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“If at First You Don’t Succeed”: Blacksher, Menefee & Stein, A Second Appraisal

Carol Ellis and Russell James

INTRODUCTION

Processing large collections can present a challenge to archivists. When a large collection consists of case files from a law firm, issues can arise that few archivists have experience in managing. Despite the special concerns that must be addressed in managing a large collection of legal records, archivists have a strong interest in these collections because of the historical relevance of cases the firms handle or particular clients the firms represent.

The very nature of legal collections can present problems for archivists. Lawyers represent clients on a case-by-case basis, treating each independently. As a consequence, archivists will find that legal collections are made up of sub-collections. In addition, lawyers tend to generate large volumes of files that must be retained for long periods of time. Law firm staff responsible for managing these files are rarely knowledgeable or experienced in archival theory and practice. Understanding the filing system of the law firm is critical for archivists in their effort to gain control over the collection and prepare it for research use.

Besides handling the large volume of files and understanding the law firm's unique filing system, archivists also have to address issues such as changing corporate names, privacy, and confidentiality. This article will describe one such large, complex legal collection and how the University of South Alabama Archives (USA) met the challenges associated with acquisition, restricted access, arrangement, and description. A particular focus of the article is the appraisal process and the problems that necessitated a second appraisal.

ACQUISITION OF BLACKSHER, MENEFEE & STEIN COLLECTION

The Blacksher, Menefee & Stein (BMS) law firm of Mobile, Alabama, was involved in some of Alabama's most important civil rights cases. Some of the firm's clients were locally renowned and some of their cases precedent-setting. A few of the firm's attorneys went on to serve as state legislators and judges or became notable in Alabama civil rights history. BMS was one of the few biracial law firms in the state of Alabama, and it acted as cooperating counsel with the Legal Defense Fund (LDF) of the National Association for the Advancement of Colored People (NAACP). The LDF paid BMS maintenance fees and funded expert witnesses and deposition costs for civil rights cases in which it had an interest. BMS litigated important civil and human rights issues, such as prison reform, employment discrimination, school desegregation, single-member district voting, and voting discrimination.

In 1989 an industrious secretary from the law firm called Michael Thomason, director of the University of South Alabama Archives, informing him that BMS was disbanding. Aware that BMS had handled two of the state's most important civil rights cases, *Birdie Mae Davis et al. v. Board of School Commissioners of Mobile County* and *Wiley L. Bolden v. the City of Mobile*, Thomason contacted the firm and negotiated for the files to be transferred to the archives. Three hundred cubic feet of records were delivered to the repository in 100 three-cubic-foot storage boxes. The firm also provided USA with a box list inventory that its staff had prepared and used to locate records after the files had been transferred to internal storage.

Although accession of the collection occurred immediately upon its arrival at USA, some of the cases handled by the firm were still ongoing. Greg Stein, the only one of the three attorneys remaining in Mobile after the firm dissolved, informed USA about concerns related to attorney/client privilege and confidentiality. He stipulated that the collection be closed for ten years. Requests for access during this ten-year period would be decided on a case-by-case basis. Unsure of what the eventual disposition of the collection would be, USA stored the files in the archives' stacks in the same condition that the files were received from BMS.

Eleven years later, in 2000, Michael Thomason and Greg Stein agreed that the collection should be fully processed and made available for research. By this time only one case, *Birdie Mae Davis*, was still in the courts. Stein rescinded the stipulation on closure and gave USA control over the collection. However, it was agreed that, during the processing of the collection, materials pertaining to privacy and confidentiality of individuals would be removed. Such materials included medical and divorce records. USA's primary interest in the collection remained only with the civil rights case files.

ORIGINAL APPRAISAL

In establishing selection criteria to appraise the collection, Thomason advised Stein of the archives' goal to preserve Mobile's historically significant civil rights cases and Stein agreed. With the assistance of Stein and his former law partner Henry Brewster, and using the box inventory provided by the firm, a list of the most historically significant civil rights cases handled by BMS was compiled. Selection guidelines were outlined in a letter between USA and Greg Stein and became referred to as the Thomason/Stein retention schedule. The two agreed further that cases deemed sensitive due to privacy issues were to be destroyed.

To begin the selection process, USA Archivist Lisa Baldwin assembled a staff of two to work on the project. The archives has a small staff, with Baldwin being the only full-time employee. The director, Michael Thomason, is also a history professor at the university and therefore gives only a portion of his time to the archives. Other than Baldwin, the archives staff consisted of one part-time employee, one graduate assistant, a

fluctuating staff of three or four undergraduate assistants and work-study students, and one dedicated, long-time volunteer. Baldwin chose the graduate assistant and the volunteer for the project because of their experience. A retiree, John Calametti, has a master's degree in history. He had been a volunteer at the archives for more than ten years and had organized a number of important collections. Carol Ellis, the graduate assistant, was studying for her master's degree in history. She had worked in the archives for three years, gaining experience in archival procedures.

The archivist and two project staff members met with the director to discuss the procedures. The group agreed to examine each box of material in the order shown on BMS's box inventory, selecting files based on the Thomason/Stein retention schedule. Selected materials were removed from the original boxes and placed in temporary storage units, pending final organization. The archivist provided supervision over the project and advised the project staff when questions arose. The final decision on which cases to retain rested solely with the archivist.

As Calametti and Ellis progressed through the selection process, they realized that the box inventory provided by BMS was inaccurate and that there were many more files and a much larger volume of materials which needed to be retained than initially thought. Law firm files tend to be voluminous and complex, and the files of BMS were no exception. Some of BMS's cases remained in the courts for ten years, one for more than twenty-five years. A case can have many parts, including pleadings, correspondence, research, depositions, medical and employment records, résumés of expert witnesses, court proceedings, and final settlements or court orders. Some case files within the firm's collection ranged from three inches to several feet thick.

In its routine administrative practices, BMS's staff transferred older material in ongoing and closed cases from the firm's current files to storage boxes for inactive files. This practice resulted in documentation about a legal case being dispersed among numerous boxes and in files stored out of sequence. Ellis and Calametti did not discover this problem, however, until more than halfway through the selection process.

The archivist preferred to review a case file in its entirety to determine whether the case should be retained. However, because some of the BMS files were incomplete or dispersed throughout the collection, cases that were at first judged to be of no value were later found to be notable and worth retaining. That meant some cases deemed inconsequential, with their files removed to temporary storage awaiting destruction, were found to be important after other parts of the file were located.

The large volume and complexity of BMS's legal records proved to be somewhat overwhelming to USA's small project staff. To move judiciously through the three hundred cubic feet of records meant that Ellis and Calametti could give only a cursory look at files or file folder titles and judge whether to keep or discard the file. Reviewing the original BMS boxed material sequentially, the archives staff worked for seven months wading through the large number of boxes. They examined cases individually, deciding which files were of historical significance and which to discard due to privacy and confidentiality. Initially unaware of the problem of scattered files, USA placed case material in temporary storage boxes in the order the files were removed from the larger collection. As the extent of the scattered files became more apparent, the concern with keeping the cases selected for retention in the original order lessened, precisely because the lack of original order was evident.

Approximately fifty case files, totaling about 155 cubic feet, were chosen for retention in the original appraisal. After the appraisal was completed and staff had removed the most important civil rights cases, arranging and describing the collection began. John Calametti, the volunteer, was assigned as the principal processor, primarily because of his experience. This permitted Lisa Baldwin, the archivist, to focus on the day-to-day operations of the archives. Months into processing the collection, Russell James, a graduate intern from the University of West Florida, joined the archives staff for the summer. James wanted more experience in processing and organizing collections. Toward that goal, the archivist assigned James to join Calametti in processing the BMS collection. As James processed individual cases within the collection, he discovered a few problems. First, some of the case files were incomplete, lacking seemingly important materials that should be in a legal case.

Included in this category were materials that were not essential for the case's continued retention (letters and intermediary pleadings) and materials which had to be found in order to justify the case's continued retention (original pleadings and court judgments). Second, certain of the retained cases contained medical files that gave privileged information about BMS clients or witnesses. Third, some cases had correspondence with letterhead showing two or more variations of the firm's name. These three problems, coupled with the confusion caused by the inaccurate box inventory and materials from cases being scattered among various boxes, led USA to conclude that a second appraisal was needed.¹

CORPORATE NAMES

Before beginning the second appraisal, the issue of changing corporate names was explored. The various name changes would impact the description and cataloging of the collection and also were important for researchers to understand when reviewing the collection. Blacksher, Menefee & Stein was an example of a law firm whose name changed more than once. While continuity did exist due to the presence of James Blacksher, the firm was known by at least three other names during the period from 1975 to 1982, the time frame of most cases USA chose to retain. For the sake of consistency, the firm was accessioned as Blacksher, Menefee & Stein.

The project archivist discussed the evolution of the law firm with Greg Stein, one of the partners, to better understand and clarify the distinctions among the corporate names. Subsequently, the archivist decided that finding aids for the various cases would include an abstract noting the different names. The only name entered in the MARC record was that of Blackshear, Menefee & Stein.

¹ Leonard Rapport, "In the Valley of Decision: What to Do about the Multitude of Files of Quasi Cases," *American Archivist* 48, no. 2 (Spring 1985): 173. This article recommends a second appraisal for large collections of the type discussed here. Rapport writes about a second appraisal of a collection *after* it had been processed, shelved for years, and used by researchers. However, his philosophy and methodology for a second appraisal warrants reading by those dealing with second-appraisal issues.

SECOND APPRAISAL

The University of South Alabama Archives director, archivist, and project staff held many discussions on the BMS collection throughout the initial arrangement and description. When the problem of incomplete case files was discovered, the staff decided that a second appraisal was essential. The staff of USA also wanted to perform a second appraisal because of the extensive size and complex filing system for the collection. Staff wanted to be sure that they had not overlooked any valuable material in the initial appraisal. The archivist decided that if essential materials for a case were not recovered in the second appraisal, any incomplete cases would be removed from the collection and designated for disposal.

In undertaking the second appraisal, the archivist made a list of all cases selected for retention in the first appraisal. To that list Russell James added a description of the materials he noticed were missing from some of the cases. Carol Ellis and Russell James began the laborious process of sifting through each box again, while John Calametti continued organizing the cases that were complete. As potentially valuable new materials were found, they were set aside for consultation with the archivist. The Thomason/Stein retention guidelines were used again as the criteria for whether to keep the new case or return it to the box for future disposal. As the second appraisal continued and a new case was retained, its name was added to the list so that all staff would be cognizant of the addition.

The most time-consuming portion of the second appraisal was sifting through more than two hundred cubic feet of files again. Ellis and James reopened and reviewed each of the boxes of case files that were previously designated for discard. The sheer volume of material again forced project staff to look at file folder headings or satisfy themselves with a cursory review of portions of the case's files. The archivist identified specific cases that required a more thorough review. After the review of the box was exhausted and the pertinent files removed, the box was marked with the date in red permanent marker. The box was then re-designated for disposal. The second appraisal required considerably less time—several weeks rather than seven months for the first appraisal—because the team was looking only for those specific cases of civil rights impor-

tance that were overlooked or for particular case files that were missing.

Ellis and James worked full days on the second appraisal, compared to the first appraisal when project staff was only available to work part-time. They carefully sifted through each three-foot box, looking for documents relevant to 1) the missing materials from cases selected for retention and 2) cases that should have been retained in the original appraisal but had been overlooked for the reasons given earlier.

Because of the heightened attention to detail in the second appraisal, other materials not of a legal nature, but nonetheless important to Mobile's civil rights history, were found. One example was the records of the Social Justice Commission of the Archdiocese of Mobile. This organization grew out of the reforms of the Second Vatican Council (1960-1965) and was made up of local clergy and laity who helped lead the fight for human and civil rights in Mobile and throughout Alabama. The papers of the Catholic Social Services of Mobile were also located and retained because of the special importance of this collection to the city's civil rights history. These records found their way into the collection because James Blacksher had been associated with both groups. Also discovered were some personal files of one BMS attorney. The attorney was contacted and the materials returned to him.

After Ellis and James completed the second appraisal, the case list was reviewed. Those cases selected in the second appraisal were examined to see if any crucial case materials were missing. The staff determined that all materials identified as missing in the first appraisal had been found. They also located additional materials for other cases retained in the first appraisal. In addition, four new cases were selected for retention. In total the BMS collection yielded fifty-five cases that totaled 162 cubic feet of materials.

PRIVACY AND ACCESS

The second appraisal proved successful in more ways than had been anticipated. A policy for access to sensitive legal files was constructed. Archivists sometimes play a guessing game in regard to the kinds of information protected by privacy laws. National, state, and local laws are often contradictory or vague. The archivist may need to consult an attorney or the profes-

sional literature to determine the extent to which privacy laws affect a collection. Not every collection containing sensitive materials needs to be closed completely to research. William G. Rosenberg recently laid out a practical policy for the seeming contradiction between privacy and access:

There are obviously good reasons why access to information of various sorts relating to an individual's private life needs to be restricted, but it would be a mistake to imagine that the protections uniformly prevent access Rarely, if ever, is the right to access, and hence the right to privacy[,] assured by deaccessioning personal files and returning them to the individual. . . . Under all regimes and I daresay in all cases, classification and declassification decisions are based on the familiar question of whether the documents under review contain information whose release would irreparably harm state or individual interests. In other words, they are decisions about content, even if the materials for entire institutions or agencies . . . are thought by definition to contain this kind of material.²

Privacy concerns came into play in quite a few of the BMS cases, both the ones retained and the ones not selected for retention. In fact, several law cases were not retained based strictly upon concerns for privacy. Nevertheless, USA determined that none of the retained BMS cases was to be restricted in its entirety because there were some sensitive materials among the files. Instead, restricted access was limited to only sensitive information such as medical or social security records of persons named within a case. Restrictions are noted in the finding aids. Researchers may examine cases in their entirety to identify trends; however, researchers may not reveal specific names of persons in the restricted files.

²William G. Rosenberg, "Politics in the (Russian) Archives: The 'Objectivity Question,' Trust, and the Limitations of Law," *American Archivist* 64, no. 1 (Spring/Summer 2001): 82-83.

CONCLUSION

Archivists know that collections are likely to come to them in an unorganized state. Such was the case with the Blacksher, Menefee & Stein collection. Archivists also realize that the organic nature of collections necessitates careful appraisal. In this instance, the archivists had to pay attention to the types of cases handled and their content, as well as to the other representative materials present.

Archives strive to operate in a cost-efficient manner. Understanding the firm's record-keeping practices can save time and money during the appraisal process. Did the creating entity endeavor to keep case files together? Or were case files merely put into storage in the order in which they were removed from the firm's filing cabinets? Performing a second appraisal requires the expenditure of time by the archives' staff, but given the nature of large, unorganized legal collections and short of knowing how the collection was originally organized or having an exact inventory, the procedure may be the most cost-effective alternative.

Sensitivity and privacy issues are another challenge that can arise in processing legal collections. Archivists who accession, arrange, and organize law firm cases need to be aware that they may encounter materials of a confidential or private nature that should be restricted. Policies and procedures need to be implemented to regulate access to such files and enforce restrictions already in place. One method of addressing this problem is to close the records to research for ten years. Archivists may find, however, that some records, such as medical files, will require additional restrictions.

Archivists who process large law firm collections should conduct a second appraisal so that missing files can be located, overlooked materials can be saved, and privacy and confidentiality issues can be properly addressed. Pleasant surprises may also accompany a second appraisal. For example, the increased understanding of the firm and its work achieved during the first appraisal may result during the second appraisal in the discovery of historical records of a non-legal nature that meet the historical-content criteria for retention.

In a perfect archival world, a second appraisal would never be necessary. The file management practices at BMS, however, made it difficult to find all the relevant materials dur-

ing the original appraisal. The incomplete condition of the original BMS box inventories and the prevalence of related materials strewn throughout the collection led the staff of USA to rethink the appraisal process in this instance. Although USA is unlikely to acquire another collection as large and complex as the legal collection of Blacksher, Menefee & Stein, its experience in the appraisal, arrangement, and description of the BMS collection proved invaluable and should benefit other repositories faced with appraising and processing similar collections.

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