community, it seems quite premature to move to protocols or guidelines. Much more dialogue between Native and non-Native archivists will be needed before rules, guidelines, or protocols can be laid down.

3. Any sensitive reading of the document and any respectful approach to both Native and non-Native communities makes clear that there are fundamental differences in the metaphysics of the Native and non-Native or Euro-American communities. While mutual respect between the two can provided a basis for improved relations, honest participants in the dialogue need to accept that some of these fundamental differences can never be resolved. It is in these circumstances where a commitment to respecting differences will be most needed.

4. Historically, the Euro-American cultural resource community has not been sufficiently sensitive to the legitimacy of the Native perspective when it has been at odds with the

Euro-American view. In some cases, the non-Native community has been disrespectful in the distant and not-so-distant past. Clearly, instances where Native tribes, nations, and bands have faced access barriers to use of their own materials or where repository descriptive practices have included degrading terminology should be addressed promptly and thoroughly.

5. The kinds of cultural materials, the types of actions Native and non-Native communities want to do with the materials, (or have done in the past) vary widely from material type to material type and from time to time. However, the *Protocol* seems to be concerned about providing against the most egregious, most insensitive actions, for the most sensitive materials. Both communities need to recognize that successful dialogue and negotiation will focus on the fact that there is a range of sensitivities such that all practice does not need to be driven by those actions appropriate for the most sensitive. Thus, rules or guidelines are not going to be terribly effective if designed through a “flat” rather than “faceted” approach. Thus, when guidelines are eventually developed they will need to acknowledge that some kinds of materials and some kinds of actions demand the utmost of protection whereas some others do not.

6. SAA Council needs to remember that whatever actions it takes for the specialized area of Native American materials may constitute a *de facto* if not *de jure* precedent for other kinds of cultural heritage resources in archives. Thus, when it does take action on behalf of a system of respect for Native American materials, Council needs to make sure that the position cannot preclude its ability to serve as a strong advocate for the principles of access and preservation on which it has distinguished itself so well over the years. For example, in the post 2001-terrorist attack world, the Society needs to be able to forcefully advocate against external parties from purging or closing off access to archival material.

#### SPECIFIC OBSERVATIONS ON THE *PROTOCOLS*

For initiating a dialogue, this is an effective provocative piece. But as "protocols" i.e., as guidelines or a code, we think it is problematic. We do not see how the profession can simultaneously educate its members and repositories about the philosophical issues here and at the same time issue guidelines when there is so limited a base of understanding what these issues are and why we should be paying attention to them. What we would like to see Council do is find a Soloman-like solution which would use the sensitivities expressed in the document (and behind some of these concerns) as a general expression of “matters of professional concerns to archivists when dealing with Native materials.”

This document seems to be very much a committee-project trying to reach consensus on many areas where it also suggests that there is range of opinions even within the Native communities. This was certainly in evidence at the quite interesting and related sessions at the 2006 Washington meeting. (Session 201 “When Technology and Traditions Collide: Respecting the

Cultural Traditions of Native American Collections” and Session 709 “Native American Protocols for American Libraries, Archives, and Information Services”). As such, while it is good at reflecting that there can be range of opinion, there is great difficulty in coming to firm policy or protocols in such an environment.

The way the *Protocols* presents themselves suggests that it is a finished document we are to “take or leave it” as a whole, but as document reads now, it is not ready for this type of decision. On the one hand it presents some troubling conclusions and precedents for handling all sorts of materials in archives and on the other hand it raises alternate perspectives and concerns that demand more sensitive consideration by non-Native archivists (e.g., adoption of the protocols would make it very difficult for us to defend our retention of collegiate fraternity rituals which presently constitute a useful research tool that can be managed via a restricted access policy). As it is written now many crucial preservation decisions will be made without any clear guidelines as to how/when/why/who will have the power to make these decisions. For example, it would appear that the protocols would provide any native American with the power to request the closure of Native-American and related Native-American archives with little discussion with non-Native archivists. While this inference is troubling, we do hope Council will ask the creators of this document to continue their ground breaking work in order to help provide clearly defined guidelines for how decisions can and will be made.

Overall, we believe that more good could be accomplished by the groups involved creating a document to educate people about the cultural sensitivities that exist with these kinds of materials rather than trying to create a sequence of actions to deal with each of many different types of materials from many different kinds of groups. There are so many different possibilities that it is hard to see how a set of actions that appear geared for, or conceived in relation to, the most sensitive materials from known, readily-identifiable successor nations, can apply as broadly as the document attempts, for example, when the creators are unknown and unknowable.

The *Protocols* language seems to be overly broad, and it is very ill-defined on many key concepts. For example, the term 'culturally sensitive' is very slippery both in its dispositive use throughout the document and the vagueness of the glossary definition. The document seems to leave the concept open, so that potentially anything could be defined based on the standards of a community or even individual within it. Thus we get a set of concepts that sound progressive in the abstract but which could be extremely problematic if taken to their logical conclusion. In the end, the document always sets up the Native community as sole arbiter regarding major decisions. Indeed, the ability of the document to support an open dialogue is not helped by statements such as “In all of these cases the rights of a Native American community must take precedence” or “. . .Native American communities have primary rights for all culturally sensitive materials that are culturally affiliated with them.” Certainly, the rights of native communities are important, but if the protocols are really supposed to support a dialogue and coming together, it

seems highly counterproductive to suggest Native rights trump all other considerations in all circumstances! That said, there are two further overarching issues that stand in the way of the document being useful as guidelines for action.

First, the document does not sufficiently distinguish practices or recommendations for objects and documents created by Native communities from those created by non-Native individuals and institutions. Related is also the impression one obtains by reading the entire document that unlike NAGPRA the document does not distinguish between objects from the Native community and documents about them.

Second, as much as we can appreciate the differences in the metaphysics, ways of knowing, world views, and concepts of property in Native cultures, both non-Native and Native American archivists must operate within the legal framework of U.S. law. That is, while concepts of community property may inform and inspire how Native cultures have arisen and developed, the fact is that the laws that apply throughout the universe in which American archives operate are based on notions that regard individual and personal property as pre-eminent. Insofar as archivists are part of the “cultural heritage community,” there are many general policy concerns on which archivists in general and SAA in particular have stepped forward to advocate for the public and general interest as opposed to private concerns. Over the past 10 to 15 years, for example, SAA has steadily advocated for broad general interest in the copyright arena, distinctly in opposition to the rapidly encroaching assertions of private property interests on the part of “content owners.” Unfortunately, despite the archival profession’s general interest in serving humankind as a whole, the trends we are facing in these areas are very much against assertions of community over private interests.

A further serious matter that must be considered before SAA could embrace the *Protocols* as guidelines for action is the effect that so doing could have as a precedent for other communities of interest to come forward and assert their “community concerns” with materials we have in archives. In particular, we believe that adoption of the protocols could weaken the position of SAA as well as of archivists in general when approached by either religious groups or national security officers to close off access to materials in our repositories. Since the 2001 terrorist attacks SAA, along with its colleagues in the library community, have been particularly insistent on the need to guarantee the continuance of the underlying interests of a democratic society in open access to information. Likewise, insofar as many American archives contain substantial quantities of field notes, photographs, datafiles, correspondence, and reports relating to scientific findings documenting issues related to what some like to call the “culture wars,” we believe that adopting the principles in the *Protocols* as guidelines for curatorship could open the door for multiple challenges to many other areas.

All of this said, as a discussion document, the *Protocols* do provide a very good basis for understanding and questioning the cultural and intellectual hegemony that has been implicit in

Frank J. Boles  
December 16, 2007  
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western archival practice for so long. We very much appreciate the opportunity to have our perceptions and views challenged by the document and the opportunity to offer our comments to Council. Should the need arise, we would be willing to provide item by item suggestions and comments on the document.

Sincerely yours,

William J. Maher  
University Archivist Assistant

Christopher Prom  
University Archivist

Scott Schwartz  
Director, Sousa Archives and  
Center for American Music

*Comment 22*

Hi Frank:

I am forwarding this message to you on behalf of the Protocols group.

Best,  
Karen [Underhill]

----- Original Message -----

**Subject:** Protocols for the Archiving of Native American Materials  
**Date:** Sun, 16 Dec 2007 10:34:17 -0500  
**From:** DEAN R. SNOW <[drs17@psu.edu](mailto:drs17@psu.edu)>  
**To:** [archives.protocols@NAU.EDU](mailto:archives.protocols@NAU.EDU), [tobi\\_brimsek@saa.org](mailto:tobi_brimsek@saa.org)

The Society for American Archaeology has only just this weekend become aware of the proposed Protocols for the Archiving of Native American Materials. We note that the comment period has nearly expired and we respectfully request that it be extended so that we can provide input that might be valuable. While we applaud the overall effort, we are concerned that there might be some unintended consequences entailed by some of the provisions. We are eager to help in the avoidance of such problems. We will appreciate an early response to this offer of assistance.

Dean R. Snow, Professor  
President, Society for American Archaeology  
Department of Anthropology  
Penn State  
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*Comment 23*

Dr. Frank Boles  
[boles1fj@cmich.edu](mailto:boles1fj@cmich.edu)

17 December 2007

Dear Dr. Boles,

The Ohio Archaeological Council (OAC) is a private, non-profit, scientific, and educational membership organization whose mission is to promote the advancement of archaeology in Ohio. The majority of our members are professional archaeologists working in private, for-profit cultural resource management firms and private and public sector, non-profit universities, museums, and government agencies, some of which are defined as museums and Federal agencies in the Native American Graves Protection and Repatriation Act (NAGPRA). While few or none of our membership are members of the Society of American Archivists (SAA), many of the institutions with which our members are associated contain archival materials, which are encompassed by your draft "Protocols for Native American Archival Materials." Moreover, all of our members rely on these materials to interpret America's ancient past. Therefore, we see ourselves as important stakeholders in this discussion.

In the spirit of the statement on your website, in which you "...call broadly for comment on the Protocols because the Protocols encompass some significant and substantial changes in archival theory and practice," we offer the following comments, because the changes proposed will profoundly affect the ability of archaeologists to access and utilize the critical information on America's ancient past housed in archives across the United States and Canada.

We note that no archaeologists are represented as contributors to the development of the Protocols and would urge you to seek further comment from archaeologists, historians, and other stakeholders outside of your organization before you formally adopt such "significant and substantial changes in archival theory and practice."

Many of the recommendations contained in this document are worthwhile improvements in the handling of Native American archival materials. A few are worryingly ambiguous and others are extremely problematic.

On page 2, the document indicates that "Institutions and communities are encouraged to adopt and adapt the culturally responsive recommendations to suit local needs." This attitude is commendable on the face of it, but is possibly dangerous, in that it will result in these recommendations being applied in an unequal fashion across the United States and Canada. The application of NAGPRA itself is subject to "revision and enhancement," but only through legal processes.

On page 6, in the section "Building relationships of mutual respect," the document suggests that, "if a Native American collection is out of scope, transfer the collection to the community or the closest archives at the tribe or band's request." Since such an action could remove irrevocably the material

from a publicly accessible archive, the decision making process should include an independent assessment of its historical significance.

On page 8, the document offers an analogy between extant archives of "restricted materials, classified materials, secret materials, or materials that may not be accessed until some future date" and culturally sensitive Native American material that might be "restricted or repatriated to the culturally affiliated group" or even intentionally allowed to degrade. The OAC considers this analogy to be invalid. The examples offered demonstrate that library/museum archives have the operational means to restrict access to certain materials, but they do not provide a justification for doing so in this case. We believe it would be unethical for a library, archive, or museum to allow materials held in the public trust to be indefinitely restricted from the public, surrendered to special interest groups, or destroyed in the furtherance of narrow and unspecifiable ("secret") cultural/religious interests.

On page 8, the document urges archives and libraries to conform policies relating to the access and use of relevant collections to "Native American approaches." In at least one case with which we are familiar, menstruating women were to be kept from certain materials. The OAC regards such a policy as sexist, patronizing, and an outrageous invasion of privacy. If an archive or library attempted to enforce such a policy, it could be subject to legal action. Yet this is the sort of thing that blind conformance to "Native American approaches" conceivably might entail.

On page 10, it is not clear what is meant by the statement that archives and libraries should "rethink the need for 'credentials' from patrons"? Does this mean that if access to a collection were restricted to "Native Americans," then anyone who identified themselves as a Native American would be allowed access to the material? NAGPRA regulations require that museums and Federal agencies interact with federally-recognized tribes and nations. Consultation with and subsequent repatriation to groups that are not federally recognized (i.e., state recognized tribes or groups) could create difficulties in subsequent collaboration and consultation with those groups that are federally recognized.

On page 12, the examples of "kinds of archival materials" that "may be culturally sensitive from a Native American perspective" include "human remains," "archaeological objects (especially if from burials)," and "archaeological data." The tone of this document suggests that access to all such material reasonably might be restricted by archives, libraries, or museums. NAGPRA requires that groups claiming human remains for repatriation must be able to demonstrate that they are culturally affiliated with those remains. These protocols at least should require a similar demonstration of relationship before public access and institutional control over archival materials are relinquished. Regardless, the idea that archaeological data, reports, and photographs (usually funded with public money) routinely could be sequestered and even removed from publicly accessible archives is deeply disturbing. Such a policy could be devastating to disciplines such as archaeology and history.

On page 13, in the section titled "Providing Context," it is suggested that archivists "remove offensive terms from original titles and provide substitute language (e.g., replace "squaw" or "buck" with [woman] or [man])." While it is clear that such terms are offensive at this time to many (including many non-Native American peoples), actually changing the wording of documents that are a product

of their time is reprehensible. This type of editing applies current-day morals and standards to documents that were created in the past. Rather than participating in this kind of censorship, it is our opinion that the archive should “add explanations of derogatory words to original titles (e.g., [title created by xxxx in xxxx year]).” In this way, the document will continue to exist in its original format, which is a part of the purpose of archiving a document.

The OAC commends the SAA for its work of consulting with Native Americans regarding the materials, which they regard as sensitive, held in archives across the United States and Canada. Archaeologists, museum curators, and Native American representatives have had nearly 20 years of working with each other during the implementation of NAGPRA. This law, while not considered perfect, has provided a way for the people and institutions that are integrally involved in preserving the past for the future to develop mutually beneficial partnerships with Native Americans. The Protocols are a commendable step in the same direction, but should be considered carefully prior to their implementation. Implementing the Protocols as currently written could result in the irreparable loss of much hard earned knowledge about ancient and historic Native American cultures. The OAC urges the SAA not to follow such an extreme course without undertaking more extensive consultation with stakeholders, such as archaeologists and historians. Making the changes proposed without this consultation will hurt all future attempts to reconstruct or understand entire past cultures, thus affecting the shared heritage of humankind.

Sincerely yours,

Lynn M. Simonelli, M.A.  
President, Ohio Archaeological Council  
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[www.ohioarchaeology.org](http://www.ohioarchaeology.org)

*Comment 24*

From: Jordan Patty [mailto:pattyw@cua.edu]  
Sent: Monday, December 17, 2007 10:57 AM  
To: Boles, Frank J.  
Subject: Native American Protocols

I am submitting my comments on the Native American Protocols. I really have only one comment. That is that there should be included in the protocols mutual respect for the creators that assembled materials about Native American cultures. For instance, professors' field notes contain a lot of information that could fall under the guidelines to be returned. However, those field notes are also a part of the universities and contain valuable historical information on why and how research was conducted. In many cases, these notes are a life's work by people that cared deeply for the Native American communities they worked with. Archives should make a "good faith effort" to make copies and provide these documents upon requests, but at the same time, Native American communities should realize the constraints of time and money.

Thanks,  
Jordan Patty

--

Jordan Patty  
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*Comment 25*

Date: December 17, 2007

To: Frank Boles, Task Force Chair  
Society of American Archivists

From: John F. Doershuk, Ph.D., RPA  
State Archaeologist  
University of Iowa  
700 Clinton St., Iowa City, IA 52242-1030  
Ph. 319-384-0751; Fax 319-384-0768

Re: Protocols for Native American Archival Materials

The Iowa Office of the State Archaeologist (OSA), as a designated repository for the State of Iowa, holds in public trust a large collection of Native American archaeological material including a variety of archived reports, maps, photographs, and similar materials frequently used by non-native and native scholars and other researchers. Some of these items depict human remains and burials as well as archaeological objects associated with burials but access to culturally sensitive information is always case-by-case and on a need-to-know basis grounded in respect. Iowa has been at the forefront of Native American consultation regarding culturally sensitive archaeological materials as witnessed by the passage in 1976 of the first-in-the-nation state law concerning disposition of ancient burials. The OSA maintains an Advisory Committee with native representation as well as an Indian Advisory Council comprised only of Native Americans with whom we regularly consult on burial issues. The OSA has helped organize a 21-tribe consortium with interests in Iowa concerning NAGPRA-related issues. We applaud the Society of American Archivists in their efforts to open lines of communication with native peoples concerning Native American archival materials and believe the proposed *Protocols* contain useful guidance for achieving this end. We are confident that sincere efforts to engage in substantive consultation concerning native materials in archival holdings across the nation will yield broadly positive results. At the same time, we feel it critical to stress the value and importance of accrued knowledge about Native Americans to modern American society and especially to burial repatriation and NHPA/Section 106 consultation efforts. We strongly urge that Archivists be very careful to limit relinquishing of control of archived information. Remember that NAGPRA does not include/reference archival records for the very reason that these records were specifically set-aside in the crafting of this law as the enduring knowledge that would survive the repatriation and reburial of the specific remains and associated objects to which this legislation applies. The Iowa burial law actually requires accumulation and preservation of archival information. Thank you for your consideration.

*Comment 26: Received December 17, 2007*

As an anthropologist and museum director, I agree wholeheartedly with the comments made by the Ohio Archaeological Council about your proposed Protocols for Native American Archive Materials.

Specifically:

Page 8, para. 1: The document offers an analogy between extant archives of "restricted materials, classified materials, secret materials, or materials that may not be accessed until some future date" and culturally sensitive Native American material that might be "restricted or repatriated to the culturally affiliated group" or even intentionally allowed to degrade. We believe this analogy to be invalid. The examples offered demonstrate that library/museum archives have the operational means to restrict access to certain materials, but they do not provide a justification for doing so in this case. We believe it would be unethical for a library, archive, or museum to allow materials held in the public trust to be indefinitely restricted from the public, surrendered to special interest groups, or destroyed in the furtherance of narrow and unspecifiable cultural/religious interests.

Page 8, para. 3: The document urges archives and libraries to conform policies relating to the access and use of relevant collections to "Native American approaches." In some cases with which we are familiar, menstruating women were to be kept from certain materials. We regard such a policy as sexist, patronizing, and an invasion of privacy.

Page 12: The examples of "kinds of archival materials" that "may be culturally sensitive from a Native American perspective" include "human remains," "archaeological objects (especially if from burials)," and "archaeological data." The tone of this document suggests that access to all such material reasonably might be restricted by archives, libraries, or museums. NAGPRA requires that groups claiming human remains for repatriation must be able to demonstrate that they are culturally affiliated with those remains. We believe these protocols should require a similar demonstration of relationship before public access and institutional control over archival materials are relinquished. Regardless, the idea that archaeological data, reports, and photographs (many produced with public funds) routinely could be sequestered and even removed from publicly accessible archives is deeply disturbing. Such a policy could be devastating to the practice of archaeology.

I urge you to revise your proposed protocols to take into consideration these important issues.

Thank you for your time,

Stan Knick

Stanley Knick, Ph.D.  
Director  
Native American Resource Center  
UNC Pembroke  
PO Box 1510  
Pembroke, NC 28372  
910-521-6282

*Comment 27: Received December 17, 2007*

Hello Frank,

May I make just a few comments on the Protocols for Native American Archival Materials? I appreciated that the group established at the outset of their proposal the fact that Native Americans in the United States, and I believe to a great degree in Canada also, are sovereign "nations." Their legal standing certainly affects their ability to request a certain influence over materials related to them: materials might have been taken from them or created about them without their input.

The question of intellectual property is a fascinating one, and I am intrigued by the concept of Native Americans belonging to the community, and rather than things and objects belonging to them. Having spent some time in Hawaii, that is in great agreement with the Hawaiian indigenous perspective on property.

I also appreciated their approach of "mutual respect" and the concept of establishing Native American archivists as mentors to their non-indigenous colleagues. That sort of mutual education will have to be beneficial. I also am impressed that the group working on these proposals contains native peoples outside of the United States, librarians and archivists, and the likes of Richard Pearce Moses.

Finally, I would like to say that I have created my own research guide to "early" Native American materials in the Harvard University Archives, and it has served an excellent purpose of creating a good connection between the Archives and the strong Native American programs on campus. <http://isites.harvard.edu/icb/icb.do?keyword=k18801>

Sincerely,

Claudia Holguin  
Harvard University Archives

*Comment 28: Received December 17, 2007 on behalf of the Museum of Northern Arizona*

Mr. Boles,

Attached and copied below is the Museum of Northern Arizona's response to SAA's call for comments on the "Protocols for Native American Archival Materials". We hope that our response is helpful to the task force. If you have any question regarding our response, please feel free to contact me at [kkelly@mna.mus.az.us](mailto:kkelly@mna.mus.az.us) (928-774-5211 x 262) or our director, Dr. Robert Breunig at 928-774-5211 x 201.

Regards

Kara Kelly

Kara Kelly  
Registrar  
Museum of Northern Arizona  
3101 N. Fort Valley Rd.  
Flagstaff, AZ 86001  
928-774-5211 x262

**Attached:**

December 12, 2007

Society of American Archivists Council

c/o SAA Vice President Frank Boles  
527 South Wells St., 5th Floor  
Chicago, IL 60607

Dear Council members,

The Museum of Northern Arizona (MNA) recently received the call for responses concerning the *Protocols For Native American Archival Materials*. Due to its location MNA has long had close working relationships with the Hopi and Navajo Tribes and is working to strengthen its relationship with the Havasupai, Zuni and Apache tribes. This relationship is reflected in our collections which include archives, cultural and natural history collections as well as a non-circulating research library. Through NAGPRA consultations MNA has worked closely with tribes and has engaged in tribal consultations regarding both cultural and archival collections. Our comments regarding the *Protocols* result from our experience curating Native American archives.

MNA's position at this time is that the *Protocols For Native American Archival Materials* is an important step in discussing archives and library material that relate to Native Americans. However, the MNA library and collections staff identified two general concerns regarding the protocols. One

concern is the grouping together of library and archival collections. These two types of collections have their own separate and very different methodologies and should be addressed individually to avoid confusion. Another concern is the broad generalizations in the language of the document.

In addition to these general concerns, the following specific concerns were also brought forth:

- Pg. 11, bullet 4 “Involve communities in creating welcoming and comfortable spaces for Native American visitors and rethink the need for “credentials” from patrons.” Checking identification is a way of preventing theft or misuse of archival collections. Security of collections is a top priority for all collection types. If the term “credentials” here refers to academic degrees and a strong record of previous research publications as criteria for access to collections, then we agree that possession of such credentials should not be the only considerations for access. MNA has no policies or procedures that would restrict tribal members from viewing archival materials at mutually convenient times, unless those materials have been restricted at the request of official representatives of tribal governments. The only exception is archaeological site location information, which has its own set of access criteria as mandated by Federal and State laws. Site location access criteria do involve academic credentials as well as “need to know” authorization from landowners.
- Pg. 14, under Providing Context “Native American communities should be aware that offensive language or other injurious perspectives and information may be inherent in the content of some of the original materials.” Pg 15, first bullet “Promote changes to established lexicons to allow retrospective conversion or enhancement of antiquated or inadequate catalog records to include contemporary, culturally responsive language.” These two statements seem to contradict each other. In addition, the later bullet does not address the rapid rate at which culturally responsive language changes over time and the burden this requirement would place on already overworked museum staff, especially institutions with small staffs. That said, we agree that research, commentary, analysis, and critique of earlier resources should be encouraged. Such commentary and critique have an important place in libraries and archives and should be made available to patrons as soon as such documents and publications can be accessioned and cataloged. In short, we favor an additive approach to addressing this important problem, but do not see removing or replacing original content or language as an ethical solution. The original language is part of the history of scholarship, and provides important data for future research and critique.
- Pg 14, second bullet under Providing Context “Inform patrons, at the request of a community, of potentially offensive content...” This is a major deviation from current library theory and practice which maintains that a library or archive must remain neutral and objective in the presentation of information. This also directly conflicts with ALA’s policy regarding labeling library material. It begs the question that if one group is allowed to label content, why not any other group including religious, political or economic groups. For a proposed solution, see the above comment.
- Pg 14, last bullet “Work with community representatives to revisit indexing terminology...” This recommendation, while understandable, represents a complex and long-term undertaking. Such a change would represent a substantial use of financial and personal resources, which many smaller organizations could not afford.

MNA feels that more consultation and revision is required before we can fully endorse the *Protocols For Native American Archival Materials*. MNA supports tribal consultations and will continue its ongoing consultations with Native American tribal representatives regarding culturally sensitive archival material and will continue to implement policies and procedures for administering culturally sensitive archival material. We appreciate the guidance provided in the *Protocols* and the spirit in

which it was conceived. We look forward to the active discussion of this issue that we hope this document will generate.

Warmest regards,

Dr. Robert Breunig  
Director

Comment 29: *Received December 17, 2007. In a subsequent email Mr. Altman clarified that this comment represents his personal opinion rather than that of the Society of Florida Archivists.*

Dear Frank,

I've carefully reviewed the Protocols for Native American Archival Materials and support this document. I think it meets our traditional archival practices of acquisition, preservation, handling, and use of archival materials while insuring their respectful care and use.

Furthermore, I feel that the elements which the document addresses (particularly building relationships of mutual respect, achieving balance of rights and understandings with respect to archival materials, access and use, identification of culturally sensitive materials, providing context to enhance the values of the materials, intellectual property, and reproduction and repatriation of materials) are activities we already implement in our repositories on a daily basis. Many of these are built into our archival ethics.

It is important that we consider Native American communities as equal partners in preserving their archival materials as evidence of their cultural heritage in the same manner that we work with potential donors. This type of collaboration can only enrich our collections, repositories, and research institutions. Furthermore, in the long run, I feel it will "ennoble our profession" by demonstrating that as archivists, we are culturally sensitive and respectful of our collection creators, who will be in a better position to foster greater access to their materials.

Burt Altman, Society of Florida Archivists President

Burt Altman, C.A.  
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*Comment 30*

To: Frank Boles, Chair

Task Force on Native American Protocols  
SAA Council

2007 December 17

I am writing today on behalf of the Myaamia Heritage Museum & Archive, the Miami Tribe of Oklahoma, and myself, in support of the *Protocols for Native American Archival Materials*. I encourage the SAA Council to endorse this document, as I believe this document will assist both tribal archivists and non-tribal entities working with Native American materials in establishing a relationship built on respect and cooperation.

It is time for the SAA Council to stand up and recognize that tribal archivists and librarians are their colleagues who deserve respect and whose perspectives are valid, even if different than traditional archival theory. Section II of the SAA Code of Ethics states: “Archivists cooperate, collaborate, and respect each institution and its mission and collecting policy. Respect and cooperation form the basis of all professional relationships with colleagues and users.” The *Protocols* serve as an extension of this statement in providing guidelines for interactions, based on respect and cooperation, between non-tribal and tribal institutions.

As a working document, I understand that the *Protocols* are not perfect. For example, it only weakly outlines actions in cases where objects are not clearly associated with a particular tribe, or are associated with multiple tribes. However, even if incomplete, I do not believe any aspect of the *Protocols* is “wrong.” They are written from a Native American perspective, as they should be. Native Americans, particularly Native Americans in the information professions, should be able to provide input on the control, care, and use of objects associated with their tribe. This input will benefit the holding institution, researchers and patrons, and tribal institutions.

I believe that archivists wish to respect materials in their holdings, and most recognize that materials associated with Native American tribes may require special consideration. Adoption of the *Protocols* by SAA will provide a resource for these archivists to turn to in the process of accessioning, arranging, describing, providing access to, and using Native American materials. It will also serve as a resource for tribal archivists who want to educate their peers and researchers about the proper context for these materials.

Endorsement of the *Protocols for Native American Archival Materials* by the SAA Council would show that, as a professional organization, SAA is serious about treating both tribal objects and tribal organizations with respect. In addition, it would further tribal organizations’ efforts in abolishing stereotypes of Indians and replacing these stereotypes with correct interpretations of Native American culture.

kikwehsitoole (Respectfully),

Meghan Jensen

Archivist

Myaamia Heritage Museum & Archive

P.O. Box 1326

Miami, OK 74355

(918) 542-1445 ext. 1305

(918)542-7260 fax

*Comment 31: Received December 17, 2007 from Elizabeth Yakel*

***Protocols for Native American Archival Materials***

I found a number of problems with this document. It begins a dialog but far from ends it. If it is suggesting, as I think it is, that we use two separate definitions of ownership and legal (one for whites and one for native Americans), the document fails to address when one is in effect and when the other is operational.

This document also needs many more definitions for terms such as Culturally sensitive and Culturally affiliated

Culturally sensitive, what is this? What does it mean? From the document it seems not only to mean inappropriate use (and access) of artifacts and images, but also culturally insensitive language from the past which the document seems to want changed. This latter causes a different kind of hurt than the former, but the document does not differentiate between them.

Culturally affiliated (does this mean provenance or does this also mean records created by the U.S. government about native Americans?)

There are many passages that are terribly problematic, the following are a few with my comments after each:

“Archivists and librarians taught to champion intellectual freedom and unfettered access to resources may be troubled by the notion that in Native American and other Indigenous communities knowledge can be collectively owned and that access to some knowledge may be restricted as a privilege rather than a right. These views of information are not irreconcilable, given that archives and libraries often contain restricted materials, classified materials, [secret](#) materials, or materials that may not be accessed until some future date. Native American communities and individuals may also need to achieve an appropriate balance of rights and understandings with respect to archival materials and [traditional knowledge](#). Archives and libraries should work with Native American communities on these issues as they apply to the general public.”

This sounds good but in practice but how do we identify these collectively owned items?

“Respect and act on both Native American as well as “Western” approaches to caring for archival collections. Traditional knowledge systems possess equal integrity and validity. Actions and policies for preservation, access, and use based on Native American approaches will in some cases be priorities, as a result of consultations with a tribal community.”

This is unclear what are Native American approaches to preservation??? Or is this still referring to access?

“Examine assumptions about established library and archives practices which directly contradict Native American principles and practices.”

Again what are these assumptions, these assumptions need to be spelled out, there is a assumption that we are aware of all our assumptions.

“Inform patrons, at the request of a community, of potentially offensive content prior to use by adding a notice to descriptive tools or items such as “The [tribal name] finds information in this work inaccurate or disrespectful. To learn more contact . . . .” Amelia Flores, the Colorado River Indian Tribes Library/Archive Director, applies a disclaimer to problematic publications acquired for the library, which states: *We do not endorse this publication.*”

If archivists did this to native American materials they would have to do it to materials about women, African-americans, Mormons, etc. It would never end. It has always been the responsibility of the researcher to critique the record, this is the historical method. Lots of archives collect materials that they do not endorse (abortion, choice, Ku Klux Klan), this is what an archives is, we do not need disclaimers.

I know that this is a sensitive political negotiation, but I also think that if we do not tell the tribal archivists exactly what we think and sugar coat difference that this is disrespecting them. I do not see how SAA could support this document as it stands.

Beth Yakel

Elizabeth Yakel  
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*Comment 32: Received December 17, 2007 on behalf of the Missouri Association of Professional Archaeologists*

To: Frank Boles, Task Force Chair  
Society of American Archivists

From: Timothy E. Baumann, Ph.D., RPA  
President, Missouri Association of Professional Archaeologists  
500 E. College St.  
Marshall, MO 65340  
Ph. 660-831-4044

Re: Protocols for Native American Archival Materials

The Missouri Association of Professional Archaeologists (MAPA) is a not-for-profit organization of professional archaeologists that work in the state of Missouri. MAPA was established to promote professionalism in Missouri archaeology with the objectives of 1) to facilitate communication among professionals, 2) to promote public outreach and education, 3) to seek the preservation and protection of cultural resources, 4) to encourage research and publications in Missouri archaeology, and 5) to demand professional and ethical standards. Addressing the latter, MAPA endorses the Registry of Professional Archaeologist's Code of Conduct and Standards of Research Performance (<http://www.rpanet.org/> <<http://www.rpanet.org/>> ). Our membership includes professional archaeologists that work for the Missouri Department of Transportation, Fort Leonard Wood Military Base, U.S. Army Corps of Engineers (Kansas City, Little Rock, Rock Island, and St. Louis districts), Mark Twain National Forest, private and public universities/colleges, and private cultural resource management firms. MAPA was instrumental in passing Missouri's Unmarked Burial Law (Missouri Revised Statutes, Chapter 194:400-410) in 1987 and we are currently working with Native American representatives to enforce cultural resource protection in our state.

MAPA applauds the Society for American Archivists' efforts to improve the handling of Native American archival materials and we encourage collaboration with the descendant community, but we are extremely concerned about how these protocols might impact the field of archaeology. Unfortunately, MAPA did not become aware of the request for comments on the draft protocols until Friday, December 14. MAPA and others in Missouri (e.g., Missouri Archaeological Society) have not had enough time to review this draft in-depth, but we believe that these protocols are overreaching and have the potential to repatriate or restrict information that is vital for anthropological research (e.g., NAGPRA archival material).

We ask that an extension for comments be given so that the archaeology community has had a chance to review this draft thoroughly. The SAA protocols will impact many archival records that were the product or are the focus of archaeological research. A review of the contributors list does not include any archaeologists or physical anthropologists with expertise in ethics, curation, or human remains and their associated artifacts and documents. If you have not done so already, the SAA should request formal comments from the Society for American Archaeology and the Registry of Professional Archaeologists.

*Comment 33: Received December 17, 2007*

Dear Chairman Boles,

I thought about writing something elaborate, but I decided instead just to offer the following observations with reference to the Native American Protocols Document.

I was president of the Southeastern Archaeological Conference in 1994-95, as NAGPRA was beginning to be implemented, and under my leadership SEAC moved to create a Native American liaison group that still exists. Some archaeologists were upset that "their" materials might be taken from their control, but in the event many new partnerships were forged, especially by younger archaeologists, and even where repatriation took place indigenous knowledge was shared to such an extent that new discoveries were made. As an ethnohistorian I have worked with the Choctaws and other southeastern tribal people since 1980, and from my perspective not only are Native American claims to hegemony over their own cultural property legitimate moral claims, but like the claims of indigenous people worldwide, they call on archivists to broaden their theory and practice beyond the cultural bounds of the Euroamerican thoughtworld. In my opinion engaging with indigenous perspectives on cultural preservation can have just as significant an impact on archival thinking as has digital recordkeeping. Further, the document before us is written in a spirit of reasonable discussion and I believe represents a valuable first step that traditional euroamerican archivy can work with to the great benefit of all. If the archaeologists could survive NAGPRA, archivists and librarians can survive indigenous protocols--especially when we already consider the concerns and feelings (and power) of individuals and groups within our society in making materials public and keeping them closed, and regularly accede to replevin requests when sovereignty is at issue. As Native people asked in the case of NAGPRA why only their ancestors' remains were desacralized for the sake of science, they have the right to ask a similar question about other forms of expression acquired under similarly inappropriate circumstances.

Patricia Galloway  
School of Information  
University of Texas at Austin

*Comment 34*

From: Jennifer Wood [mailto:jdwood2@uiuc.edu]  
Sent: Monday, December 17, 2007 3:13 PM  
To: Boles, Frank J.  
Subject: Protocols for Native American Materials

Hi Frank,

Well I spent some time w/ the Native American Protocols this weekend (anything to put off having to go through my papers in preparation for packing up), & you had mentioned being interested in what I thought of them, so here are a few things. (Keep in mind I'm NOT an advanced expert on this, despite what Jeff may say):

I liked the emphasis on cooperation & reciprocal communication/education between tribal & non-tribal repositories. I've always thought that this would benefit everyone (including patrons) & head off a lot of potential problems. Also the suggestion that this kind of dialogue could increase the amount of contextual information available for describing collections thoroughly, accurately, & sensitively.

A couple of concerns:

"Privacy rights extend to groups in some situations." How does this square w/ federal (U.S.) privacy law, & w/ its stipulation that the right to privacy ends w/ the individual's death?

What does "culturally responsive restrictions on deeds of gift" mean in practice?

>

I was also concerned that "[Native] community research protocols...formal research policies & procedures which may require legal contracts or agreements w/ individual researchers" could result in efforts to discourage or interfere w/ research that might yield results that were politically disagreeable to all or part of the relevant Native community. (For example, what if the Sag. Chip Tribe decided that my perspective on the Indian School wasn't sufficiently hostile to the federal government, white employees, etc.--would I be denied access to relevant material in the tribal archives?)

I'm sure this is going to be an interesting subject as it plays out over the next few months...

Take care!  
Jennifer

## **Appendix 5: Comments Received after the December 17, 2007, Deadline**

Comments received from individuals or organizations not affiliated with SAA after the December 17, 2007, deadline have been placed into this appendix. The Task Force has not systematically considered these comments in preparing its report to Council.

*Comment 35*

Hi Frank:

I am forwarding comments received below to the Protocols account yesterday from Sharon Howe, Washington State Archives.

Best,  
Karen

----- Original Message -----

**Subject:** Native American Protocols comment  
**Date:** Tue, 18 Dec 2007 15:47:18 -0800  
**From:** Sharon Howe <[howe@cwu.EDU](mailto:howe@cwu.EDU)>  
**To:** [archives.protocols@NAU.EDU](mailto:archives.protocols@NAU.EDU)

Thank you all for taking on this important cross-cultural project. [Note: I did try to send it to the e-mail address listed in the SAA notice, but my system is not recognizing the address.] I realize I am a day beyond the deadline, but just in case you are allowing comments to sneak in over the Dec. 17 wire, I do have a few—probably some that others already have addressed, but here goes:

Under the Providing Context section, I agree with the concept, but I am concerned that one or more of the guidelines may have unintended consequences. The most troubling of these, in my view, is sanitizing our history in the name of eliminating offensive language. When a guideline actually recommends changing—or at least sanitizing—an existing title, I view that as an attempt to rewrite history. As archivists, we need to be able to provide historical sources, warts and all, with whatever appropriate contextual notes may be necessary to ensure people understand that what may have been common usage in one time period is not appropriate in another. (If we are supplying titles or other information, of course we use appropriate language.) When we take it upon ourselves to sanitize the original, why should our researchers trust that anything we have to offer is authentic?

I also am uncomfortable with the notion of the institution officially stating they don't endorse a particular publication's or archival item's point of view. As institutions and archivists, I suspect we could attach that statement to much of our collections that are offensive to one group or another because of their content. If one wants to take this route, then a better suggestion might be a general statement, included wherever appropriate, along these lines: "This institution holds a wide range of materials that help researchers understand history and culture. Holding the materials does not constitute endorsement by this institution of language or ideas contained in them."

I believe there is an error of fact in an example in the Intellectual Property Issues:

Second bullet point under guidelines for archivists:

I believe that Western legal interpretation allows for ownership beyond the “only one person or entity” cited. In any given property, multiple individuals and/or groups may hold legal rights jointly. I see that as at least an opening toward understanding Native American ideas of property rights, rather than being totally antithetical to them. For example, a private non-profit membership historical society holds collections “in trust” for the people of a state under an agreement with the state, with specifications on who should have ownership or control should that society cease to exist. The members and society legally “own” the materials under deed of gift but the real owners are the people of the state and the society is expected to operate in a way that reflects that. This is just one example of many ways of dealing with property rights under the Western system, not just the narrowest possibility, which is all that is cited.

Here, I'd just like to insert a personal note on terminology that might shed a bit more light on the complexities of using language in sensitive ways. I worked with a large collection of materials produced by Nazis and their sympathizers around the world, so when the word “protocols” pops up, the first thing my mind latches onto is “The Protocols of the Elders of Zion,” a spurious anti-Semitic piece that is pretty horrendous. On the other hand, I would never suggest that because this word has some horrible connotations it should not be used appropriately in a different setting.

Again, I applaud the tremendous work on this project and wish you all Happy Holidays.

Sincerely,

Sharon Howe, CA

Sharon M. Howe, Processing Archivist

Washington State Archives Central Regional Branch  
400 East University Way, MS 7547  
Ellensburg, WA 98926-7547  
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Head, Special Collections and Archives  
Northern Arizona University  
Cline Library, Box 6022  
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Fax: 928-523-3770

[www.nau.edu/library/speccoll](http://www.nau.edu/library/speccoll)

*Comment 36: Received December 21, 2007*

Dear Dr. Boles:

I wish to comment on the draft "Protocols for Native American Archival Materials". As a professional archivist, I believe the core responsibilities of an archivist are to preserve archival materials for the present and future generations and to make the materials available to the public for research. However, some of the statements in the Protocols directly challenge these core responsibilities.

On page 8, it states:

"At the request of a Native American community, avoid artificially prolonging the life cycle of sensitive documentary material. Some items, such as a photograph of a sacred ceremony, or object, or culturally sensitive documentation of a burial, should not be preserved forever or may need to be restricted or repatriated to the culturally affiliated group." I believe it would be unethical for a trained archivist to purposefully withhold preservation care from an item with the intent of causing the item to deteriorate beyond usefulness or for an archivist to turn archival materials over to another group, which intends to destroy the materials.

Another of my concerns with the Protocols is the wide range of materials that are listed as being subject to access restrictions. While NAGPRA deals with human remains, funeral objects and sacred items used in religious ceremonies, the Protocols are much broader and include as sensitive materials:

- photos or illustrations of hospitals
- maps of Native American territories or villages
- documents/theses/published works containing archaeological data or genealogical data

I believe that such a broad range of possible restrictions would seriously impact the study of American history and archaeology. I think it would be absolutely necessary for SAA to obtain input from historians, archaeologists and other researchers before approving these Protocols.

The Protocols also seemed unclear as to whether these restrictions would apply to all researchers or only to non-Native American researchers. The statement on page 10: "Involve communities in creating welcoming and comfortable spaces for Native American visitors and rethink the need for > "> credentials> "> from patrons," appears to suggest that Native Americans should be exempted from providing identification before using archival materials. My repository's requirement of a photo ID from patrons is applied fairly to all researchers. In the same way, restrictions on collection access are not based on the researcher's nationality, ethnicity, race, religious or political affiliation, or gender. It would be unthinkable to discriminate based on these factors.

I strongly urge SAA to refrain from approving the Protocols until these sections can be revised.

Thank you for your consideration.

Yours truly,

Anne Kling, Archives Manager, Cincinnati Museum Center  
1301 Western Ave.  
Cincinnati, OH 45203

*Comment 37: Received December 21, 2007*

Dear Mr. Boles,

I apologize for getting my comments to you so late regarding the Protocols for Native American Archival Material. Even as a co-chair of the Women's Roundtable I was only marginally aware of this very important document. I do not believe that it was publicized enough in the archival community. It has not been discussed on the SAA listserv, the only touchstone for many of us who cannot make it to the yearly meetings. Since this affects almost every repository in North America I was shocked to see so little discussion of this very broad document. I do understand that this is only the first draft and will describe my concerns below. These are concerns I share with my colleagues who include historians, curators, and archeologists. All were shocked that SAA would endorse such a broad and sweeping document.

I first want to clear that other professionals and I do our best to be culturally sensitive to the issues raise by the protocols. Of course more education is always welcome but this document comes across as restriction of access after restriction after restriction which no amount of education could remedy. That, of course, goes against the ethics of our profession. We do all have restricted documents in our collections and I do understand that Native American tribes hold a special legal status, but I bristled at reading that repositories would not be allowed to collect or keep items that were never held or created by Native Americans. What about researcher's field notes and photographs? The statement that some items are not meant to be preserved forever such as photographs of a ceremony does not sit well with me personally or professionally. There are many grey areas. This is very different from NAGPRA. Most institutions go beyond its guidelines and err on the side of restriction when it comes to items that common sense tells you need to be handled with care.

Context is raised in the protocols as being a large issue here. Archivists work to be sure that all of our items are not seen in a vacuum but rather set in cultural and historical context. To announce that archivists can no longer decide such issues is rather harsh. Who do I go to for our collections on the Hopewell communities here in the Ohio River Valley? Also, "culturally sensitive" is a vague term that even the protocols admit varies from and within tribes. Perhaps the language is more combative and authoritarian than intended, but my reading of it felt harsh, no questions asked, archivists cannot make decisions on any Native American items. Others have echoed my reading so I do not feel it is too far off.

I do hope that you will once again bring this topic to all of SAA's attention as well as associated professional groups in a very loud and large manner. This restriction could set a poor precedent for the research community.

Respectfully,  
Christine Schmid Engels  
Assistant Archivist  
Cincinnati Museum Center

*Comment 38*

Date: Wed, 09 Jan 2008 12:23:51 -0500  
To: Christine Weideman <[christine.weideman@yale.edu](mailto:christine.weideman@yale.edu)>  
From: George Miles <[George.Miles@yale.edu](mailto:George.Miles@yale.edu)>  
Subject: Protocols for Native American Archival Materials  
X-YaleITSMailFilter: Version 1.2c (attachment(s) not renamed)  
X-Scanned-By: MIMEDefang 2.52 on 130.132.50.54

Dear Chris,

I'm writing to you in your capacity as a member of the SAA task force charged with gathering comments regarding the recently proposed "Protocols for Native American Archival Materials." You are welcome to forward this email to committee colleagues. You and they are welcome to quote me or cite me as author of these comments as you and they see fit.

Relationships among Native Americans, Native American communities, Native American governments, archivists, librarians, scholars, archives, research libraries, and academic institutions are complex and, as the authors of the protocols suggest, ripe for misunderstanding and conflict as well as collaboration and mutual learning. I applaud all efforts to increase communication across cultural, community, institutional, and political boundaries and believe it essential that organizations like SAA, the American Library Association, the American Historical Association, and the Organization of American Historians converse with Native American governments and pan-Indian organizations as well as Indian scholars and librarians. Archivists and research librarians who collect or care for materials (regardless of format) that document Native American history and culture have a responsibility to educate themselves about the issues surrounding the origin and use of their collections. Just as we recognize the authority of nation-states throughout the world to control the export of their cultural patrimony, we must recognize the ongoing right of individual Native Americans, their communities, and their governments to exercise authority over themselves, their property, and their records. I am especially concerned that we appreciate the uneven distribution of resources that often makes it difficult, if not impossible for Native Americans to consult and do research in important collections about their personal, community, and cultural history.

Having said this, I cannot support the current draft of the protocols. I am concerned, first, that they are vague and fail to clearly define key terms. What, for instance, is "American Indian archival material?" The term appears throughout the report but at no point is it defined. Does it mean the records of a Native American government? Or the records of a Native American organization? Or the personal papers of a Native American writer? Or the letters of a missionary who served a Native American community? Or the diary of an army officer who escorted Native American prisoners to jail? Does it mean the photographs taken of Native Americans while they traded in white settlements? Does it mean the writings of a white trader reminiscing about his

experiences with Indian customers? Does it mean the motion pictures and sound recordings of Native American life made by non-academic scholars in the early 20th century, or the recordings of conversations among political activists promoting Indian rights in the late 20th century? My rhetorical questions are not meant to draw a line, but to suggest the breadth and ambiguity of the term. The current draft provides far too little information for anyone to know what the authors mean by it and hence for anyone to know just what they are agreeing to (or disagreeing with) when they endorse (or reject) the protocols. I, for instance, would respond very differently to the protocols were I told they are meant to apply to the formal records of Native American governments and community organizations than if I were told they apply to all writings about Native American history and culture. Similar problems exist with such terms as "primary rights" (in the first paragraph under the heading "Building Relationships of Mutual Respect") and "relevant materials" (in the second bullet under "Archives and libraries guides for action").

A great strength of the Native American Graves Protection and Repatriation Act (NAGPRA) was the specificity and clarity of its definitions. Scholars and activists may object that the law grants too much or too little presumptive "ownership" to Native American communities or complain that the Act impedes scholarship or fails to protect sufficiently the human dignity of Native Americans, but it seems clear that most people clearly understand what items are or are not subject to regulation under the terms of the act. People who disagree about ultimate values can agree on what is and is not covered by the act. I think that any successful attempt to extend the concepts of NAGPRA to documentary records, especially those created or collected by non-Indian peoples, will require similar specificity and clarity. To endorse the protocols as they now stand is to invite confusion and disagreement about what material they address.

My second concern is that the draft elevates cultural sensitivity to a pre-eminent value that trumps principles of preserving the human record for purposes of free inquiry. To my reading, the current draft proposes and endorses restrictions on research that American archivists and librarians would resist if they were proposed by the Pope, the President, or other institutional or community leaders. As you know, our colleagues at the Yale Library have recently revisited the issue of controversial and sensitive material in our collections. Their "Draft Policy on Requests for Destruction, Return, or Removal of Materials from the Collection or Circulation" observes

The Library collects, preserves, and makes available and accessible to its users materials on all subjects, topics, and issues, independently of their origin, background, or views of their creators and producers, and the nature of their contents. This is in accordance with the principle of free expression and speech, which is the lifeblood of democracy and a prerogative for unbiased education and intellectual pursuit.

In citing Article 2 of the ALA's *Freedom to Read Statement*,

"Publishers, librarians, and booksellers do not need to endorse every idea or presentation they make available. It would conflict with the public interest for them to establish their own political, moral, or aesthetic views as a standard for determining what should be published or circulated."

they remind us that research librarians and archivists seek to document the full range of human activity so that all of us can, now and in the future, contemplate, explore, assess, and critique humanities failures as well as its successes. Our mission is not to save what someone else tells us is valuable or safe or appropriate to keep, but to stand for the principles of preservation and accessibility.

As the authors of the protocols point out, archivists and librarians in the United States routinely restrict access to certain kinds of material. What they don't acknowledge is that virtually all such restrictions are in place for limited periods of time and that few, if any of those restrictions provide selective access. That is, most such restrictions close material to ALL prospective users until the restriction expires. The protocols seem to be open-ended, without any sense that the restrictions they propose would expire, and seem to envision selective access based on the judgment of someone outside the staff of the library or archive that holds the material under question.

If the archival and library community accedes to the desire of Native American communities to monitor and approve access to material they regard as sensitive, should it grant similar authority to European governments to monitor and approve access to papers they consider vital to their national security? Does it grant similar authority to religious organizations who are concerned that their privacy is violated if non-members consult the unpublished memoirs of dissident, former members? Do it allow corporations to regulate access to the papers of former employees? In each of the scenarios I've cited, there might be specific reasons for a library or archive to question the suitability of its holding material. Perhaps the federal government has enacted legislation that classifies certain foreign documents as top secret. Perhaps an employee has stolen corporate property in the form of product designs. But in each case, the library or archive would turn to clearly defined principles of property law to explore whether or not it had a legitimate right to hold the material in question - not to vague principles that granted a third party the right to review who could or could not examine the material.

The protocols allude, in general terms, to ways in which materials may have been removed improperly and illegally from Native American control, under which circumstances no good title could pass to future holders. The protocols propose that some records may have been created under circumstances in which Native American communities (or perhaps individuals) retain or share certain property rights. I endorse the concept that a library or archive which holds Native American material to which it does not or cannot have good title should return the material to its owner, but questions of property rights and ownership are fundamentally legal and political questions requiring training, knowledge, and experience distinct from that of research librarians and archivists. We ought not, as a profession, arrogate to ourselves or endorse third party assertions about property rights. To the extent that the authors of the protocols argue for the recognition of and incorporation of traditional concepts of property rights within "western" legal systems, they should address their concerns to the legislative and judicial branches of government, not to libraries and archives. I think the profession ought to endorse the fundamental principle of respecting property rights in collecting any and all materials rather than make a special example of Native American material. That the history of property rights in Native American materials may be unusually complicated does not change a fundamental principle

nor should it cause us to create a separate understanding regarding Native American materials.

Finally, I am concerned by the protocols' suggestion that libraries and archives collaborate with Native American communities to establish and administer research protocols. I re-read the section multiple times and remain uncertain whether the recommendations apply to the adoption of standards regarding the kinds of collection material a library or archive would be willing to acquire or accept for its collections, to the adoption of standards regarding how collection materials are used by scholars and readers, or to both cases. I think it is essential for all libraries and archives to understand tribal, local, state, national, and international laws regarding property rights, cultural patrimony, and export regulations. This would certainly include awareness of regulations passed by contemporary Native American governments. To do otherwise invites the possibility of expending financial and staff resources in acquiring material that will have to be returned to its proper owners.

I am less sympathetic to arguments that libraries and archives should be responsible for what scholars and readers do with the information and insights they gain from work in our collections. Our society and our profession have tried to clarify the various responsibilities of property owners, authors, publishers, teachers, and record-keeping institutions such as libraries and archives for protecting and respecting intellectual property while encouraging research and learning. Research libraries and archives, and their staffs, provide opportunities for non-owners to consult and contemplate the words, ideas, and often the "property" of other people. Indeed, even in a collection as large and varied as Yale's most of the collection remains under copyright to people other than the University or the library. We own books and papers, not the words on the pages. We remind the people who consult our collections regarding their obligations to respect the property of others, but we do not attempt to supervise or oversee how they behave "outside" the library. For instance, when we acquire the correspondence and unpublished diaries of a recently deceased author, we do assume the administrative function of literary executor. We rely on the author's heirs and assigns and on the legal institutions of our society to protect and preserve their rights. To do otherwise would dramatically change the American landscape of intellectual inquiry that has been established by law and precedent over the last 250 years.

In closing, I want to endorse the draft's observations regarding the responsibility that research libraries and archives have to reach out to Native Americans communities and individuals to inform them about the existence and availability of material concerning their history and culture and the responsibility of institutions to increase opportunities for Native Americans to consult those materials. We ought to work aggressively to reduce barriers that inhibit use by Native Americans, to encourage the education and training of Native American librarians and archivists, and to support the creation of tribal libraries and archives across the country.

Thanks for taking the time to serve on an important task force and for soliciting comments from the professional community.

George Miles, William Robertson Coe Curator of Western Americana  
Beinecke Rare Book & Manuscript Library, Yale University.

*Comment 39 by Frank Boles, January 9, 2008*

Having served as the principal author of the Task Force report forwarded to Council, I believe it appropriate to add a final comment explaining my own views regarding the *Protocols*. Although I have attempted to set aside my personal opinions regarding the *Protocols* and faithfully report both the praise and the criticism given the document by those who commented, nevertheless anyone who works on such a project becomes acutely aware of the importance of personal opinion in the creation of a report on a topic that stirs strong emotion.

The context in which the *Protocols* come before SAA Council is significant. The *Protocols* are not an isolated document that reflects only the opinions of a small minority of individuals. As references in the *Protocols* themselves make clear, around the world ancient and indigenous communities have begun to reassert what these communities consider their birthrights. The *Protocols* are clearly a part and a product of this global effort to redefine cultural ownership in a post-colonial world.

The problem this movement and the *Protocols* seek to address is straightforward; how can equality be re-established between those who were once dominant and once subordinate communities? Originally that discussion was political. That political discussion, given urgency by several armed conflicts, led to the end of European colonialism. Today that discussion has become cultural. The cultural discussion has become very broad regarding “ownership” of national heritage and involves a surprising mix of players including various European nations. Italy, for example, has successfully reclaimed national treasures long held by non-Italian museums, such as the Metropolitan Museum of Art in New York. Despite the fact that the structure was built thousands of years before the current Greek nation existed, Greece has asserted that it “owns” all rights to images of the Athenian Acropolis, and has posted signs noting that current government policy allows tourists to take pictures of the structure only for their personal use. Where this conversation, whether over pictures of ancient ruins in Athens or material sacred to Native Americans, will end is far from certain. But that there will be a conversation is certain.

The United States has played an important role in asserting Western cultural values. In its most benign form, the United States has often reveled in its role as a cultural leader, a “city upon a hill,” in the words of John Winthrop, to which “the eyes of all people” turned to watch great experiments, first regarding religious identity and later, in the eyes of the founders of the nation, republican government. This sense that America is a beacon is one of the nation’s enduring self-images, and often has served as an inspiration to others. But the form of cultural leadership exercised by the United States has not always been so benign.

As the government of the United States reached westward, its policies toward Native Americans were often shameful. As one commentator (who opposes endorsement of the *Protocols*) writes, “we are aware of the profoundly unfair treatment that has driven American Indians from their land, used their culture as a commodity, and treated them as an exotic ‘other’ for purposes of drama, music, and study rather than as equal citizens with equal rights to privacy and respect. We look back in shame at this pattern of first European and later American behavior, wanting not to perpetuate this cycle of abuse.”

This same commentator uses the word “genocide” in describing American policy toward Native Americans. Certainly it is difficult to find another word that describes the decision by late nineteenth century Americans to “kill the Indian, save the man” through a system of Indian Boarding schools. Cultural genocide was explicitly the goal of this policy and these institutions. It should surprise no

one that Native Americans, who perpetuated their cultures despite the best efforts of the United States government to undermine and destroy them, have a profound desire to control their own heritage and have a deep distrust of Western ways.

Which of us, had we been subject to such a policy, would easily trust a government or a philosophy that perpetrated it? Which of us, if our culture had been so shamefully treated by another culture, would not, given the opportunity, demand control from that suspect culture of our cultural memory? At heart this how I can understand the *Protocols* authors' request that their document be endorsed. It reflects a desire to regain control of the documentation that describes their peoples, their cultures, and most importantly their religious beliefs from an American culture in which, for good historical reasons, they have little trust.

I believe the *Protocols* are less about the details of archival practice and much more about recognition of a wrong in need of righting. I believe its authors most fundamentally call to us, after the long night of oppression and disdain that American society collectively brought upon them, to make amends by acknowledging that their culture is of equal status with Western culture and that they, rather than we, have primary responsibility for the memory of their culture. The rest is secondary – means to accomplish these ends.

To answer this call we who control America's archival heritage are asked to do something extraordinary – to take the radical step of surrendering sole and arbitrary control over those aspects of Native American culture that we possess. We are asked to take this step not because the government ordered us to do so, as occurred within the archaeological community with the passage of NAGPRA, but because we within the archival community recognize it as the right thing to do.

Giving up control is never easy. In my own search for why I might want to agree to such an alien act, I find myself revisiting the words of Verne Harris, a South African archivist whom I recently had the opportunity to hear. Speaking about ethics in archives Harris told his audience that ultimately the archivist's goal is to seek justice. The call of justice leaves little option in this case but to give back what was illicitly taken. Let us not quibble over title to a specific body of papers or the legitimacy of a particular gift. At some time we will have to resolve such questions, but to focus on them now misses the broader point. What was taken were not merely papers but a way of life and a culture stolen from the first inhabitants of this continent. Justice calls on us to recognize this theft and to offer reparation by acknowledging the legitimacy of returning control over this cultural heritage to its rightful owners.

Justice, however, is a complex concept. Justice should not require the surrendering of the best values found among those of us who serve as archivists within the American tradition. What changes when we acknowledge the call of justice are not our archival values but the way in which those values are affirmed. In a multicultural world we must persuade, rather than require, those who do not share our beliefs to accept the importance of the values we hold important. If open access to all material is important, we should be able to articulate those reasons clearly and persuasively across cultural divides. If non-discriminatory access to material is important, we should be able to articulate why it is so regardless of with whom we are speaking. If we believe concepts of private property are superior to concepts of community ownership, we should be able to explain why.

This desire to explain, to educate, to lead by example, to be a city set upon a hill, is among the best lights of American society and culture. If Winthrop's imagery of a nation upon a hill is to have any meaning, it is not that we can force people to do what we wish but rather we can persuade them of the

benefits of our society, including the benefits that accrue from contemporary American archival practice and thought.

Justice offers American archivists a unique opportunity to affirm our best nature, a belief in our ability to voluntarily persuade others that the path we propose is the best. Justice calls on us to right a wrong and repatriate that which was not ours to take, but this same justice also offers us the rare opportunity to share our wisdom – not as conquerors dictating terms to the defeated, but rather as equals who propose for discussion a solution we believe the most appropriate.

Justice also leads us to another, unanticipated benefit: It leaves us open to the possibility that through discussion among equals a path none of us can see today will be revealed. Embracing justice is frightening in the changes that it calls on us to make, but it also offers the promise of being incredibly rewarding.

It is particularly in the arena of archival questions that I ask my fellow archivists to be open to the rewards of discussion. I believe as strongly as any in the concept of open access, but I note that while some commentators feared the possibility of closing Native American collections to research, we have long tolerated, in the name of private property, the closure of huge tracts of personal manuscripts. I believe as strongly as any that archival material should not be destroyed, but I note that while some commentators fear the possibility that Native Americans who regain control of their material might do just this, we have long tolerated, in the name of private property, the destruction of historical records by their owners. Why is it that when one of us owns it he or she can close it, or even burn it, and the archival community merely “regrets” the action, whereas when Native Americans assert that they might have a similar communal right, some among us reject the claim out of hand? Is it truly that different?

Discussion can define terms in ways that are mutually beneficial. Novel legal concepts, with careful articulation and the passage of time, can become accepted pillars of jurisprudence. Laws change. What is a novel archival concept today can become tomorrow’s archival truism. As for the precedent that the SAA Council may establish should it favor the ideas found within the *Protocols*, I believe acting justly is the wisest precedent. As Martin Luther King, Jr., said a few days before his assassination, “the arc of the moral universe is long, but it bends towards justice.” I choose to assist, insofar as I can, the direction of that bend. I choose to believe that justice will bring about more good than harm, both in the world generally and among archivists particularly.

Despite my strong sympathy for the concerns expressed by the authors of the *Protocols*, I cannot ask the SAA Council simply to endorse the *Protocols* as they are written. Having read carefully through the comments in preparing this report, I recognize that many of the objections raised to the specific components of the *Protocols* are valid. The means to implement justice proposed by the authors of the *Protocols* are not always practical. Terms are sometimes poorly defined. The *Protocols* propose novel legal concepts that are not imbedded in current American law or in some cases would cause archivists to violate the law. Archival theory and practice as we understand it is sometimes turned on its head.

In discovering workable mechanisms to achieve justice, the *Protocols* authors must recognize that SAA, too, works within a legal and cultural framework that is as valid as their own. Two examples make this point. Regardless of the scope of Native American sovereignty, it cannot trump the sovereignty of the United States. Archivists in the United States must work by U.S. law as it exists, not as the *Protocols* authors might wish it to exist. Although archivists can advocate for legal changes we cannot unilaterally implement change. To ask us to do so is to ask too much. Culturally, American

culture also must be recognized as being as legitimate as Native American culture. Multiculturalism is not a one-way street leading to the privileging of a once-subordinate culture over the culture once dominant. Multiculturalism, if it is not to become a new name for an old inequity, must be a two-way street in which cultures meet as equals and are equally willing to share with each other and learn from each other.

Furthermore, SAA cannot move forward in seeking justice without the cooperation of the authors of the *Protocols*, and more broadly all of our Native American colleagues. We must both, in fact and in spirit, meet. As one commentator wisely noted, he is not yet persuaded of all the points raised by the *Protocols*, but he is open to discussing them. As I have already suggested, I, too, cannot accept every point found in the *Protocols*. Indeed I am profoundly troubled by some of them. But I am willing to listen and learn. I ask only that my colleagues from the Native American community, who sit at the table, share that willingness to listen and learn. Neither side can simply lecture to the other and consider it a day's work well done. Indeed, the more honest the conversation, the more it may prove uncomfortable on both sides. I would be more than a little surprised if there are ideas and facts that we both prefer not be closely examined. But honest conversation is how one begins to realize what the problem is and how to correct it.

The *Protocols* authors have begun a conversation by having the Native American Archives Roundtable present to the SAA Council their handiwork for endorsement. To continue that conversation, I believe that the Council can and should endorse as a first principle that Native Americans, as a matter of justice, should control the records created by their communities that document their cultures. This, I believe, is a fundamental truth found within the *Protocols*. It is, for me, the "spirit" of the document discussed in the draft motions found elsewhere in the Task Force report. In addition to that endorsement, I believe that the SAA Council should offer to begin a dialog with the Native American community from which we will all grow in our understanding of the meaning of that endorsement.

The road ahead will likely be long. It will certainly be bumpy. But all journeys, short or long, easy or arduous, begin with a first step. The authors of the *Protocols*, on behalf of the Native American community, have taken theirs. I ask the Council, on behalf of the Society of American Archivists, to take ours.

## **Appendix 6: Classification of Comments for Statistical Purposes**

Because the statistical summary of the comments received involves, in some cases, the subjective interpretation of the Task Force regarding the placement of comments (particularly when the author of the comments failed to clearly state a position), the Task Force includes, for the record, how it evaluated each comment for statistical purposes.

### **Comments In Favor Of Endorsement**

- Comments 1, 5, 8, 10, 13, 16, 19, 25, 29, 30, 33

### **Comments Leaning Toward Endorsement**

- Comments 4, 39

### **Comments That Could Not Be Classified Regarding Endorsement**

- Comments 6, 7, 9, 24, 27, 34, 35

### **Comments Leaning Toward Opposing Endorsement**

- Comments 3, 12, 14, 22, 28, 32, 37

### **Comments Opposing Endorsement**

- Comments 2, 11, 15, 17, 18, 20, 21, 23, 26, 31, 36, 38

### **Comments Designated As Originating From Non-Archivists**

- Comments 9, 14, 22, 23, 25, 26, 28, 32