1-1999

Fresh Focus: Mississippi's 'Spy Files': The State Sovereignty Commission Records Controversy, 1977-1999

Lisa K. Speer

Fresh Focus

Too often the pressure of the present day work environment lures archivists into ignoring their professional past or advancing shortsightedly into the future. To encourage such reflection on the archival enterprise, *Provenance* includes this section, Fresh Focus. We invite contributors to explore neglected chapters in archival history or to share an original, especially historical, perspective on the current world of archival affairs. *Provenance* particularly encourages submissions for Fresh Focus from new or student archivists who are, after all, the future of the profession. Following is the third in a series of occasional essays or papers meeting these criteria.

The Editors

Mississippi's "Spy Files": The State Sovereignty Commission Records Controversy, 1977–1999

Lisa K. Speer

On 17 March 1998 the Mississippi Department of Archives & History, at long last, opened the State Sovereignty Commission records for public use. Reporters from state and national newspapers and television were on hand for the event as well as a

bevy of curiosity seekers. All awaited their chance for a glimpse into the files that were the subject of a twenty-one-year legal battle between the state of Mississippi and the American Civil Liberties Union (ACLU). Dubbed the state "spy files" by reporters, the records of the State Sovereignty Commission and the legal case and history surrounding their disposition represent a perfect case study of the conflict between access versus privacy rights in state records.

From the time of the commission's establishment by the state legislature in 1956 to the time of its demise in 1973, the commission amassed "spy files" on over 87,000 names.[1] The collection of records, which consists of approximately 124,000 documents, represents the single largest state-funded spying effort in United States history.[2] Many believed opening the records would ruin lives and destroy friendships, while those who favored disclosure argued that the state of Mississippi had hidden for too long the truth about what the commission did to its citizens between 1956 and 1973. In the end, those who sought disclosure prevailed. While it seems fair to speculate that opening

---

[1]Peter Maass, "The Secrets of Mississippi: Post-Authoritarian Shock in the South," *New Republic*, 21 December 1998, 21(5).

[2]Several other southern states, including Alabama, Florida, and Georgia, also had sovereignty commissions during this time period. The Mississippi commission, however, was the only organization supported by taxpayer money, and, therefore, the most active of the southern agencies. The opening of Mississippi's records also generated far more controversy than in any other state. The records of the Alabama State Sovereignty Commission opened at the state Department of Archives and History in 1978, without the fanfare and expense of a prolonged legal battle. See Beverly Pettigrew Kraft, "Miss. Spy Files Draw More Attention than Other States," *Clarion-Ledger* (Jackson, MS), 22 March 1998, 1A.

the files ruined no lives, the controversy over the files and their content impacted many lives.[3]

In 1956, the year of the commission's establishment, Mississippi was gearing up for a battle to preserve what some called "the Southern way of life." Two years earlier, the Supreme Court had handed down its judgment in the landmark *Brown v. the Board of Education, Topeka* case regarding racial segregation in public schools. This decision sent southern states into frenzied action to preserve their segregated schools and the racial caste system that so thoroughly pervaded every facet of public and private life. Mississippi quickly distinguished itself as the most militant of the southern states.[4] While many white southerners undoubtedly applauded Mississippi's efforts, outside the South not everyone looked so favorably upon the state's reactionaries and their fight to keep black Mississippians voiceless and powerless.

The year prior to the creation of the State Sovereignty Commission, Mississippians elected as their new governor, James Plemon Coleman. Coleman, characterized as a "moderate" by his contemporaries, was one of five gubernatorial candidates, all of whom pledged themselves to upholding school segregation

---

[3]Rick Bragg, "Old Allies Parts Ways on Opening Files of Hate," *New York Times*, 18 March 1998, A16; David J. Garrow, "Mississippi's Spy Secrets," *Newsweek*, 30 March 1998, 15 (1); David R. Oshinsky, "Should the Mississippi Files Have Been Reopened," *New York Times Magazine*, 30 August 1998, 30 (8); Kevin Sack, "Mississippi Reveals Dark Secrets of a Racist Time," *New York Times*, 18 March 1998, A1; Kevin Sack, "The South's History Rises Again and Again," *New York Times*, 22 March 1998, sec. 4, p. 1; Kevin Sack and Emily Yellin, "Smiles and Anger Mix for Man in the Spy Files," *New York Times*, 19 March 1998, A12; "Unsealing Mississippi's Past," *New York Times*, 19 March 1998, A20.

[4]Numan V. Bartley, *The Rise of Massive Resistance* (Baton Rouge: Louisiana State University Press, 1999), 211–36.

despite the Supreme Court ruling. To the credit of Mississippi voters, Coleman won by a landslide in a year of record voter turnout.

One of Coleman's first acts as governor was the creation of the State Sovereignty Commission. The purpose of the commission, according to the bill creating the agency, was "to perform any and all acts and things deemed necessary and proper to protect the sovereignty of the state of Mississippi . . . from encroachment thereon by the Federal Government or any branch, department or agency thereof; and to resist the usurpation of the rights and powers reserved to this state . . . by the Federal Government."[5] Four *ex officio* members composed the commission—the governor, lieutenant governor, attorney general, and speaker of the house. Additional members consisted of two state senators appointed by the President of the Senate, three representatives appointed by the Speaker of the House, and three private citizens, one from each of the state's Supreme Court districts, appointed by the governor. The activities of the commission, which critics called "the watchdog of segregation," were twofold—public relations and investigations.[6]

To combat the increasingly unfavorable national image of Mississippi, the agency operated a public relations department that disseminated the "truth" about Mississippi and the virtues of "the Southern way of life." To accomplish this aim, the commission sent speakers throughout the country to lecture outsiders on the importance of allowing Mississippians to solve their own racial issues. The commission also generated press releases, pam-

---

[5]Erle Johnston, *Mississippi: The Defiant Years* (Forest, MS: Lake Harbor Publishers, 1990), 48.

[6]James W. Silver, *Mississippi: The Closed Society* (New York: Harcourt, Brace & World, Inc., 1964), 8.

phlets, and at least one film in keeping with this theme. By far the most insidious activity of the commission, however, was the monitoring of private citizens by hired professional investigators and informants. Leonard Hicks, former head of the Mississippi Highway Patrol, served as Chief of Investigations for the commission, and former FBI Agent Zack Van Landingham as one of the investigators.[7] Additionally, the commission paid a number of private individuals to report on the potentially "seditious" activities of their friends and neighbors.

The commission's original mission was monitoring activities that presented the most obvious threats to segregation—civil rights rallies, marches, and voter registration drives. The commission scrutinized, however, any questionable facet of an individual's life. Investigators inspected the hair, nails, and skin of infants alleged to be biracial and also documented allegations of illegitimate births, child molestation, homosexual activity, drug abuse, and financial improprieties, regardless of factual support. The potentially controversial nature of the files was a key factor motivating some individuals to support their destruction, or indefinite restriction.

The debate over the disposition of the files began in 1977, four years after Mississippi Governor Bill Waller effectively killed the commission by vetoing funding. Upon closure of the agency, the question of what to do with its six cabinets of files took center stage. In typical reactionary form, the Mississippi House passed a measure by a vote of eighty-one to sixteen that allowed the secretary of state to destroy the files.[8] Those who favored

---

[7]Johnston, *The Defiant Years*, 50.

[8]"Record Burning Amendment by Holmes Added to Bill Abolishing Sovereignty Commission," *People's Press* (Yazoo City, MS), 3 February 1977, n.p.

destruction felt that "the turbulent desegregation era [was] an unfortunate part of Mississippi's history . . . best forgotten."[9]

Fortunately, not everyone agreed with the state's lawmakers. Former Lieutenant Governor William Winter, a highly respected public figure, spoke out in favor of saving the records. "Burning records, records of any kind that have some input into our background as a people," Winter warned, "is inconsistent with our system of government and it smacks of the totalitarian state."[10] Winter compared the files to those of the infamous House Un-American Activities Committee (HUAC), stored for safekeeping at the National Archives. The Mississippi Department of Archives & History (MDAH) also entered the fray on the side of retention. Archives director Elbert Hilliard told lawmakers that under Mississippi law an MDAH official had to inspect the files for historically significant content before the state could proceed with destruction. Talk of destruction halted in February 1977, however, when the Mississippi Chapter of the American Civil Liberties Union (MsACLU) obtained an injunction against destruction of the files, which they believed could provide useful evidence in a class action suit against the state of Mississippi by those individuals on whom the agency illegally spied.[11]

Arguments in favor of saving the records carried the day in a March 1977 senate hearing. The Mississippi Senate voted overwhelmingly (35–9) in favor of preserving the files and in-

---

[9]David Hampton, "Archives' Trustees Ask for Sovereignty Files," *Jackson Daily News*, 29 January 1977, 1A.

[10]James Young, "Lawmakers to Vote on Fate of Sovereignty Panel Files," *Commercial Appeal* (Memphis, TN), 17 February 1977, n.p.

[11]"ACLU to Seek Preservation of Sovereignty Panel Records," *Clarion-Ledger*, 25 February 1977, 4B.

structed the state to turn the records over to the MDAH. The hearing also resolved the question of access to the files by the MsACLU or any other agency or individual by sealing them until 2027.[12] Workers at the Vital Records Center in Flora, Mississippi, secured the six cabinets with metal bands and transferred the files to the vault of the state archives. Anyone found guilty of tampering with the files before the fifty-year period elapsed faced sizeable fines and possible imprisonment.[13]

While the MsACLU succeeded in saving the records from destruction, the senate ruling impeded the organization's primary objective—obtaining evidence for a class action suit against the state. For the next sixteen years, the MsACLU waged legal warfare over access to the files. In early 1979, the MsACLU petitioned district court to view the files. The organization, representing over ninety individuals and groups, sought compensatory and punitive damages against the commission for its illegal spying activities against people whom the agency knew were not involved in criminal activities. To prove its case, however, the MsACLU needed access to the "spy files." MsACLU attorneys asserted that a government agency could assert privilege of documents only after the head of the controlling agency reviewed them and provided a reason for privilege. In the case of the commission records, the state had conducted no such review.

The MsACLU wanted the governor's office to review the files and to allow ACLU attorneys, as well as a member of the federal judiciary, to view them. In this particular bid, the MsACLU was unsuccessful. U. S. District Court Judge Harold Cox ruled that federal courts had no authority to open the records

---

[12]James Young, "Senate Votes to Seal Secret Files," *Commercial Appeal*, 3 March 1977, n.p.

[13]Mississippi House Bill No. 276, 4 March 1977.

to the ACLU. Cox dismissed the ACLU petition on the basis of the Eleventh Amendment to the U. S. Constitution that bars suits against states unless the state agrees to be sued.[14] In 1984, U. S. District Judge William H. Barbour, Jr., overturned the previous district court ruling. Barbour granted MsACLU attorneys access to the files and gave the state thirty days to comply with his ruling. After weighing the state's argument for keeping the records sealed, Barbour wrote:

> The [state's] brief forthrightly admits that the files are 'potentially inflammatory' and asks us to hold that the 'state had justifiable and compelling interest to allow old wounds to heal.' This appealing argument carries little weight when it is at the expense of a litigant relying on federal constitutional rights. We do not have the power to forgive and forget.[15]

Prior rulings, Barbour declared, unduly restricted the MsACLU's entitlement to discovery of information. He enjoined ACLU attorneys, however, to release no information from the files to the public. Barbour threatened the MsACLU with penalty of perjury or contempt of court in the event they ignored his instructions.[16]

After Barbour's 1984 ruling, the next major milestone in the saga of the records controversy came in 1989, when Judge

---

[14]Steve Hallam, "ACLU Says Open Sovereignty Files," *Jackson Daily News*, 21 February 1979, 1C; and Patrick Larkin, "Judge Dismisses Sovereignty Commission Suit," *Clarion-Ledger*, 24 April 1979, 3A.

[15]Greg Kuhl, "Judge: State Must Open Sovereignty Records," *Jackson Daily News*, 30 October 1984, 1.

[16]Greg Kuhl, "ACLU Gets to Inspect Long-Sealed State Files," *Jackson Daily News*, 29 November 1984, 1A.

Barbour ruled that the state archives should open the files, as public records. Attorney General Mike Moore, in response to the 1989 ruling, announced that he would not appeal the decision. Moore, who had merely inherited the case from a previous administration, supported opening the records.[17] The continued legal efforts of the MsACLU were a primary catalyst behind Barbour's landmark decision, although he had been moving in this direction for several years. In 1985, he ordered former commission director Erle Johnston to release to ACLU attorneys the names of informants; and in 1986, he permanently enjoined Mississippi's public officials from ever again using surveillance and harassment tactics against private citizens. In 1988, Barbour granted the U. S. Justice Department access to the files as part of a discovery request involving allegations of discrimination in judicial redistricting.[18]

The many leaks that had already occurred, none of them emanating from the sealed files at the state archives, also significantly influenced Barbour's decision to open the records. The presence of commission documents in other archival repositories, primarily at the University of Southern Mississippi at Hattiesburg, seemed to negate the need to keep the MDAH files sealed any longer.[19] A 1989 article in the Jackson *Clarion-Ledger* had already outlined the categories of documents contained

---

[17]Jerry Mitchell, "Attorney General Will Not Appeal Judge's Decision," *Clarion-Ledger*, 29 July 1989, 1A.

[18]"Sovereignty Commission History," *Clarion-Ledger*, 28 July 1989, 6A.

[19]Commission records had been deposited at USM as part of the Sid Salter Collection. Salter, a newspaper reporter, acquired these records from former commission director Erle Johnston. The papers of former Mississippi Governor Paul B. Johnson, Jr., housed at the USM archives, also contain copies of commission documents.

in the files. These included newspaper clippings, correspondence with employers of individuals involved in civil rights organizing activities, reports gathered through warrantless searches on private property, reports of funds spent on informants, press releases and investigations, and lists distributed to local law enforcement officials of people suspected of civil rights activity. One such list of the latter variety contained the license plate number of the car driven by civil rights workers James Chaney, Michael Schwerner, and Andrew Goodman, murdered in Neshoba County in 1964, by Klansmen with direct ties to the local sheriff's office.[20]

While Judge Barbour ultimately agreed with MsACLU attorneys who believed the state should open the records for public inspection, he sympathized with those individuals possibly injured by information in the files. In the forefront of the fight to keep the records sealed were Revered Edwin King and John Salter, Jr., former civil rights activists from Jackson's all-black Tougaloo College. King was the white former chaplain at Tougaloo, and Salter, a Native American professor of sociology at the college. Salter and King filed an appeal in the Fifth Circuit Court in 1979, shortly after Judge Barbour first ruled that the state would allow the public to view the records. As a caveat to his ruling, however, Barbour added that the records would remain sealed until all appeals were exhausted.[21] Salter and King objected to opening the files on the grounds that the records contained a variety of half-truths and lies that could prove damaging to those therein

---

[20]Beverly Pettigrew Kraft, "Some Records Destroyed, Removed Years Ago." *Clarion-Ledger*, 28 July 1989, 1A.

[21]Jerry Mitchell, "2 File Notice of Appeal to Keep Sov. Records Closed." *Clarion-Ledger*, 24 August 1979, 1B.

named. They believed that only those eligible to bring suit against the commission should have access to the files.[22]

Attorney for King and Salter, David Goldstein, proposed a compromise between the two conflicting views that formed the crux of the controversy—freedom of access to public records and an individual's right to privacy. Goldstein argued for redaction of the records before opening them to the general public. In addition, he proposed (1) providing victims with access to the files, (2) withholding records that included references to victims, but (3) releasing records that included the names of public officials or informants who cooperated willingly with the commission.[23]

Ultimately, the courts decided upon a course of action similar to Goldstein's proposal and one that balanced individual privacy rights with the public's right to know. The court instructed the Mississippi Department of Archives and History to review each of the 124,000 pages of documents, compile a list of names of individuals mentioned in those files, and ascertain the role of each individual—victim, actor (i.e., employee of commission or paid informant), or public figure. Judge Barbour defined "victim" as anyone who was "subject to investigation, surveillance, intrusions or the dissemination of false and misleading information by the Sovereignty Commission."[24] The MDAH would then employ some means to notify those classified as "victims," provide them with access to copies of their files, and comply

---

[22]Jerry Mitchell, "Open State's Spy Files, Judge Says," *Clarion-Ledger*, 28 July 1989, 1A.

[23]"Court Hears Arguments in Sovereignty Case," *Sun-Herald* (Biloxi, MS), 13 July 1990, n. p.

[24]"Sovereignty Commission Records Unsealed," *Hattiesburg American* (Hattiesburg, MS), 1 June 1994, n. p.

with their wishes for disposition. To accomplish this end, the state ultimately provided the MDAH with $300,000 to prepare the files and notify victims.

Some questioned the appropriateness of allowing a state agency to edit the files of one of its own. Mark Marquardt, MsACLU official, felt that putting "the state in charge of correcting what the state did [was] like putting the proverbial fox in charge of the hen house." MDAH director Hilliard, however, felt that the decision to allow the archives staff to edit the papers was a perfectly logical one and compared the situation of his agency to that of the National Archives, which edits the records of the Federal Bureau of Investigation.[25]

In June 1994 Judge Barbour gave the MDAH one year to prepare an index to the files; this included the categorization (i. e., "victim" or "actor") of all individuals appearing in the records.[26] Once the MDAH completed this work, they launched a $90,000 national advertising campaign designed to alert those classified as "victims" to the impending opening of the records and provide them with an opportunity to view and edit their files. In early January 1997, the MDAH placed ads in state and national newspapers announcing the opening of the files and instructing that "due to the personal and sensitive nature of some of this information, the court has provided a limited period of time during which persons may submit a written request to the MDAH to determine if their name appears in the files."[27] The ads ran twice, on 20 January and 27 January 1997, in all Missis-

---

[25]Jerry Mitchell, "State Archives Should Edit Spy Commission's Files, Official Says," *Clarion-Ledger*, 17 July 1990, 1A.

[26]"Sovereignty Records Unsealed," *Hattiesburg American.*

[27]"Spy Panel Files May Be Open by Sept.," *Picayune Item* (Picayune, MS), 24 December 1996, n. p.

sippi newspapers, as well as the *New York Times*, the *Wall Street Journal*, and *USA Today*.

Individuals who thought the records might contain files on them had ninety days in which to respond to the advertisements. The MDAH did not consider responses postmarked after 28 April 1997 and considered privacy rights waived in these cases. In response to all written requests, the MDAH sent respondents questionnaires to fill out and return within fifteen days. The questionnaire asked respondents to provide their full names, nicknames, possible spelling variations of their names, and descriptions of the activities they thought might have subjected them to surveillance. Respondents could request that the MDAH search for their names only, and the state required them to sign affidavits to their identity.

Upon receipt of the completed questionnaire and the signed affidavit, MDAH staff searched the records for relevant files and sent copies to the respondents. MDAH staff redacted any other names contained within an individual's files before sending the copies. Only those individuals classified as "victims" by the MDAH had an opportunity to review and edit their files. Individuals classified as "actors"—commission members, spies, newsmen who requested information from the commission—could only petition U. S. District Court to have their classification changed. "Victims" had thirty days in which to decide how they wanted their files handled. They chose from among four privacy options: (1) permanent redaction of their names, (2) permanent redaction of all identifying characteristics, (3) petitioning district court to have their names permanently sealed, or (4) supplementing records with material of their own choosing.[28]

---

[28]Mississippi Department of Archives and History Press Release, 17 January 1997; and "Spy Panel," *Picayune Item*.

In response to the national advertising campaign, the MDAH received seven hundred responses. This number represented less than 1 percent of the 292,000 indexed names.[29] Of these respondents, only forty-two eventually filed privacy requests, all of which the MsACLU challenged.[30] The records that opened to the public on 17 March 1998 represented 94 percent of the agency's files. The 6 percent of files that remained closed was the subject of continued litigation, brought by the families of deceased victims. In early 1999, however, Judge Barbour ruled that the MDAH would make public these last 7,200 files.[31]

The opening of the commission files, following the two-decade legal battle, was somewhat anticlimactic. While attended by a goodly amount of media fanfare, scholarly researchers have paid only modest attention to the files in the almost three years since their opening. The MDAH permits access only to digitized versions of the files at two computer terminals in their public reading area. Individuals must register to use the terminals in one-hour blocks. Reaction to information contained within the files varies widely. While some feel that the protracted legal battle was really "much ado about nothing," others find in the

---

[29]Beverly Pettigrew Kraft, "700 Apply to See Sovereignty Files," *Clarion-Ledger*, 16 April 1997, 1B. The figure of 292,000 represents the variations in spellings and misspelling of the names of the 87,000 individuals mentioned in the SSC files.

[30]Jerry Mitchell and Beverly Pettigrew Kraft, "Sovereignty Commission Files Ordered Opened," *Clarion-Ledger*, 14 January 1998, 1A, 8A.

[31]"Most Sovereignty Commission Records Are Now Open," *New Albany Gazette*, 6 May 1998, n. p.; and "Sovereignty Commission's Last Files will be Released," *Hattiesburg American*, 24 March 1999, n. p.

records startling evidence of a totalitarian regime within Mississippi's borders.[32] The reality of the situation probably lies somewhere between these two extremes. One reporter for the *Economist* offers what is perhaps a more balanced assessment of the significance of the files. "The documents," the author writes, "offer an unsettling account of a state obsessed with race."[33] Indeed, the name index provided at the MDAH and on the MsACLU web site reads like a "who's who of individuals and groups involved in the struggle to bring blacks into the American mainstream through integration, voting rights and other basic tenets of citizenship."[34]

Regardless of the content of the commission files, the controversy surrounding their disposition illustrates the heavy responsibility faced by the courts and the archival community of balancing individual privacy rights against the public interest. Public records, those defined as "documents made or received and preserved in the conduct of governance by the sovereign or its agents," are seen as "the arsenal of the polis."[35] Archivists, however, often must grapple with the issue of when privacy supercedes public disclosure. In doing so, the U. S. Freedom of Information Act (FOIA) assists them. The FOIA exempts certain categories of information from mandatory disclosure, includ-

---

[32]Maass, "The Secrets of Mississippi," 21.

[33]"Mississippi Tries to Lay its Ghosts," *Economist*, March 1998, 32 (2).

[34]Donald P. Baker, "A New Look at Old Hostilities," *Washington Post*, 20 March 1998, A03; "The Sovereignty Commission Files: an Index of Names Mentioned in the Files," Mississippi ACLU at <http://www2.msaclu.org/ma/sover/sovlist.html>.

[35]Trevor Livelton, *Archival Theory, Records, and the Public* (Lanham, MD: Society of American Archivists and Scarecrow Press, Inc., 1996), 142.

ing instances which would compromise national security, provide an unfair advantage in the marketplace, compromise police investigative methods, or constitute an unwarranted invasion of personal privacy.[36] The FOIA also provides that in cases where personal and public rights come into conflict, agencies can protect individual privacy by redacting the names of identifiable persons before releasing any documents—the solution ultimately settled upon in the Mississippi Sovereignty Commission records controversy.[37]

Despite a concern for personal interest, in the United States the bias is decidedly towards access over privacy. The Supreme Court, as Heather MacNeil notes, asserts that repositories of public records must balance privacy rights against the basic purpose of the FOIA, which is to "permit the public to decide for itself whether government action is proper."[38] The courts, she contends, generally favor opening records in instances involving governmental oversight or misconduct, or when such action is of interest to an audience broader than the party requesting disclosure. Furthermore, disclosure must constitute the *only* means of serving the public interest. On all these counts, the controversy over the disposition of the Mississippi State Sovereignty Commission files is a perfect case study of the complexity involved in balancing access versus privacy rights with regard to public records.

---

[36]Alan Reitman, "Freedom of Information and Privacy: The Civil Libertarian's Dilemma," *American Archivist* 38 (October 1975): 503–04.

[37]Heather MacNeil, *Without Consent: The Ethics of Disclosing Personal Information in Public Archives* (Metuchen, NJ: Society of American Archivists and Scarecrow Press, Inc., 1992), 66.

[38]Ibid., 67.