

**Society of American Archivists' (SAA) Oral History Section Live Web Chat:
Lessons Learned from Boston College and the Belfast Case**

**Wednesday, July 17, 2013 @ 2pm Eastern
Featuring guest panelists Clifford Kuhn and Elena Danielson**

Time	Author	Text
Wednesday July 17th 2013 2:00:37 pm	saa oral history section	Hello and welcome to this live web chat sponsored by the Oral History Section of the Society of American Archivists. Today we will be discussing Lessons Learned from Boston College and the Belfast Case. Before we begin a disclaimer: This event is not intended to be a place to get answers to specific cases and rulings as our group is not prepared to provide legal advice but instead to encourage discussion of the issues that affect archivists and their work with oral histories and the lessons we've learned.
Wednesday July 17th 2013 2:00:55 pm	saa oral history section	Our panelists today are Elena Danielson Former Director and now "archivist emerita" at Stanford University's Hoover Institution and author of The Ethical Archivist. And Clifford Kuhn Associate Professor of History at Georgia State University and Executive Director of the Oral History Association. We'll get started in just a few minutes but if you have questions for our panelists go ahead and submit them. We'll be moderating the conversation virtually and we will get to as many of the questions as possible. We'll also be posting a few poll questions during the discussion.
Wednesday July 17th 2013 2:02:38 pm	elena danielson	First a big thank you to the Oral History Section of SAA for sponsoring this web chat on the fascinating Belfast Project which has implications for access to data well beyond oral history projects. I am no lawyer and have no intention to give advice but I found reviewing the documents on the section website very helpful to gain perspective. I reacted to the Belfast Project in three very different ways due to my varied experiences as a reference archivist an acquisitions archivist and then manager. As a reference archivist I tried to minimize restrictions and let the chips fall where they may. Gathering information and then locking it up was offensive to me. As an acquisitions archivist my sympathies were with the vulnerable donors and I encouraged restrictions to protect them and their interests. As a manager I was very skeptical of donors who wanted commitments that required expensive legal assistance and huge amounts of staff time that could divert our efforts and funds from our main mission. In dealing with foreign political movements I learned that my good intentions for documenting history made me vulnerable to become a tool of special political interests I did not fully understand. As a manager I was not impressed by the integrity of the courts and did not want to become involved in litigation especially involving criminal acts or political struggles. Archives need to balance the needs of these three groups: researchers donors and the welfare of the archives itself.

Wednesday July 17th 2013 2:03:00 pm	saa oral history section	This is a web chat and will not have audio or video components.
Wednesday July 17th 2013 2:03:10 pm	Cliff Kuhn	In many ways the Boston College case is an anomaly. It involves an international treaty law enforcement officials in two countries and possible revelations about a murder. And Delours Price the former IRA member whose interviews were at the core of the case has since died thus lifting the original seal on the interviews. Yet the case has raised in high relief a number of important and complex ethical legal and procedural matters and offers the possibility of a constructive dialogue around best practices from the evolution of an oral history project to its implementation and dissemination. This web chat marks an important step in the process and I welcome the opportunity to take part in the discussion.
Wednesday July 17th 2013 2:06:37 pm	saa oral history section	We are so excited to have a great turn out for our first live web chat! Please feel free to post questions for the panelists. We will add them or combine similiar questions to the chat conversation.
Wednesday July 17th 2013 2:07:18 pm	saa oral history section	Our first question: What are our responsibilities to our interviewees and donors especially with regard to informed consent prior to oral history interviews?
Wednesday July 17th 2013 2:08:25 pm	Cliff Kuhn	Rapport and trust between the two parties involved in an oral history interview are central crucial ingredients for any successful fruitful interview. And these don't happen automatically they have to be worked at from the first contact If one is to speak fully and candidly about potentially sensitive subjects there has to be a guarantee to the greatest degree possible that any restrictions on the interview placed by the narrator are honored. If those restrictions are breached it clearly erodes trust and might well lead to potential narrators being less likely to cooperate in the future. On the other hand as the SAA Government Affairs Working Group has stated vis a vis the Boston College situation, "it is likely that there will be an even greater chilling effect if archivists and others involved in obtaining historical documentation are perceived as giving legal advice that has little chance of being supported in a court of law. Certainly a key facet of trust is keeping one's promises not promising more than what one can deliver." (http://files.archivists.org/advocacy/BostonCollIRAOralHist_FINAL2.p

<p>Wednesday July 17th 2013 2:11:11 pm</p>	<p>elena danielson</p>	<p>I agree with Cliff that trust is key. We need to be careful what we promise narrators and then provide well thought out easy to administer restrictions when necessary (See Menzi Behrnd-Klodt on oral history releases and agreements in her SAA manual on the law p. 257)</p>
<p>Wednesday July 17th 2013 2:07:36 pm</p>	<p>anthony mcintyre</p>	<p>The Boston College case is less an anomaly than is sometimes made out. Despite what the surface complexities may be such as MLAT and law enforcement issues at root is the ethical imperative of a researcher to protect their sources from any harm that may accrue as a result of what those sources revealed during confidential interactions with the researcher.</p>
<p>Wednesday July 17th 2013 2:10:08 pm</p>	<p>sadyoh</p>	<p>I'm curious if there will be a chilling effect on the project level i.e. institutions choosing NOT to document (with oral history) contested historical moments social movements/activism etc.</p>
<p>Wednesday July 17th 2013 2:15:52 pm</p>	<p>elena danielson</p>	<p>The chilling effect is a possibility of course. But using good communication and good procedures we can construct highly successful oral history programs such as we know from the Bancroft Library.</p>
<p>Wednesday July 17th 2013 2:16:41 pm</p>	<p>Cliff Kuhn</p>	<p>Take seriously the principle of informed consent whether or not you have to undergo IRB review. There are certainly oral historians who argue that too much divulgence on the part of the interviewer can have a chilling effect on the interview. I would tend to argue otherwise that rather than have a chilling effect a serious in-depth advance discussion about the contours of the interview -- including review of potential subjects to address various restriction options and how the interview will be processed and made available -- can actually foster investment in the interview on the part of the narrator. Such a process shows the narrator that you're showing them respect (another key component of any interview) and gives them a chance to consider what to include and how to say it in the interview. The result often is a richer fuller account.</p>
<p>Wednesday July 17th 2013 2:09:27 pm</p>	<p>tessa beers</p>	<p>The whole case calls into question the nature of restricted collections. We have oral history collections which were conducted in Africa Latin America and India - the big question is does this mean that none of our donor agreements can be honored if the home government requests access to the interviews?</p>

<p>Wednesday July 17th 2013 2:15:09 pm</p>	<p>carrie bcsn</p>	<p>Sadyoh we have been made aware of projects that have not gone ahead because of the problems posed by the subpoenas of the Belfast Project. One in particular was to be an oral history of security forces. Other anecdotal evidence of the chilling effect has been found in researchers' comments about people no longer willing to speak to them citing the BC case as why.</p>
<p>Wednesday July 17th 2013 2:21:22 pm</p>	<p>elena danielson</p>	<p>Subpoenas in archives are actually pretty rare. Menzi Behrndt-Klodt does address the issue p. 22-23 of her SAA law manual. Restrictions normally work but apparently it is not possible to make them entirely subpoena proof...and maybe they shouldn't be...</p>
<p>Wednesday July 17th 2013 2:22:02 pm</p>	<p>saa oral history section</p>	<p>In our workplaces: do we fully understand our institutions' access policies and our abilities to offer restrictive/confidentiality agreements to donors? Do our practices match our policies?</p>
<p>Wednesday July 17th 2013 2:24:21 pm</p>	<p>saa oral history section</p>	<p>Just a reminder that this is a moderated chat not an open chat. This chat is meant to be an informal dialogue around the issues that the Belfast Case and other cases suggest for administrators and custodians of archival collections (archivists but not always archivists).</p>
<p>Wednesday July 17th 2013 2:22:46 pm</p>	<p>tina</p>	<p>What options do archives have for dealing with interviews in their possession which never had signed releases of any kind and for which all efforts to obtain releases have been exhausted? Is the responsibility of creating access to interviews just as significant as the responsibility of protecting privacy and copyright?</p>
<p>Wednesday July 17th 2013 2:27:48 pm</p>	<p>Cliff Kuhn</p>	<p>John Neuenschwander in Oral History and the Law suggests several options including tracking down the narrator tracking down descendants and tracking down the interviewer who is a joint creator of the document.</p>

<p>Wednesday July 17th 2013 2:30:52 pm</p>	<p>Cliff Kuhn</p>	<p>I think publication of interviews online poses particular challenges including the possibility of legal challenges by both the person interviewed and by third parties mentioned in the interview. (For an overview of some the legal issues in the digital environment see John Neuenschwander "Major Legal Challenges in the Digital Age" http://ohda.matrix.msu.edu/2012/06/major-legal-challenges/.) There exists the real problem of on-line interviews being taken out of context especially as many perhaps most people find these interviews via Google and can bypass any contextual framing or disclaimers supplied by the archive or hosting entity. And there's also the issue of self-censureship if people know that their words (or their image) can be broadcast around the world. However I don't think self-censureship is automatic; let's give people credit for figuring out themselves how much or how little they wish to divulge and in what manner. In any event possible on-line publication warrants a special attentiveness in the process of informed consent.</p>
<p>Wednesday July 17th 2013 2:11:11 pm</p>	<p>polina</p>	<p>What do you do if the oral history includes negative statements about a living politician (the interviewee doesn't object to publishing the transcript with these statements)?</p>
<p>Wednesday July 17th 2013 2:35:56 pm</p>	<p>Cliff Kuhn</p>	<p>Public figures as a rule cannot be defamed. In addition two U.S. Circuit Courts of Appeal have affirmed the doctrine "once a public figure always a public figure." However if there is any doubt I'd consult counsel.</p>
<p>Wednesday July 17th 2013 2:36:05 pm</p>	<p>saa oral history section</p>	<p>In our workplaces: as archivists do we know and have access to our institution's legal team?</p>
<p>Wednesday July 17th 2013 2:37:42 pm</p>	<p>tessa beers</p>	<p>When we were entering into an oral history project we worked closely with our OGC (Office of General Council) to craft the agreement form in a way that suited both us as the archive and OGC's legal team.</p>

<p>Wednesday July 17th 2013 2:39:02 pm</p>	<p>elena danielson</p>	<p>Each archival repository needs to calibrate the level of risk they can assume depending on the legal and financial support they have available. Even with legal counsel archivists need to educate the lawyers about how archives work...</p>
<p>Wednesday July 17th 2013 2:41:37 pm</p>	<p>Cliff Kuhn</p>	<p>I concur. Along with IRB boards lawyers tend to be ultracautious and sometimes overly restrictive. My advice is at the outset of the project consult with legal counsel about any possible legal issues surrounding restriction and confidentiality that might be joined during the project and how these might be embedded in the release form as well as in any preliminary conversations with potential narrators. Make sure that counsel is aware of the pertinent cases as well as state open records acts and their exemptions and is prepared to exhaust all legal avenues if necessary to protect the interviews.</p>
<p>Wednesday July 17th 2013 2:39:42 pm</p>	<p>sadyoh</p>	<p>will this chat be archived? (getting pulled into a meeting dang!)</p>
<p>Wednesday July 17th 2013 2:42:38 pm</p>	<p>saa oral history section</p>	<p>The text of chat will be available on the Oral History Section microsite.</p>
<p>Wednesday July 17th 2013 2:43:43 pm</p>	<p>saa oral history section</p>	<p>When is it appropriate to accept or not accept a collection?</p>
<p>Wednesday July 17th 2013 2:49:52 pm</p>	<p>saa oral history section</p>	<p>To summarize a few questions that have been coming in: Can you trust your institution's guarantees of support when you accept a risky collection?</p>

<p>Wednesday July 17th 2013 2:45:54 pm</p>	<p>elena danielson</p>	<p>In my experience it is important to work with upper management to have permission to turn down collections even trophy collections if they come with unacceptable risks. That said saving history is our business and will always involve some risk to preserve a truthful records it's part of the job.</p>
<p>Wednesday July 17th 2013 2:50:43 pm</p>	<p>Lauren Kata</p>	<p>I think too this is a matter of understanding both professional ethics and institutional mission and balancing those - Elena you refer to this as "harmonizing policies with a parent organization" in "The Ethical Archivist"</p>
<p>Wednesday July 17th 2013 2:52:16 pm</p>	<p>elena danielson</p>	<p>In my experience it is important to educate your upper management and parent institution about archives using lots of exhibits and presentations as opportunities to get management on the same wavelength it will pay off in the long run and minimize problems. But each problem is a learning experience.</p>
<p>Wednesday July 17th 2013 2:53:14 pm</p>	<p>Cliff Kuhn</p>	<p>2) Make sure that everyone involved with the project -- upper administration counsel interviewers/researchers archives staff even transcribers -- is on the same page. In particular make sure that all parties are using precisely the same language when it comes to making promises about restrictions and confidentiality. Keep a careful paper trail to document that everything is consistent up and down the line.</p>
<p>Wednesday July 17th 2013 2:53:43 pm</p>	<p>saa oral history section</p>	<p>In our networks and professional associations: What is or should be the role of professional associations in speaking out about legal cases?</p>
<p>Wednesday July 17th 2013 2:55:02 pm</p>	<p>elena danielson</p>	<p>I think our professional organizations have an important role to play and work best on the level of articulating general principles. Then when the do issue a strong protest on a particular case it will be taken seriously.</p>
<p>Wednesday July 17th 2013 2:54:37 pm</p>	<p>carrie bcsn</p>	<p>How do you make sure everyone involved is on the same page if the project was initiated a decade before subpoenas arrive and completed years prior?</p>

Wednesday July 17th 2013 2:57:49 pm	Cliff Kuhn	There's no guarantee of course but at least a paper trail helps reduce such problems.
Wednesday July 17th 2013 2:58:23 pm	elena danielson	I agree with Cliff
Wednesday July 17th 2013 2:59:10 pm	saa oral history section	Cliff and Elena: What are some of the lessons we should be taking away?
Wednesday July 17th 2013 3:00:45 pm	Cliff Kuhn	In terms of lessons learned/best practices one of the best general resources is the Oral History Association's "Principles and Best Practices" available at http://www.oralhistory.org/about/principles-and-practices/ . Other useful on-line sites include the collection of essays on the "Oral History in the Digital Age" website (http://ohda.matrix.msu.edu/) and historian Zachary Schrag's blog on Institutional Review Boards and associated ethical issues http://www.institutionalreviewblog.com/ . Schrag is also the author of Ethical Imperialism: Institutional Review Boards and the Social Sciences 1965-2009. As far as specific lessons from the BC case I'd include the following: Don't publicize potentially explosive interviews which have restrictions. If the BC interviews had not been publicized there never would have been a subpoena issued. Perhaps even keep the interviews in a separate place or under separate authority from the archive until the death of the narrator or until the embargo on usage is lifted. Whether or not you need to undergo IRB review fully and proactively engage the principle of informed consent. And fully consider possible fallout from the interview to the narrator to others mentioned in the interview to associates of the narrator to the larger community. Consider other forms of arrangements such as Creative Commons. Keep your promises.
Wednesday July 17th 2013 3:01:22 pm	saa oral history section	Unfortunately that's all the time we have for today's live chat. Thanks for joining us. And thank you to Elena Danielson and Clifford Kuhn for their insight and expertise.

<p>Wednesday July 17th 2013 3:01:40 pm</p>	<p>saa oral history section</p>	<p>If you found this web chat interesting and helpful be sure to come to Session 708 during the annual conference (Saturday Aug. 17 @ 9:45am). Title: Privacy Academic Freedom and the Law: Collecting and Protecting Oral Histories Description: During the last decade federal law and institutional policies have increasingly been applied to oral history methodology and collections. From institutional review boards (IRBs) to federal subpoenas oral historians and collecting repositories face a number of challenges in their efforts to gain the trust and maintain the privacy of their subjects. Although collection restrictions may be granted when facing a subpoena how much power do these agreements truly hold? Learn more about the rights and responsibilities of archivists working with contentious oral history collections and the legal power of repository-imposed restrictions.</p>
<p>Wednesday July 17th 2013 3:01:52 pm</p>	<p>saa oral history section</p>	<p>Other planned activities for oral historians coming to New Orleans in August: 1. Thursday August 15 @ 12 noon - Forum: SAA Oral History Section - come network and ask questions to help you with your next oral history project! 2. Thursday August 15 @ 3:30pm - Oral History Section Meeting featuring presentations about local oral history projects in NOLA 3. Saturday August 17 @ 8am - Session 608 - "Let's Give 'Em Something to Talk About: Oral History in the Digital Age" 4. Saturday August 17 @ 9:45am - Session 708 - "Privacy Academic Freedom and the Law: Collecting and Protecting Oral Histories" We hope to see you there!</p>
<p>Wednesday July 17th 2013 3:02:16 pm</p>	<p>saa oral history section</p>	<p>Thanks everyone!</p>