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[untitled]

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Although Glenda Gilmore and I are the only paper-givers in this symposium who did their Ph.D. at UNC, I confess I did not use the Southern extensively for my dissertation on the Scottsboro Case. Nevertheless, I somehow wangled access to a study on the fourth floor and was on first-name familiarity with everyone in the Southern Historical Collection and over the years I have returned often. I spent several weeks here when I was working on my book on the aftermath of the Civil War in the late 1970s and I examined a number of collections when I was doing research on George Wallace in 1990 and 1991.

I am not, however, going to spend most of my time discussing the Southern Historical Collection itself. Instead—since I am rapidly approaching the age when I qualify as a source from the past—I'd like to reflect on some of my own experiences over the last forty years as a historian who has worked in more archival collections than I care to remember.[1]

There is, of course, a risk—a considerable risk—that these will be self-indulgent self-reflections. But I hope along the way I can talk a bit about two larger issues related to these experiences that are important to us all, as historians and as citizens.

First: the problem of access to information at a time when institutions—particularly government—plays a greater role in the life of our nation.

Secondly, the more growing difficulty of capturing and retaining materials in a new age of digital and non-traditional records.

Almost everything I've written has been filled with effusive thanks to archivists and librarians for the very good reason that they have been enormously helpful in my research. But there are a few memorable exceptions and none more so than when I was researching the history of the Scottsboro civil rights case of the 1930s. I began my research in 1966 at a time when George Wallace was *de facto* emperor of Alabama and any research topic dealing with race was automatically suspect.

The trial transcripts were a prime source, but after researching in the United States Supreme Court Library and the private papers of Samuel Liebowitz at Cornell University in the early summer of 1966, I learned that there were four trials that had never been appealed past the Alabama Supreme Court; thus the only transcripts were in the court's records. But when I wrote to the court clerk that summer and requested permission to examine the trial transcripts, I received no response. In late September while working in the Alabama Department of Archives and History, I walked over to the Supreme Court and

briefly—very briefly—spoke to Clerk of the Court who told me that I was not a licensed attorney and, since I did not have a legal interest in the case, I could not examine the trial transcripts.

I explained my problem to the director of the Alabama Archives, Milo Howard. Milo was from an old Montgomery family and—while I do not know his politics—I think it is fair to assume that they were somewhat different from mine. Nevertheless, he and his staff had been extraordinarily professional and helpful in my research. When I explained my problem, he immediately picked up the telephone, called the court clerk and explained that—under the law—these were public records and had to be made available to me.

Despite his call, when I arrived at the Supreme Court building I was still subjected to a series of questions by an intense no-nonsense interrogator who, with the slightest encouragement, would be quite at home today at Guantanamo or Abu Ghraib.

What follows is my recollections of the highlights of that interrogation.

Why was I interested in the Scottsboro Case? Answer: "I'm trying to get a Ph.D. and this is my dissertation topic".

What was the title of my dissertation? Answer: "The Scottsboro Case." (Fortunately, I hadn't yet settled upon the eventual subtitle, *A Tragedy of the American South.*)

Did I think the Scottsboro boys were innocent or guilty? Answer: I haven't yet firmly reached any conclusions. ("Firmly" is the operative weasel-word here—sort of like, it depends on the definition of "is.")

Did I think they received a fair trial? Answer: I haven't yet reached any conclusions. (Something less than the truth; actually a bald-faced lie.)

Where was I doing my graduate work? Answer: At the University of North Carolina, Chapel Hill. (I discreetly failed to mention I had done graduate work at the University of Wisconsin, Madison.)

Where was I "from?" Answer: I grew up on a farm in eastern South Carolina. (At this point, my accent had broadened to a point somewhere between Gomer Pyle and the regulars on "Hee Haw.")

For the first time, her voice softened and she seemed at least partially relieved as she exclaimed. "Well then you understand that we treat our Nigras fairly in the South!" Answer: A totally hypocritical "Yes, Mam."

Reluctantly I was given authorization to examine the trial transcripts.

But then: disaster. The large bound transcript volumes for the 1937 session of the court were stored on the top shelf of a high-ceilinged room directly above the main Supreme Court Chambers which—unfortunately—were open to the Chambers because of the installation of new central air conditioning ductwork in progress at the time. Sternly the bailiff instructed me to remove my shoes at all times when I was in the room since any sound would disturb the Justices hearing cases.

And so, on that fine October morning, I took off my shoes, tiptoed into the storage room, scaled a 12 foot step ladder and began bringing down the four bound volumes of Powell v. State, 1937; carefully

placing them on the end of a rickety table on which an earlier court researcher had deposited about a dozen volumes from other cases. (I think you can see where this is going). As I stood at the top of the ladder to remove the fourth volume, I heard an ominous creaking and looked down just as the front leg of the table buckled and—with a thunderous crash—dumped the volumes onto the marble floor. There was an immediate halt to the droning voice in the court chambers below and then a murmuring undercurrent of voices from several justices.

I remembered my Parson Weems and climbed down the ladder, put on my shoes and hurried down the hall to apologize for disrupting the sanctity of the court proceedings. But halfway down the steps to the main floor, I met the bailiff, a grim faced former lineman from the Crimson Tide who ignored my explanations, grabbed me by the back collar of my sport coat and carried me down to the chambers of Associate Justice Thomas Seay ("Buster") Lawson where I was told that I was in deep trouble. (Actually, I don't believe that's the word he used.)

Now there is a certain historical irony here: for Judge Lawson was one of the principle players in the Scottsboro trials: he had been Assistant Attorney General during most of the trials and had, in fact, prosecuted the very cases I was researching. But it was not an irony that I found very comforting.

I did not keep notes of my encounter with Judge Lawson and I'm very suspicious of individuals who can recall conversations that passed 38 years earlier.

But:

I distinctly remember the fact that he declined to shake my hand when I stood and extended it.

I distinctly remember his opening remark.

"Mr. Carter," he said, "I understand you've been interested in Alabama's judicial and penal system. How would you like to see it from the inside?"

And I distinctly remember saying with heartfelt sincerity, "No sir, I would not."

In fact, my only punishment was a tongue-lashing over my lack of respect for the dignity of the court and a promise on my part to show such respect in the future, delivered I am sure, with a fawning obsequiousness that would have shamed Uriah Heep.

I am sure that we see such efforts to block access to information as a quaint example of the racism of the bad old pre-civil rights days. But not really. More than twenty years later while doing research on my biography of George Wallace, I encountered stone-walling on the Nixon Papers that made the folks at the Alabama Supreme Court look like rank amateurs. In the weeks after Nixon left the White House in 1994, his attorneys moved to gain access to the papers of his late and unlamented presidency and—in the course of their representations—made it clear that the former President reserved the right to withhold and even destroy materials.

In 1974, the 93rd Congress, intimately familiar with Mr. Nixon's attitude toward incriminating records, responded by passing the Presidential Records and Materials Preservation Act, which made the Nixon Presidential papers Government Property and ordered the National Archives and Records Administration to process and open the records at the "earliest reasonable date." Nixon challenged the constitutionality of the act all the way to the Supreme Court where he lost.

Despite losing his battle with the courts, Nixon and his supporters fought a series of holding actions for more than thirty years.[2] During the time I was researching my biography of the Wallace in the late 1980s and early 1990s, I was anxious to gain access to any White House documents disclosing secret negotiations between Nixon staffers and George Wallace that might cast light on rumors of a "deal" whereby the Justice Department dropped its investigation of Wallace for corruption in return for his abandonment of a third party run in 1972. I also wanted to hear a number of taped White House conversations that Nixon had concerning Wallace, particularly the recording of his meeting with Charles ("Chuck") Colson on May 15, 1972, the day Wallace was shot. In that meeting, Colson and Nixon had concocted a bizarre scheme in which former CIA operative and White House flunky E. Howard Hunt of Watergate fame would plant pro-McGovern material in the apartment of Wallace's would-be assassin, Arthur Bremer.

But I was never able to examine either the records or the tape recordings because the Nixon lawyers had filed a series of lawsuits blocking the National Archives staff from releasing many of the most important files in the Nixon Papers, often on the spurious grounds that they involved "personal" matters. And I'm sure that the President did regard his racist comments about Jewish and African-Americans as a personal matter. Eventually a lawsuit by my friend Stanley Kutler ended the roadblocks and the National Archives began processing the tapes. But the gambit had successfully delayed the release of these materials for more than a decade; even today the May 15 White House recording that I sought has still not been released.

As a coda to this story, I should note that—in February of 2005—the House Republican leadership added a rider to a spending bill that transferred the Nixon Papers to the Richard Nixon Library and Birthplace in Yorba Linda, Ca. even though the federal government had paid Nixon $18 million to obtain clear title to the documents. Moreover, Congressman Gary Miller of California who originally pushed for the amendment releasing the Nixon records obtained a $500,000 appropriation to design an addition to the library. And he has promised federal appropriations for its construction even though all other presidential libraries have been built with private contributions.[3]

This despite the fact that the so-called Nixon Library's director, the Rev. John Taylor, seems committed to sanitizing the Nixon papers and minimizing the release of incriminating material, an impression that seems confirmed by his recent cancellation of a proposed conference on the Vietnam War that was scheduled for the Nixon Library and included a number of scholars who have written critically about Nixon.[4]

The Freedom of Information Act (FOIA), adopted in 1966 and substantially amended in 1974 in the wake of the Watergate cover-up has clearly had its ups and downs. The Carter and Ford administrations were refreshingly receptive to FOIA requests; the Reagan and Bush I administrations sought to restrict access to government records throughout the 1980s and early 1990s. Initially the Clinton administration seemed to follow in the Reagan-Bush I footsteps. But after initial complaints from journalists and scholars that his administration's penchant for restricting access to federal records was "worse than Nixon's," Clinton ordered a top-down review. Under guidelines laid down by Attorney General Janet Reno in late 1993, FOIA officers were told to "apply a presumption of disclosure." The policy, she said, should be a simple one. If there was doubt about whether a document should be restricted, release it. Only in clear-cut cases of national security, questions involving the invasion of personal privacy or other narrowly mandated areas should journalists, scholars and taxpayers be denied access to the documents produced by their government. What was even more important, Reno told government agencies that, should they be sued, the Justice Department would not defend an agency's decision to withhold information simply because there was a technical legal justification for their action.[5] The Clinton administration's policies were often observed in the breach by various government agencies—notably

the Federal Bureau of Investigation and the State Department (and let's not even get into the Central Intelligence Agency which operates as a law unto itself). But I think it's fair to say that there was an improvement in the level of access over the previous two administrations.

All that changed in 2001. Although it is safe to say that efforts to restrict access to information seem to be written into the DNA of governments, democratic or authoritarian, the history of this current administration has been marked by a focused and highly disciplined policy of restricting access to information on a wide range of issues dealing with domestic as well as foreign policy. As a panel of historians at the 2005 meeting of the American Historical Association noted, the administration has used a variety of measures to thwart access to public records. They have slashed the budgets of FOIA offices; the number of documents annually classified as "secret" has more than doubled since September 11, 2001; and agencies—particularly those dealing with any issue that could remotely be connected to national security—have increasingly labeled documents as "Sensitive But Unclassified" or "SBU." Not only are these documents kept from the public, but—unlike records labeled "Top Secret"—they can be discarded without review.

We should not be surprised. President George W. Bush has a penchant for such secrecy. When he left the Texas governorship, he deposited his papers ***not*** in the Texas State Library—which would have made them subject to the state's expansive Freedom of Information law—but in his father's presidential library at Texas A&M at College Station.[6]

The new restrictions have been defended on the grounds that we need to protect national security in the midst of the war on terror. But this process was well underway before September 11. Under the Presidential Records Act of 1978, all Presidential records were to become available twelve years after an administration left office. Just as the Bush administration took office in 2001, it was faced with the prospect that the Reagan administration's records would be open to the public later that year, with potentially embarrassing revelations about figures like Secretary of Defense Donald Rumsfeld and Vice President Dick Cheney—to name just a few members of President George W. Bush's administration. As a result, in February of 2001, White House Counsel Alberto Gonzales, issued a temporary halt to the release of the material. Then, three weeks after September 11, the White House released Executive Order 13233 with a typically Orwellian title: "Further Implementation of the Presidential Records Act." I say Orwellian, because it was, in fact, a gutting of the Presidential Records Act. Under the Bush executive order, former presidents and vice-presidents or representatives after their death could bar release of the documents by claiming any of a variety of privileges: "military, diplomatic, or national security secrets, presidential communications, legal advice, legal work or **the deliberative processes of the president and the president's advisers**."[7] Presumably this would include the "deliberative processes" such as extensive meetings between a president—or vice-president—and industry lobbyists). At the same time, Attorney General John Ashcroft issued a memorandum—which had been prepared by White House Counsel Alberto Gonzalez—reversing Janet Reno's 1993 memo, assuring federal officials that, if they "decided to withhold records, in whole or in part, "you can be assured that the Department of Justice will defend your decisions . . . ."[8] The end result, I think it is fair to say, has been to send a clear message to FOIA agency officials to adopt a "when in doubt, say no" policy. In both cases, there was no press release and, indeed, no mention in the media at all until archivists and a handful of historians and political scientists sounded the alarm.

One consequence of this action is to place a potential barrier—not only to access to President Bush's presidential papers, but to his records as governor. I say this because –after several years of litigation—Texas's highest appeal court finally ruled in 2003 that President Bush had to transfer his gubernatorial papers from his father's library to the Texas state library—their proper home. But ongoing litigation and political pressures led by the current Republican Texas Governor, has delayed the scheduled release of

most of the gubernatorial papers until after 2008. As the *Austin American* noted in the course of a lengthy investigation of the issue, these delays mean that the president will be able to place his records in his own presidential library before the state can release them where, barring a reversal of his 2001 presidential memo, President Bush will have a veto over access to all of his government records through and beyond his lifetime.

All of this may seem rather arcane and more related to issues of political infighting and current contemporary political issues than history. As one of my less feverish friends argued: you're a historian. Let the journalists and the politicians fight this one out. Eventually the material will be available and then you can render the kind of judgments we, as historians, are better at making.

From my perspective, there's one fundamental problem with that strategy.

I'll be dead by then.

Moreover, while it is certainly true that first judgments by historians are superseded by later ones; that's true no matter how "deep" the history. And first-drafts of the historical record do have their uses.

Moreover, I have to ask: are we not citizens as well as scholars? Are these not issues that should concern us in a broader sense than whether or not it affects our own professional turf?

My second concern about the future of archival research is a different, but related and far more perplexing question. What records will we have access to in the coming generation?

A decade ago—driven by some misguided effort at flattery or simply clerical error—Emory University asked me to donate my personal papers for the University's Special Manuscripts collections. I cannot imagine who would be interested in the disorganized detritus of my thirty-five years as a historian (and I don't say that out of false modesty). But I dutifully began to box up these materials recently in response to my wife's threat to deposit them in a local dumpster. During that process I made an interesting discovery.

From the late 1960s through the mid-1990s, scattered amidst the grade books, committee reports and other assorted professional materials there are hundreds of pieces of incoming and outgoing correspondence with publishers, colleagues, students and former students and interested—and indignant—readers of my work. Carbon copies of the earliest outgoing letters and memos are usually on onion-skin paper, but occasionally on the crumbling yellow stock that was often used in the 1960s and 1970s. In 1978—at a cost of $2,100—(that's $5,000 plus in 2004 dollars)—I bought an Apple-II computer and these smeared copies were replaced by photocopies, dot-matrix printouts and eventually inkjet and laser printouts.

But in 1994, the volume of incoming and outgoing correspondence begins to decline steadily and by the last couple of years, there are only a few official documents that I have printed out and virtually no personal and informal correspondence.

You don't have to be wizard to figure out the reason. I began emailing in 1993 and by the time I taught in England in from 1995 to 1996, electronic mail was already becoming my preferred form of communication.

Now this is hardly the first time technology has reshaped the sources from which we historians try to recreate the past. The telephone had something like the same impact—particularly in allowing historical figures to avoid putting to paper precisely the kind of materials we often find most intriguing. All of us are familiar, I'm sure, with the famous admonition Louisiana's Earl Long to one of his underlings.

Don't write anything you can phone; don't phone anything you can talk face to face, don't talk anything you can smile, don't smile anything you can wink, and don't wink anything you can nod.

To an unnerving degree we have always been dependent upon chance in salvaging historical sources. But now the vagaries of technology have to be added to this mix. This came home to me in a particularly forceful way this past year when I served on a committee for the Library of Congress as part of its National Digital Information Infrastructure and Preservation Program (NDIIPP). The program—established during the waning hours of the Clinton administration—established a national planning process for the long-term preservation of materials that were either created in digital format (an example might be recent census records) or traditional historical and cultural materials that can best be retained and distributed in digital electronic form. Here one immediately thinks of the Library of Congress's "American Memory" site with its millions of digitized documents and photographs.[9]

Most members of the panel were experts in the technological aspects of the problems we face while my expertise stops just short of understanding the difference between an internet protocol or IP address and my personal email address. But they were remarkably indulgent, clearly struggling at times to explain in metaphors and analogies, the long-term technical challenges we face in acquiring and preserving historical records that are linked to digital formats. I was intrigued by and vaguely familiar with the problems involved in saving, for example, the millions of data punch cards still stored by the Gallup, Harris and other polling organizations—data punch cards that contain source information that has never been printed out. But I quickly learned about a vast array of at-risk records in everything from satellite mapping images, to historical aerial photography, public television programs—the list goes on. Nor is it simply a matter of "saving" this material, because there is great uncertainty over just how long specific digital formats will be retrievable.

I was gratified by sensitivity of these largely technical experts to the fundamental questions that archivists, historians and other scholars raise about what is important and what we should try to rescue from our past: a fundamental challenge since the quantities of these materials will overwhelm even the most elaborate information storage systems in the absence of protocols for separating the wheat and the chaff.

I think the project made a good start. Within the financial limits available. And by the end of the two days, it seemed clear to me that—if this panel is any indication—there are a number of first-rate individuals who are grappling in imaginative and innovative ways with the challenges we face.

Over the next generation, we have to undergo a major transformation in the ways that we collect social, scientific, historical and cultural materials for future generations. It is no secret that this will require archival institutions with pro-active collection procedures beyond anything we have experienced in the past.

But there are—among many—two issues that continue to concern me.

First, developing, collecting and preserving these records will require extraordinary leadership and resources at the national, state and local level to develop and carry out these functions. While the Library of Congress's Digital Information Infrastructure and Preservation Program is a worthy beginning,

it is only a beginning. And it is not clear that preserving non-commercial records are likely to be a high national priority at a time when the current administration has called for the defunding of the National Historical Publications and Records Commission in its next budget. As I need hardly tell you, the NHPRC—established in its earliest form in 1934—has made possible the preservation and publication of the papers of sixteen American presidents and hundreds of other historical preservation projects.

Secondly, I fear our own three-way version of the gap between the two cultures of the sciences and the humanities described by C. P. Snow in 1959. By that I mean that traditional archivists and experts in the highly specialized and technical fields increasingly involved in this process are so preoccupied and overwhelmed by the challenges they face, that there will not be a sustained conversation with scholars—historians and otherwise—about the best guesses we can make about what it is important to save and what inevitably must be discarded.

Let me hasten to add that most historians seem to be part of the problem rather than the solution. That is certainly the case as it applies to me. Quite apart from my ignorance about the technological problems that exist, my mantra has always been a mindless version of: "don't throw anything away." And that, I now understand, is simply not realistic.

What I do believe is that—however important these technical issues and political challenges—our fundamental challenge remains the same: to collect and preserve those materials that allow us to engage in that conversation with the dead and the still living who make up our past.

At times, of course, it is a rather tedious conversation; one that meanders and folds back upon itself in what can seem to be an endless—and meaningless—loop; a bit like a historical version of the movie *Ground Hog Day*. But all of us who have done research at one time or another have experienced a quite different encounter. In the summer of 1966, I spent several days at Boston University Library, working in the papers of the Rev. Allan Knight Chalmers who headed up the Scottsboro Defense Committee in the late 1930s. During these years—and longer after the Committee had been dissolved, he continued to receive dozens of letters from the Scottsboro defendants—all written in their claustrophobic Kilby prison cells.

In 1937, six years after the original trial of the nine Scottsboro defendants, the state released five of the nine original defendants with vague promises of quick pardons for the remaining four. But state officials quickly backed away from their promises and the remaining four young men suddenly faced the prospect of a life behind bars. Ozie Powell, Haywood Patterson, Clarence Norris and Andrew Wright had committed no crime except being black and being in the wrong place at the wrong time.

All of the letters were affecting and powerful, but none more than those of Andrew Wright's letters, written with pencil in a broad and scrawling hand. As he wrote his regular letters to Chalmers, he struggled to explain what it was like to caught in a nightmare that never seemed to end. "I am trying all that is in my power to be brave," he wrote Chalmers at one point. "But you understand a person can be brave for a certain length of time and then he is a coward down. That's the way it is."

As I sat reading those letters, I found myself emotionally caught up in the story in a way that I've seldom been by any research before or afterwards. Stuffed into one envelope was a brief Montgomery *Advertiser* article reporting that the state of Alabama had released him from Kilby Prison with a new suit of clothes and a parole cash payment of $13.45. This for nineteen years of prison hell—six years on death row—for a crime he didn't commit. That point, needless to say, was not made in the story.

Without friends or family he wandered from one dead-end job to another—subject to another false rape charge, which (fortunately) was dismissed by a skeptical prosecuting attorney; fired from another job when his employer learned he had been one of the infamous "Scottsboro Boys." Finally I came to the one of the last of his letters to Chalmers. "I am just like a rabbit in a strange wood," he wrote, "and the dogs is after him and no place to hide." There is a long space on the page, and then the words: "Freedom don't mean a thing to me."[10]

Through some fortuitous combination of circumstances—the compulsiveness of Allan Knight Chalmers, the request of the university librarian for his papers in 1954, perhaps even chance—Andrew Wright, and his fellow Scottsboro defendants, speak to us across the years. There is no greater challenge for the next generation of historians and archivists and information specialists than to reach out and grasp at least some of those voices before they fade into the silence that enfolds so much of our past.

Notes

[1] I realized how long I have been doing research recently when I found carbon copies of notes to George Tindall attempting to resolve the problem created for one member of my dissertation committee over the fact that I had used oral interviews in my doctoral dissertation. Dr. James Patton was, if not scandalized, deeply suspicious of such a research innovation. Eventually he relented; I don't know what Professor Tindall did to solve this problem, and I don't want to ask at this late date.

[2] Dan T. Carter, "The Nixon Cover-Up Goes On," *New York Times*, 25 July 1988, sec. A, p. 17.

[3] As historian Stanley Kutler has pointed out, the Richard M. Nixon Library and Birthplace, "markets itself as 'a family attraction' rather than a research center." Moreover, it is the only presidential library under private, rather than governmental control. Scott Shane, "Nixon Library Stirs Anger By Canceling Conference," *New York Times,* 11 March 2005, sec. A, p. 16.

[4] Ibid.

[5] The original Clinton and Reno Memoranda have been removed from the Department of Justice Web Site, but may be found at http://www.fas.org/sgp/clinton/reno.html

[6] The Texas law—on paper—is one of the most expansive of its kind: "It is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times, to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know . . . . This chapter shall be liberally construed in favor of grant-ing a request for information."—*Texas Government Code, Chapter 552*

[7] Emphasis added.

[8] The Ashcroft memorandum is available on the Department of Justice web site: http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm

The American Library Association, which filed a brief in a lawsuit challenging Executive Order 13233, has complete copies of the relevant materials on its web site: http://www.ala.org/

[9] Amy Friedlander gives an excellent overview of the history of the program and its challenges in her article, "The National Digital Information Infrastructure Preservation Program: Expectations, Realities, Choices and Progress to Date," *D-Lib Magazine*¸ 8 (April 2002); available on line at www.dlib.org/dlib/april02/friedlander/04friedlander.html

[10] From Andrew Wright to Allan Knight Chalmers, 22 February 1939; July 1951, Allan Knight Chalmers Papers, Howard Gotlieb Archival Research Center, Boston University Library, Boston, Mass.