

ARCHIVES AND THE PUBLIC GOOD

*Accountability and Records in
Modern Society*

Edited by
Richard J. Cox and David A. Wallace

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Introduction

Richard J. Cox and David A. Wallace

This book, like most books on its topic, originates with the editors' personal and professional experiences. At times we have followed different paths prior to our decision to collaborate on this volume, one of us having worked for years in traditional archives and records management programs, the other with years of experience in an untraditional archives with a mission to make previously classified federal records more readily accessible. However, over the past fifteen years our paths have also crossed as both teacher and student, remarkably at two different universities, and presently in the classroom educating future archivists, records managers, and other information professionals. Over this time we have become both colleagues and friends, all the while constantly rediscovering that we share similar convictions about the importance of records in our society and the need to educate professionals who understand that records are not only artifacts for use by historians and genealogists but that they are also essential sources of evidence and information providing the glue that holds together, and sometimes the agent that unravels, organizations, governments, communities, and societies. Even if the records of a society or organization are not used in the way they are intended, the process of creating and maintaining records takes on powerful symbolism for that society or organization.¹

The immediate origins of this book were our convictions but also the perception of the need for record-focused case studies both for use in the classroom and to communicate and promote to a wider audience the significance of the roles records play in constituting society.² We are both incessant book buyers and readers, mostly focused on the search for studies—from as many disciplines

and perspectives as possible—on the nature and importance of records and record keeping, from the ancient world to the modern age. Across the years we have each developed extensive personal libraries, but we have been frustrated in choosing what our students should read about record keeping and accountability, often feeling overwhelmed by the vast quantity of monographs, biographies, autobiographies, festschrifts, textbooks, and even novels, on the general notion of how records hold us accountable from our private to our public spheres.³ These books, whose impact upon the reader can be moving, alarming, entertaining, depressing, or enlightening, often mute the issues about records within their larger narratives. Records frequently provide the scaffolding for the stories relayed and sometimes they even play central roles, yet they are rarely explicitly surfaced as objects receiving concentrated attention, especially in what has long been described as the Information Age, with its stress on the effective and efficient creation, management, and use of information. The importance of records and especially archives is often obscured.⁴ The authors' focus on the broader narrative they are constructing, while entirely appropriate, serves to obscure recordkeeping dimensions that can profoundly shape social interactions and memories of them. When teased out, the recordkeeping dimensions—such as control and access, preservation, destruction, authenticity, and accuracy—demonstrate time and again that records are not mute observers and recordings of activity. Rather, they often actively constitute an activity in themselves and are frequently struggled over as objects of memory formation. They are often at the heart of struggles over what “memory” will be produced and socially validated, issues that have become more essential in the postmodern age with its varying emphases on texts and contexts.⁵

To counter our frustrations over the dearth of records-specific accountability-focused studies we decided to approach a series of prospective authors on their interest in writing case studies explicitly focusing on the intersection between record keeping and accountability. This call was enthusiastically received. Others in the wider recordkeeping community and those along its margins had themselves been grappling with the accountability dimensions associated with records, and our request for a contribution was more than once the final straw compelling thoughts to paper. For that we are grateful and hope that this volume contributes to a widened understanding of the quite significant roles records play in accountability.

The fourteen contributions to this volume revolve around four closely related themes tying the importance of records for accountability in society—*explanation* (making laypeople understand what records mean), *secrecy*, *memory*, and *trust*. We believe that the case studies that make up this volume provide powerful narratives for the classroom and can be read profitably by individuals who wish to know how records support and help constitute organizational and societal functions.

First, though, what do we mean by *accountability*? There are many definitions we could employ, from simple dictionary definitions to legal treatises. For

instance, the *Oxford English Dictionary* associates accountability with notions of “responsibility” and “liability” and being able to “answer for [the] discharge of duties or conduct.”⁶ For this volume, we employ a definition forged by experience and grounded in years of observation. Kevin Kearns, a professor of management, provides a “pragmatic approach” to the topic of accountability. In his view, accountability meanders through “legal and regulatory mandates,” “negotiating with ... clients, special interest groups, and other stakeholders,” “discretionary judgments, calculated risks, and entrepreneurial ventures,” and finally, advocacy involving the need to “interpret and communicate the needs of citizens to higher authorities who have the power and resources to meet those needs.”⁷ Kearns discerns that accountability systems possess “three core elements”—a “higher authority vested with the power of oversight and supervision, a measure or criterion used by the higher authority to assess compliance or performance of mandated activities, and an explicit reporting mechanism for conveying information to the higher authority.”⁸ Kearns argues that accountability means different things for different groups, but that it is real and can be mapped out in different kinds of organizations, cultures, and circumstances. Accountability represented by records is not merely restricted to a legal or organizational sense. As a family member explores the records of his ancestors, there is the sense that one generation holds another accountable to its legacy.⁹ We can even stretch the notion of accountability provided by records as a means for us to understand just how people or government create images or re-create images of themselves, especially with the notion of speechwriters or ghost writers.¹⁰ Accountability, as an idea suggesting the importance of records, needs to be explored in greater detail so that all its ramifications are understood, and we hope that this volume is a start to doing this.

The case studies that make up this volume confirm these notions by demonstrating how accountability can be served or undermined by recordkeeping practices in many contexts. They provide an understanding of how records and documents help compel, shape, distort, and recover social interactions, and all, to some degree, comment on what has come to be a discipline in its own right, the study of social, public, or collective memory.¹¹ While on the surface memory seems soft and fuzzy and accountability can be viewed in a legalistic manner, the concepts are much more closely related. The new scholarly interests in memory suggests a quest for meaning and even stability in the face of everchanging technologies in an age in which the complexities of information and evidence are now well known.¹² Records appraised for legal or accountability purposes can, over time, assume symbolic or memory functions. Moreover, the role of archives to acquire and maintain records with continuing value to society is a form of accountability by providing a reasonably explicit memory function for that society. The archivist of Canada, Ian Wilson, reflected that notions like information, knowledge, accountability, and memory are all related or parallel responsibilities of archivists and archives, and ones that are not easily disconnected from one another.¹³ It is easy to lose sight of how such notions are all at

play at once, both by archivists as they develop working strategies to manage the increasingly complicated documentary heritage, and by the society with often simplistic notions of how and what archives and archivists do.

While Kearns, in his general discussion of accountability, does not explicitly discuss records (he mentions “red tape” and information systems), it is our contention that the chief value of records is, in fact, a broad accountability binding individuals with each other and with governments, organizations, and society across space and time. Records created in the normal course of business provide evidence of actions, decisions, and intentions, both legal and illegal, proper and improper, and wise and misguided. There is, in fact, historical precedent for such matters as the importance of records for accountability and evidence as we gain additional understanding about the roles records play in dramatic shifts in information technologies.¹⁴ As records accumulate, they can evolve into sources of memory for individuals, organizations, and society. For some they can become symbolic. Over time a small proportion of what is created comes to be formally preserved in archival institutions.

It is records’ power as sources of accountability that is for us their most salient feature, a feature that often bring them into daily headlines or into the courtroom. Over the past decade records have become key participants in both large-and small-scale events that both constitute and reshape our world. On the large scale, “truth commissions” in Argentina, Brazil, Chile, El Salvador, Guatemala, and South Africa have struggled to obtain access to the archives of former regimes. And across Europe, in Czechoslovakia, Poland, Germany, and Romania, debates have raged over whether access to Soviet-era records would do more harm than good in coming to terms with the past. In these instances records have been central to understanding the extent of repression and human-rights violations in these countries.¹⁵ And in both the former Soviet Union and the United States, broadened access to millions of formerly classified archives are contributing to more realistic assessments of their often shocking activities throughout the Cold War era. In a profound sense, the combined release of these records across the globe represents a unique episode in world history. Never before have so many governments released so many documents in an effort to confront the past. Nothing like it was possible for most of the twentieth century. The linkages between political control and information control rendered earlier access attempts largely futile. The societal consequences of this outpouring of documentation remain largely unclear. However, the consequences will be great, as records are tied up with the most basic senses of personal and community identity, human impulses, and societal and organizational control.¹⁶

And such releases are not unique to the public sector. Private-sector enterprises such as the tobacco and chemical industries have been forced to release vast amounts of records documenting their knowledge about and refusal to take responsibility for their products’ damaging consequences.¹⁷ In addition, the long shadow of Nazi Germany and World War II continues to hold our attention as the remaining victims and perpetrators reach the ends of their natural lives.

Over the past decade reconciliation with and accountability for the impacts of Nazism have led to records-based investigations into plundered gold and art, payments for insurance policy and common property claims, and corporate complicity in the Holocaust.¹⁸

On the small scale, records appear daily in the global press, underscoring the roles they play in social and political accountability. A small representative sampling from stories appearing in the news media from late February through late March 2001 is illustrative, highlighting the roles played by records in investigations and access controversies, as well as the consequences resulting from their handling (including security, authority, and theft). On the investigatory front, a U.S. federal judge ordered the chairman of the Bank of New York Company to provide telephone records, tax returns, and credit card statements as part of a shareholder lawsuit accusing nineteen bank officials in a money laundering scheme; government investigators subpoenaed former White House officials and documents pertaining to highly controversial pardons granted by former president Bill Clinton during the final days of his presidency; court documents released in North Carolina demonstrated that automotive giant DaimlerChrysler engineered a massive “lemon-laundering” effort wherein the company bought back and recycled troublesome vehicles to unknowing consumers (between 1993 and 2000, the company bought back more than 50,000 vehicles); and an audit of Medicaid documents in Florida revealed that the state office continued to pay more than \$3 million to health maintenance organizations, hospitals, pharmacies, and nursing homes for services for over 6,000 patients who had already died.¹⁹

On the matter of access, Mexican news agency executives pressed the president of Mexico to support a freedom of information law in Mexico to counter administrative secrecy and the hurdles encountered by citizens seeking government information; a controversy erupted over whether autopsy photographs of race-car driver Dale Earnhardt should be made public (Earnhardt died during a crash at the Daytona 500 car race, and the press wanted copies of the photos in order to conduct an independent investigation into the causes of the driver’s death); the Canadian Blood Services (CBS), Canada’s blood agency, came under criticism for developing what was perceived as too constrictive a freedom-of-information-access policy (the level of discomfort over CBS’s secrecy stems from an earlier “tainted-blood” scandal that left thousands of Canadians infected with the AIDS virus and Hepatitis C, and critical documents bearing on this earlier scandal had been improperly destroyed); and a bill in the Arkansas legislature that would have allowed adoptees to see their birth certificates when they reached the age of 21 died in committee (this bill was the latest in a series of nationwide public policy debates over the confidentiality of adoption records and the rights of adoptees to access them).²⁰

On security, there were the following stories: The online book service Bibliofind.com suffered a hacker attack into 98,000 customer records, forcing the Web site to go offline for a short period; Indiana University suffered a hacker

attack resulting in the unauthorized downloading of the Social Security numbers of 3,000 students, the hacker taking advantage of a security hole that had inadvertently been left open by one of the server administrators; a couple availed themselves of identities of twelve people by collecting Social Security numbers from driving records (these numbers were used to illegally obtain credit cards under false identities), representing only a small part of the more than 40,000 complaints received from November 1999 through December 2000 by the Federal Trade Commission from consumers and identity theft victims; over the past several years the U.S. District Court and the U.S. Bankruptcy Court in northern California have been posting lawyers' filings and judges' opinions online, with personally identifiable details about credit card accounts, Social Security numbers, and details on the depression, homosexuality, and annual income and expenditures of named individuals, adding to the growing national debate over the privacy considerations of posting normally open court records online; and thousands of confidential instant messages between the CEO and top-level executives of a dot-com company were inappropriately posted to the World Wide Web, greatly disrupting the company's operations.²¹

On the roles records play as authoritative resources, there are the following stories: (1) A West Virginia man pardoned by the governor in 1996 is unable to assemble the records he needs in an effort to expunge his criminal record. The state archive is unable to locate the original application or other supporting documentation associated with the governor's decision, and the director of the state's Department of Archives and History points to the absence of an enforced requirement to deposit records as a contributing factor. (2) Sophisticated counterfeiting techniques make it increasingly difficult for employers in Arkansas to screen out false identification records and work documents. One counterfeiter captured by the Immigration and Naturalization Service claimed to have manufactured more than 700,000 work documents in less than one year. (3) A local government employee is under investigation amidst allegations that she altered records to benefit her husband's income bonus. (4) The New Jersey State Division of Youth and Family Services ordered workers to reconstruct missing information in more than 1,600 agency case files (documenting the actions of the state to protect some 3,000 abused and neglected children). One novice employee testified in court that she was instructed to create records for events that occurred well before her tenure.²²

Finally, on records as objects of theft, there was one story about a Baltimore city police officer's arrest for breaking into the department's internal affairs office and stealing documents that allegedly implicated fellow officers. Another told of a Canadian lawyer charged with attempting to hire an individual to steal records associated with a federal investigation of a client. Yet another told of a legal consultant who was sentenced to sixty days in prison for leaking confidential Los Angeles police records, about seventy-nine officers accused of domestic violence, to a television reporter.²³

The challenge with these newspaper stories is that often the significance of records is poorly explained and the role of archivists and other records professionals is absent. The importance of records and recordkeeping systems must be set forth by those who best understand them, namely archivists and records managers, and in this volume these fourteen essays attempt to do just that. The most critical function for records professionals might be *explaining* records and archives in ways that they can be readily understood.

EXPLAINING ARCHIVES AND RECORDS

How well understood by the public, policymakers, and even creators of records (which, after all, the public and policymakers are as well) are records and recordkeeping systems, the nature of archival principles, the work of archivists? James M. O'Toole's essay recounts his experiences in working with lawyers and in a courtroom in trying to make these functions and issues understandable, in the well-publicized case regarding the ownership of the Martin Luther King, Jr., Papers. O'Toole notes, as other archivists have, the need to seize "teachable moments" in order to explain archives.

Terry Cook describes the public reactions to the fact that Canadian government records are routinely destroyed as part of standard archival procedures at the national archive. The standard procedures were suddenly thrust into the glare of public scrutiny, for it seemed as if the national archive had been involved in a major conspiracy and subsequent coverup. Cook's essay is additional testimony to the care archivists and records managers must take in explaining their work and that of their institutions. In fact, Cook extends the notion of accountability right to the steps of the archive itself: "Archives of the state are not just repositories of historical sources for researchers to use in understanding the past; they are also political manifestations of and active agents of the dominant culture of society. Archives are not merely scholarly playgrounds for their staffs and researchers; they are also bastions of social memory and national identity. And what documents the archives chooses to keep or destroy (or lose as 'missing') are not the result of dispassionate historical research or bureaucratic processes, but rather sensitive, controversial acts for which archives can be held accountable in courts of law and of public opinion." We concur.

Another of the themes that arises from these essays is the need for archivists and their allies to engage the public in considering the importance of records. Many other fields or causes have had their public advocates, what some call public scholars or intellectuals. One thinks of Wallace Stegner and Bernard DeVoto and the early western environmental movement as but one example in which they brought critical issues into the public forum through their writings, public speeches, and other activities.²⁴ Many of the articles in this volume call for more forceful action by archivists about the need for information and other policies promoting the importance of records for an accountable government or accountable organizations. Leadership becomes a challenge, as well, as Anne

Van Camp and others note instances in which key archival agencies or professional associations have fumbled the ball in pushing for policy changes or in taking advantage of opportunities to explain why archival records are not just old artifacts kept in dusty museumlike structures.

As some of the essays demonstrate, archivists must take their cases directly to the public and policymakers. The description of the International Records Management Trust (IRMT) “Information for Accountability Workshops” suggests that records and other professionals can take a very active role in transforming the political climate regarding access to government records. The workshops are interesting because they bring together records professionals with government officials, citizens, and other stakeholders to grapple with issues relating to records and their values. Greg Bradsher argues that the National Archives and Records Administration’s (NARA) work in making available records about Holocaust-era assets has “demonstrated the importance of NARA and archives not only to this country but to peoples, governments, and organizations in other countries.” We think he is right, although we wonder what it is that cases like this taught society about archives. The motivation for a “full accounting” of what occurred during the Holocaust certainly seems to suggest a learning process about the importance of records for accountability purposes.

The public’s misunderstanding of records and archives must seem to archivists and records professionals to be a mystery. After all, individuals have long been connected to records and vice versa. In the United States, for example, every decade the public is informed about the taking of the census, a massive and often controversial recordkeeping endeavor.²⁵ Archivists and records managers need to strive for a kind of archive literacy, just as others have argued for literacy about other pervasive societal information sources such as television and the computer.²⁶ Archivists and records managers need to move well beyond their traditional notion of advocacy in which the public and policymakers gain an appreciation for archives and records to making them understand *and* support the essential reason that records are created, how they need to be maintained, and what makes them significant.²⁷ In an age in which much is up for rethinking and redefinition (including even basic legal definitions), archivists must admit that the public perceives archives as *secret* and mysterious places.²⁸

ARCHIVES, TRUST, AND ACCOUNTABILITY

The idea that archives are completely trustworthy places may be a reflection of particular professional psyches characterizing some archivists and records managers. O’Toole brings up important, troubling matters about professional ethics. He notes his own musings and discomfort in giving testimony criticizing colleagues, but weighed this against the greater importance of archives. Shelley Davis brings up similar problems, but she mostly reflects on being ignored and abandoned by colleagues in the face of a massive government mess in neglecting to preserve IRS records. How do archivists build trust with the public unless

they take public stands on every important case involving a reliance on records for evidence and accountability?

As Davis and Chris Hurley remind us, governments are not hesitant about destroying records—very deliberately—in order to prevent investigations, as well as to generally weaken any sense of accountability. Unfortunately, in such cases we also know that archivists have not exactly played distinguished roles, often being part of the problem rather than part of the solution. Davis, not an archivist, speculates about this in some bewilderment about where archivists might have been. Hurley, an archivist, describes more pointedly the responsibility of the archivist, but notes that what happened in the Heiner affair was “misconduct” or, at least, some misplaced notions of archival responsibilities. Are archives and archivists, Hurley asks, only there to advise on “historical” values of records or do they have a broader role in accountability and related functions? As Hurley writes, “Sooner or later someone . . . is going to make the connection between the wrong they feel when the records needed to make their case are denied them and the compliant archivist who made that possible. When that day comes, archivists better have answers on where their responsibility lies.” In the case described by Bradsher, openness, both from archivists and in public access to the records, seems to be the better course for affairs to take, for records make daily headlines, especially in matters like looted art and other stolen assets of Holocaust and other victims of World War II. His story elevates the kind of role that should be played by a national archive, but, alas, this national archive has more often been the focus of charges about a lack of energy in advocating a strenuous defense of records.

What archivists and other records professionals do about ethical issues seems to be a challenge, since records hold powerful sway over individuals, governments, and organizations because of the evidence they may reveal about misconduct. While all professional archival associations have ethics codes, even ethics committees, little practical work is often done about ethics. A few articles here and there relate to ethical issues. While our society is immersed in a great love affair with experts in everything and in trying to teach everything (such as ethics),²⁹ it seems that we need to hold onto some stronger notions of records purposes, such as accountability, and set directions for practical management that reflect on ethical matters as well. We continue to have troubling questions posed to us about the involvement of both government *and* government archivists in cases like the Heiner Affair in Australia or the Tuskegee syphilis experiments described by Tywana Whorley in her essay in this book. If for no other reason, archivists and records managers must remember that society may remember because of records *and* that society may also recall the roles of records professionals because of the records they create and the records that survive in their repositories.

RECORDS, ACCOUNTABILITY, AND MEMORY

A lack of records can be a terrible blight, as Davis suggests in describing the absence of records in the IRS and the hostile, cutthroat environment she discov-

ered there. The IRS was beset by a lack of records and corporate memory and by resistance both to change and to outside influence. Apart even from the issues of accountability suggested by the Jamaican bank problems, the mismanagement of records seems to be an important, if not critical, factor in that banking industry collapse. According to Victoria Lemieux, the misunderstanding about how records were created, the rules they needed to comply with, and the panoply of policies and regulations affecting them were all factors in the poor competitive position of the banks. So, Lemieux argues, it was not just poor management, but “weak management of the record creation and keeping processes.” Some of this results from internal accountability and procedural safeguards, while some of the problems actually suggest local cultural traditions running counter to more Westernized notions of record keeping. In a sense, these banking managers lost track not just of how they needed to comply with external regulations but of their own corporate mission and tradition—their memory.

Memory problems are not just the absence of records. The value of records in holding individuals, governments, and organizations accountable can be graphically seen in the most dramatic subversion of records—their deliberate forgery. As David Gracy, in recounting a variety of cases about forgeries, notes, “every citizen who relies on the sanctity of recordkeeping systems and the integrity of individual records within those systems, especially systems of government, the contents of which are fundamental to entitling citizens to benefits, rights, and privileges, ought never cavalierly to take the incorruptibility of the system for granted.” Indeed, considering forgery puts the archivist right back to fundamental principles and mission since, as Gracy writes, “essential . . . to detecting forgery is a knowledge of recordkeeping systems and of the structure of documents.” The kinds of concerns raised by many about the reliability of records in electronic information systems long predate the emergence of computers, but they have existed since writing and recordkeeping systems first emerged. Wherever people commit activities to records, they will also attempt to fabricate or cover up documents.

Bureaucracies have long been the target of efficiency experts, administrators, and reformers, but they are also the victims of self-inflicted problems. Barbara Craig, in reviewing the Fabrikant Affair in Canada, in which a disgruntled university professor killed four of his colleagues, refocuses our attention on formal policies and procedures for creating and maintaining records, rules that we often view as bureaucratic nuisances of the worst kind. Craig, in this case, notes, “Freedom that is robust and defensible emerges logically, not paradoxically, from the attention paid to keeping complete and comprehensive records. Far from being only a lesser responsibility with only a brief claim on our attention, records making and keeping must be living commitments if they are to thrive.” Craig’s study reveals substantial problems in how the university kept records and the extraordinary efforts that it took to evaluate what documentation it had. Ultimately, it was the university’s lack of memory that was at fault.

The issue of records for individual, corporate, and societal memory is an inherent part of the accountability function of records and recordkeeping systems, a matter that can be seen in major social and political controversies in recent years. We need to remember that records are critical to societal awareness and the memory of pivotal events, and that their use may be part of controversies forcing archivists to take stands on access to records—such as in the uproar about the Enola Gay exhibition at the Smithsonian Institution, prompting books and accusations from all parties in the case.³⁰ In our modern era, the past and its interpretation is under attack or being used by pundits of all political and ideological persuasions, suggesting that archivists and records managers need to be able to articulate why records are crucial for resolving such disputes while at the same time making record keepers sensitive to the possibilities of their being targeted as well. In cases as diverse as the debates about Afrocentrism, Thomas Jefferson and his relationships with his slave Sally Hemings, and the symbolism of monuments and the Confederate battle flag, it is possible, likely, and preferable that archivists take public stands—since records are critical to each case.³¹ While society, in the absence of records or acceptable explanations, may fill in the gaps just by inventing, if necessary, events or their explanations,³² archivists must sound off about the records that attest to the veracity of these events and explanations.

RECORDS, ACCOUNTABILITY, SECRECY, CENSORSHIP, AND CITIZENS

The importance of records to the public is also suggested throughout the essays, especially given the secrecy that can often surround such records (indeed, that organizations and governments want to keep records secret is testimony to their value for keeping these institutions and their employees accountable to society). The IRS case suggests the lack of any regard for the public by an agency with very powerful arms. Robin L. Chandler and Susan Storch's examination of the Brown & Williamson tobacco papers suggests that the public's right to know can outweigh proprietary and other interests, even in a situation where there are questions about the authority to make the records available—how they were obtained, who owns them, and other similar issues. And Whorley points out that in the absence of access to records, incidents of the Tuskegee Syphilis Study can take on meanings that detract from the very real horrors perpetrated.

Open access to government records is, according to Van Camp and other authors in this volume, the hallmark of a democratic government, and such openness is crucial to the notion of accountability being considered throughout this book. Van Camp's description of the records relating to foreign relations, especially in contrast to the more recently opened records of the former Soviet Bloc nations, provides a stark argument for the importance of more open government, the role of records in such openness, and the means by which openness can be accomplished. Kimberly Barata and her coauthors describe the legacy of

secrecy in Sub-Saharan African governments, a “strongly entrenched culture of secrecy and conservatism” inherited from the colonial days, resulting in a “legislative and regulatory environment that discourages civil servants from making information available to the public.” One might suppose that the situation is better in Western nations, but the descriptions of the IRS records management debacle and the Australian Heiner affair suggest that while the degree of secrecy might be different, openness is still a critical problem.

Secrecy is a particularly important theme, and has been one. Many have fought with governments about obsessive secrecy concerning their records and the information contained in them. Wallace indicates how excessive secrecy and manipulation of the documentary record impeded investigation into the Iran-Contra Affair and detracted from accurate portrayals of events. And Harris notes how secrecy became a justification in preventing South Africa from confronting the full scope of activities of its powerful intelligence services during the apartheid years.

As more records are opened, especially with the collapse of authoritarian regimes, revelations confound and surprise us, and the crucial role of the archivist should become even more obvious to the public.³³ DeVoto, for example, gave up on his idea to write histories about military campaigns during World War II when he discovered he could not have access to the records. DeVoto discovered that his enemy “resided in Washington in the person of the smug bureaucrat who always claimed to know better and constantly denied citizens needed information.”³⁴ Others have sounded the same kind of alarm with nongovernmental records, like those documenting adoption.³⁵

The power of records, even those seeming to have fairly routine value, is suggested by the concept of secrecy and can be seen in the Brown & Williamson case, where the release of the documents has served as a watershed for the development of government policy, the onset of tobacco litigation, and the battle against the control of information. Censorship, closely related to secrecy, is another theme that emerges from these pages, sometimes a forceful, explicit process and at other times a function implied. Verne Harris’s account of the destruction of the public records in South Africa is, perhaps, the most chilling assessment because it is so blunt. Records are so critical that they have been important to societies that did not even develop formal—or Westernized versions of—writing systems.³⁶ Access to records, counter to secrecy or censorship, is a topic of importance throughout these essays. The Brown & Williamson case, as just one example, strongly suggests this importance, where the authors note that “given the gravity of the revelations about the tobacco industry, access to full text of the . . . collection was essential for informed public debate and long-term policy development within our democratic society.” This same case points out the power of using the Internet to enhance such access.

Privacy and access to information may be the distinctive hallmarks of the modern Information Age, and as a result, archivists and records managers should have pivotal roles to play.³⁷

CONCLUSION

The potential important role that archivists might play in arguing the importance of records in the public forum can be seen in the personal involvement of many of the authors in the cases they are describing. James O'Toole is an expert witness, and Shelley Davis is an official historian and insider (at least for a time). The authors describing the B & W tobacco papers write from firsthand experience. Greg Bradsher spearheads the efforts of the U.S. National Archives to play an active role in the Holocaust assets case. Terry Cook writes from firsthand experience. All belie the notion of the archivist as passive or conservative. Verne Harris, as an archivist, was involved in many of the situations he describes, bringing a personal perspective that is both powerful and emphatic. And Ann Van Camp describes her decade-long involvement as the first archivist appointed to the Historical Advisory Committee of the U.S. State Department.

There are many other case studies that could have been included in this volume, but it is more important to note that there are many more cases in which we could have hoped to have had archivists speaking out and arguing for the use of records to settle cases or resolve problems.³⁸ Who knows whether we will have many chances with future generations of archivists unless we build strong foundations for understanding records as supporting accountability and other such purposes. Think of the present generation. David Brooks describes this as a generation of people who are focused on careers (or goals of some sort), and who are also “extremely respectful of authority, treating their professors as one might treat a CEO or a division head at a company meeting.” “The world they live in seems fundamentally just. If you work hard, behave pleasantly, explore your interests, volunteer your time, obey the codes of political correctness, and take the right pills to balance your brain chemistry, you will be rewarded with a wonderful ascent in the social hierarchy.”³⁹ Who knows? Maybe this change will enhance an appreciation for the accountability value of records. Or it might just be indicative of a long hard road ahead. In either case, what is certain is that records and archives will regularly rise to the surface in accountability crises of all shapes and forms. It is hoped that this volume will serve as a weathervane indicating which way the winds can blow and serve as a resource to understand future accountability crises.

NOTES

1 . For an organizational example of this, refer to Martha S. Feldman, *Order Without Design: Information Production and Policy Making* (Stanford, Calif.: Stanford University Press, 1989).

- 2 . A representative sampling of the slim volume of writings explicitly examining the relationship between record keeping and accountability would include Edward F. Barrese, "Adequacy of Documentation in the Federal Government: Accountability Through the Record," *Information Management Review* 5 (Spring 1990): 53–58; Rachel Lilburn, "Ethics and Accountability in Public Sector Information Management," *Archifacts*, Apr. 1997, pp. 6–20; Sue McKemmish and Frank Upward, eds., *Archival Documents: Providing Accountability Through Recordkeeping* (Clayton, Australia: Ancora Press, 1993); McKemmish, "The Smoking Gun: Recordkeeping and Accountability," *Archifacts*, Apr. 1999, pp. 1–15; and McKemmish and Glenda Acland, "Archivists at Risk: Accountability and the Role of the Profession," paper presented at *Archives at Risk: Accountability, Vulnerability and Credibility*, Annual Conference of the Australian Society of Archivists, Brisbane, July 1999, available at sims.monash.edu.au/rcrg/publications/archive1.html.
- 3 . Here is a sampling of recent studies with a strong focus on the role of records in different aspects of societal or governmental accountability: Gotz Aly, *"Final Solution": Nazi Population Policy and the Murder of the European Jews* (London: Arnold, 1999); Timothy Garton Ash, *The File: A Personal History* (New York: Random House, 1997); Seymour Hersh, *The Dark Side of Camelot* (New York: Little, Brown, 1997); Martha K. Higgins, *Political Policing: The United States and Latin America* (Durham, N.C.: Duke University Press, 1998); Adam Hochschild, *King Leopold's Ghost* (New York: Houghton Mifflin, 1998); and David A. Horowitz, ed., *Inside the Klavern: A Secret History of a Ku Klux Klan of the 1920s* (Carbondale, Ill.: Southern Illinois University Press, 1999).
- 4 . A hallmark of the so-called Information Age has been the effort to control information, as depicted in James R. Beniger, *The Control Revolution: Technological and Economic Origins of the Information Society* (Cambridge, Mass.: Harvard University Press, 1986). Ironically, the very technologies aiming to control information either have depicted record keeping as bureaucratic obstacles to effective work, such as in Arno Penzias, *Digital Harmony: Business, Technology and Life After Paperwork* (New York: HarperBusiness, 1995), or have demonstrated that records can be more easily threatened by the very technologies creating them, as described by Tom Blanton, ed., *White House E-mail: The Top Secret Computer Messages the Reagan/Bush White House Tried to Destroy* (New York: New Press, 1995). If we worry about the future of traditional repositories, like libraries—an idea played with in the essays in R. Howard Bloch and Carla Hesse, eds., *Future Libraries* (Berkeley: University of California Press, 1995), then we should worry about places like archives and other repositories for records.
- 5 . See Terry Cook, "Archival Science and Postmodernism: New Formulations for Old Concepts," *Archival Science* 1, no. 1 (2001): 3–24.
- 6 . *Oxford English Dictionary*, 2d ed. (Oxford, Eng.: Clarendon Press, 1989).
- 7 . Kevin P. Kearns, *Managing for Accountability: Preserving the Public Trust in Public and Nonprofit Organizations* (San Francisco: Jossey-Bass, 1996), pp. xv, xvi.
- 8 . Kearns, *Managing for Accountability*, p. 36.
- 9 . Ian Frazier, *Family* (New York: HarperPerennial, 1994), is a good example of this, but the considerable writings on genealogy and family history all attest to this notion of accountability as well. Nick Salvatore, *We All Got History: The Memory Books of Amos Weaver* (New York: Vintage Books, 1997) provides an example of how one individual maintained records about his life in order to guide subsequent generations. We can see this in diary writing as well, as described by Thomas Mallon, *A Book of One's Own: People and Their Diaries* (New York: Ticknor and Fields, 1984).
- 10 . Carol Gelderman, *All the Presidents' Words: The Bully Pulpit and the Creation of the Virtual Presidency* (New York: Walker, 1997) is a good example of this.

- 11 . For an introduction to such scholarly study, see Patrick H. Hutton, *History As an Art of Memory* (Hanover: University of Vermont/University Press of New England, 1993), and Matt K. Matsuda, *The Memory of the Modern* (New York: Oxford University Press, 1996).
- 12 . There is growing public concern about how to communicate across the generations in an age when most things are viewed in ephemeral ways, as described by Stewart Brand, *The Clock of the Long Now: Time and Responsibility* (New York: Basic Books, 1999). Communication across generations is especially relevant, for we have seen how historical understanding can be forced aside, creating an environment lessening the accountability of public officials, organizations, and other individuals and institutions. For some provocative works about this, refer to Michael Schudson, *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past* (New York: Basic Books, 1992); Barbie Zelizer, *Covering the Body: The Kennedy Assassination, the Media, and the Shaping of Collective Memory* (Chicago: University of Chicago Press, 1992); Robert Brent Toplin, *History by Hollywood: The Use and Abuse of the American Past* (Urbana: University of Illinois Press, 1996); Toplin, ed., Ken Burns's *The Civil War: Historians Respond* (New York: Oxford University Press, 1996); and Toplin, ed., *Oliver Stone's USA: Film, History, and Controversy* (Lawrence: University Press of Kansas, 2000).
- 13 . See Ian E. Wilson, "Information, Knowledge, and the Role of Archives," *Canadian Journal of Information and Library Science* 25 (Apr. 2000): 19–34.
- 14 . See, for example, M.T. Clanchy, *From Memory to Written Record: England 1066–1307*, 2d ed. (Cambridge, Eng.: Blackwell, 1993); Patrick J. Geary, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium* (Princeton, N.J.: Princeton University Press, 1994); Jack Goody, *The Power of the Written Tradition* (Washington, D.C.: Smithsonian Institution Press, 2000); and Anthony Grafton, *The Footnote: A Curious History* (Cambridge, Mass.: Harvard University Press, 1997), and Grafton, *Forgers and Critics: Creativity and Duplicity in Western Scholarship* (Princeton, N.J.: Princeton University Press, 1990).
- 15 . See Antonio González Quintana, *Archives of the Security Services of Former Repressive Regimes* (Paris: UNESCO, 1997). Available at unesco.org/webworld/reamp/secret_english.htm.
- 16 . See, for example, Jean Bottero, *Mesopotamia: Writing, Reasoning, and the Gods* (Chicago: University of Chicago Press, 1992); Anne L. Bower, ed., *Recipes for Reading: Community Cookbooks, Stories, Histories* (Amherst: University of Massachusetts Press, 1997); Angel Rama, *The Lettered City*, trans. and ed. John Charles Chasteen (Durham, N.C.: Duke University Press, 1996); and Thomas Richards, *The Imperial Archive: Knowledge and the Fantasy of Empire* (London: Verso, 1993).
- 17 . See tobaccoresolution.com; chemicalindustryarchives.org; and pbs.org/trade_secrets/index.html.

- 18 . See, for example, Konstantin Akinsha and Grigorii Kozlov with Sylvia Hochfield, *Beautiful Loot: The Soviet Plunder of Europe's Art Treasures* (New York: Random House, 1995); Tom Bower, *Nazi Gold: The Full Story of the Fifty-Year Swiss-Nazi Conspiracy to Steal Billions from Europe's Jews and Holocaust Survivors* (New York: HarperCollins, 1997); Hector Feliciano, *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art* (New York: HarperBooks, 1997); Itamar Levin, *The Last Deposit: Swiss Banks and Holocaust Victims' Accounts*, trans. Natasha Dornberg (Westport, Conn.: Praeger, 1999); Lynn H. Nicholas, *The Rape of Europa: The Fate of Europe's Treasures in the Third Reich and the Second World War* (New York: Vintage Books, 1994); Isabel Vincent, *Hitler's Silent Partners: Swiss Banks, Nazi Gold, and the Pursuit of Justice* (New York: William Morrow, 1997); Jean Ziegler, *The Swiss, the Gold, and the Dead*, trans. John Brownjohn (New York: Harcourt Brace, 1998); and Edwin Black, *IBM and the Holocaust: The Strategic Alliance Between Nazi Germany and America's Most Powerful Corporation* (New York: Crown, 2001).
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- 25 . See Margo J. Anderson, *The American Census: A Social History* (New Haven, Conn.: Yale University Press, 1988).
- 26 . David Bianculli, *Teleliteracy: Taking Television Seriously* (New York: Continuum, 1992) and Paul Gilster, *Digital Literacy* (New York: Wiley and Sons, 1997).
- 27 . Elsie Freeman Finch, ed., *Advocating Archives: An Introduction to Public Relations for Archivists* (Metuchen, N.J.: Society of American Archivists and the Scarecrow Press, 1994), provides an excellent introduction to how archivists have thought about advocacy. Records managers have been much less focused on advocating their position.
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- 29 . Gordon Marino, "Avoiding Moral Choices: Call in the Ethics Expert," *Common-weal*, Mar. 23, 2001, pp. 11–15.
- 30 . Kai Bird and Lawrence Lifschultz, eds., *Hiroshima's Shadow: Writings on the Denial of History and the Smithsonian Controversy* (Stony Creek, Conn.: Pamphleteer's Press, 1998); Martin Harwit, *An Exhibit Denied: Lobbying the History of Enola Gay* (New York: Copernicus, 1996); Edward T. Linenthal and Tom Engelhardt, eds., *History Wars: The Enola Gay and Other Battles for the American Past* (New York: Metropolitan Books, 1996); and Philip Nobile, ed., *Judgment at the Smithsonian* (New York: Marlowe, 1995).
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- 32 . See the classic study by Daniel J. Boorstin, *The Image: A Guide to Pseudo-Events in America* (New York: Harper Colophon, 1961).
- 33 . Timothy Garton Ash, *The File: A Personal History* (New York: Random House, 1997); Richard Breitman, *Official Secrets: What the Nazis Planned, What the British and Americans Knew* (New York: Hill and Wang, 1998); Angus MacKenzie, *Secrets: The CIA's War at Home* (Berkeley: University of California Press, 1997); Michael Palumbo, *The Waldheim Files: Myth and Reality* (London: Faber and Faber, 1988); and Daniel Patrick Moynihan, *Secrecy: The American Experience* (New Haven, Conn.: Yale University Press, 1998).
- 34 . Thomas, *A Country in the Mind*, p. 85.
- 35 . E. Wayne Carp, *Family Matters: Secrecy and Disclosure in the History of Adoption*. (Cambridge, Mass.: Harvard University Press, 1998).

- 36 . Elizabeth Hill Boone and Walter D. Mignolo, eds., *Writing Without Words: Alternative Literacies in Mesoamerica and the Andes* (Durham, N.C.: Duke University Press, 1994).
- 37 . Philip E. Agre and Marc Rotenberg, eds., *Technology and Privacy: The New Landscape* (Cambridge, Mass.: MIT Press, 1997); Ellen Alderman and Caroline Kennedy, *The Right to Privacy* (New York: Vintage Books, 1997); David Brin, *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* (Reading, Mass.: Addison-Wesley, 1998); Fred H. Cate, *Privacy in the Information Age* (Washington, D.C.: Brookings Institution Press, 1997); Whitfield Diffie and Susan Landau, *Privacy on the Line: The Politics of Wiretapping and Encryption* (Cambridge, Mass.: MIT Press, 1998); Amitai Etzioni, *The Limits of Privacy* (New York: Basic Books, 1999); Michael Perelman, *Class Warfare in the Information Age* (New York: St. Martin's Press, 1998); Jeffrey Rosen, *The Unwanted Gaze: The Destruction of Privacy in America* (New York: Random House, 2000); Herbert I. Schiller, *Information Inequality: The Deepening Social Crisis in America* (New York: Routledge, 1996); H. Jeff Smith, *Managing Privacy: Information Technology and Corporate America* (Chapel Hill: University of North Carolina Press, 1994); Janna Malamud Smith, *Private Matters: In Defense of the Personal Life* (Reading, Mass.: Addison-Wesley, 1997); Reg Whitaker, *The End of Privacy: How Total Surveillance Is Becoming a Reality* (New York: New Press, 1999); and William Wresch, *Disconnected: Haves and Have-Nots in the Information Age* (New Brunswick, N.J.: Rutgers University Press, 1996).
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EXPLANATION

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Archives on Trial: The Strange Case of the Martin Luther King, Jr., Papers

James M. O'Toole

Records and documents are frequently brought into court as evidence. By giving silent but effective testimony, records help determine matters of fact and matters of law in both civil and criminal proceedings. The fundamental content of the law itself is enshrined in written statutes and regulations, at least in modern democratic societies. Writing also codifies the common law, as it is interpreted and applied in historical and evolving case law. Moreover, the routine documentation of human affairs may be brought to bear in resolving disputes between citizens. Letters, contracts, wills, deeds, and other records often prove significant in such cases, though they must be used carefully. In Western legal systems, for instance, records are generally understood as exceptions to the rules barring hearsay: Since documents cannot be cross-examined, as live witnesses can, they constitute a kind of third-party evidence that would not be admissible in trials if there were not independent means for authenticating them and thereby relying on what they have to say. Even so, records have some advantages over live witnesses. Because they were created contemporaneously with the questions at issue, records can be more reliable than witnesses, who are usually in the position of trying to remember events after the fact. For these reasons, records often join other “exhibits” as part of the body of evidence in court cases, as recent litigation involving Microsoft or the American tobacco companies has amply demonstrated. Indeed, archivists have long advanced the potential legal uses of records as one of the primary justifications for the maintenance of archival programs. Precisely because records offer a form of legal accountability, archivists argue, those records should be properly managed.

Less common are those occasions when records and documents themselves become the focus of a legal proceeding. Sometimes it is the use of records that is at issue, as in copyright cases: Was a particular use of written materials, whether published or in manuscript, a “fair use” under the terms of the copyright laws? The cases of the last thirty years on this subject, most notably the one involving the unpublished letters of the novelist J.D. Salinger, have addressed this question, though these cases have been resolved in ways that many archivists and scholars find troubling. However that may be, the records themselves are very much at issue in these sorts of cases. Even clearer examples of the centrality of records are those instances in which the ownership and possession of documents is the matter before the court. In recent years, the most striking instance of this kind of proceeding was the protracted case of the papers of Martin Luther King, Jr., a case in which I was personally involved. A lawsuit to determine the ownership of this valuable archival collection came to trial in the spring of 1993. On its face, this was a simple dispute over property. At the same time, it also raised a number of questions of significant interest to those concerned about the documentary record, broadly defined. What is the nature of archival materials? What is the purpose of archival processes, and how can we tell when these have been satisfactorily accomplished? What standards of professional ethics are involved in archival work, and how should general ethical principles be applied in particular cases? Can we determine the “proper” placement of historically significant documentation? A review of the case suggests some larger reflections on the role of records in modern society.

THE PAPERS

By the time of his assassination in April 1968, Martin Luther King, Jr., had become one of the iconic figures of the twentieth century and, indeed, of all American history. Thrust into leadership of the modern civil-rights movement as a young minister in his first pastoral assignment during the boycott of segregated buses in Montgomery, Alabama, in 1955–1956, King went on to found the Southern Christian Leadership Conference (SCLC), which became the nation’s foremost civil-rights organization. For the first time in decades, the legal and de facto segregation of black Americans was systematically challenged and began to crumble, and the impact of that social revolution was felt everywhere in the country. At his death, King was still expanding his vision of nonviolent political action, joining the growing opposition to American participation in the Vietnam War and addressing issues of economic justice at home. Surely it was clear even before his death that he would be someone whom historians would study over and over into the indefinite future.¹ Thus, his letters, papers, sermons, and other documents were sure to be an important body of sources for historical study, and their proper preservation and management was a matter of great importance.

Shortly after he received the Nobel Peace Prize in 1964, King began to make arrangements for the preservation of his papers, but the matter was a complicated one. Then the pastor of a church in Atlanta, the city in which he had been

born, he had focused most of his activity on the South, where legal segregation presented the most obvious first target of civil-rights activity. An archival repository in that region would thus seem the logical place for the documentation of his movement, but countervailing arguments worked against making that decision. The political and racial climate of the South during those years was uncertain and violent, with church burnings and the murder of civil-rights workers making news with chilling frequency. Would his papers really be secure in a southern library or archives, or might some opponent seek the symbolic satisfaction of attacking King and his legacy by destroying the historical evidence of it? Accordingly, King looked elsewhere in arranging for the disposition of his papers.

The precise origin of the plan to deposit some of them at Boston University (BU) is not wholly clear. King had attended the university's School of Theology in the early 1950s and had earned his ministerial doctorate there; it was also there that he had met his future wife, Coretta Scott King. Though he had had little contact with the school during the intervening years, he was open to an approach in the spring of 1964 from his alma mater, asking that he consider placing his papers in the library, in a newly created department of special collections. An informal exchange of letters took place between King and the director of the university's library, and soon the papers were being shipped from Atlanta. At the time, the collection consisted of fifteen file-drawer-sized transfer cases, eleven of them from the offices of the SCLC and four from the King family home. By the end of that summer, the papers, most of them dated prior to 1961, were physically in the library of Boston University, at its campus on the banks of the Charles River in Boston; a second, smaller shipment of papers was made the following year.²

To say that this was accomplished through an "informal exchange of letters" is to understate the issue that assumed center stage during the trial in 1993. No formal contract or deed of gift was ever signed between King and Boston University. Instead, in keeping with what was then a not uncommon archival practice, the transfer was effected by this informal exchange. University officials had drafted a short, two-sentence letter for King to sign, but King chose to write his own. It was the wording of that letter and the document's standing as a legal instrument that lay at the core of the later dispute. He began by naming the BU library as "the Repository of my correspondence, manuscripts and other papers, along with a few of my awards and other materials which may come to be of interest in historical or other research." He also expressed his intention to send other papers to the library from year to year, though (after the second transfer) he never did so. In effecting the physical exchange of the materials, however, he expressly retained for himself the legal ownership of them. "All papers and other objects which thus pass into the custody of Boston University remain my legal property," he wrote, going further to indemnify the school from any damage the papers might suffer "despite scrupulous care." He then stated another intention: that he would periodically designate a portion of the papers to become "the absolute property of Boston University as an outright gift from me." During his life-

time, he never acted on this intention and never legally transferred ownership of the papers to the school or to anyone else. Finally, he concluded his letter with a very significant sentence: “In the event of my death, all such materials deposited with the University shall become from that date the absolute property of Boston University.”³

Where, then, did the matter stand at King’s death in April 1968? Since the time of the transfer of the papers to BU, he had generated an even larger amount of material, and all that documentation remained in his offices and home in Atlanta. He had retained the legal ownership of all his papers, including those at BU, for he never executed the formal deed of gift to which he had alluded, and the school never pressed him for one. Expressed as it was as an “intention,” his statement had little legal effect. We all “intend” to do a lot of things, one of the attorneys subsequently explained to me, but the law does not and probably cannot enforce all of them. The last sentence of his letter might seem to have resolved the matter, however, with the fact of his death automatically conveying ownership to BU, but this may not have been as legally straightforward as it seemed. Specifically, this expression on King’s part might not conform to the so-called “statute of wills,” which required that property transfers at death be accomplished in a particular manner and form—most important, that any bequest be witnessed by at least two third parties. The absence of witnesses to King’s letter might thus render it invalid. Finally, did the letter constitute a binding contract between King and the university? If so, BU had certain obligations to fulfill, including that of providing “scrupulous care” to the papers. Failure to do so might invalidate the contract. These were the legal issues that the subsequent trial would have to resolve.

THE CASE

By the middle 1980s, Coretta Scott King and the other members of her family had established the Martin Luther King, Jr., Center for the Study of Non-Violent Social Change. Located in Atlanta, where it engaged in a variety of educational and public programs, the center also became the archival repository for those papers of King that were in his possession at the time of his death. Covering essentially the second half of his public career, these consisted of documents generated after 1961, including many of his most significant writings and speeches. A grant from the National Endowment for the Humanities in the middle 1970s had made it possible for the center to process King’s own papers and to produce a finding aid for them; the grant had also supported the processing of other collections there, including the records of the SCLC and those of the Congress of Racial Equality and the Student Non-Violent Coordinating Committee. As the center became a locus for the study of King and his impact, it began to look northward to those records of the early years of his activity that were at Boston University. Rather than having all (or almost all) King’s papers under one roof, the collection was split between two widely separated archives. Researchers had to travel to

both places: Any number of topics discussed in the papers at one repository could be fully understood only after consulting the papers at the other. The fundamental unity of the collection, something that archivists have traditionally valued and that is implicit in the principles of provenance and original order, had been shattered, with predictably unhappy consequences. Accordingly, in 1987, acting in her capacity as executor of her deceased husband's estate, Coretta Scott King filed suit in the Suffolk County Superior Court in Boston for the return to Atlanta of that portion of his papers that were at Boston University.⁴

As with many legal cases, the preliminaries of this one dragged on for several years. Documents and depositions were assembled on both sides, and the legal process of "discovery" moved slowly forward. As part of the general maneuvering, BU even filed a countersuit against the family and the center, claiming that since King had designated the school as the repository of his papers, the material in Atlanta should now be sent to Boston and the entire collection housed there; this argument was quickly rejected by the court. At least one attempt at compromise was made, with the idea floated that the items in both collections be microfilmed and the whole reunited on film in a way that it could not be in reality. Another participant in the negotiations even suggested that the collection be "shared" by the two repositories—physically reassembled into one whole and shipped back and forth between Boston and Atlanta, spending six months per year in each place. It was "a classic lawyer's compromise," the author of this suggestion said to me at one point, realizing by then that it would have been completely unworkable and probably damaging to the papers. With the failure to find any middle ground, the case of *Coretta Scott King v. the Trustees of Boston University* came to trial early in 1993.

It was at this point that I became involved. Attorneys from the Boston law firm of Goulston and Storrs, which had agreed to represent Mrs. King on a *pro bono* basis, contacted me in early February at my office at the University of Massachusetts, Boston, where I was director of the M.A. program in history and archives. Since a collection of documents was at the heart of the case, the lawyers needed something of a crash course in archival theory and practice, hoping to gain an understanding of what archives were and what archivists did with the materials in their care. They also hoped to determine whether BU had fulfilled its responsibilities to give "scrupulous care" to the King Papers, and whether the university's custody of the collection had been in conformity with accepted professional practice. Moreover, the advocates needed a way to understand the organization of the very materials at issue; since the collection was split right down the middle, it was not clear how all the various parts of it fit together. Never having used archives themselves, the lawyers also needed to know how scholars extracted relevant information from such collections. How did researchers go about using papers of this kind, and what finding aids were available? For that matter, just what were these "finding aids" that they had heard about, and what was this "provenance" business that they seemed to encounter at every turn? If they hoped to present such information to a jury, they first needed to under-

stand it themselves. If they hoped to convince that jury to sanction reuniting the King Papers in the one repository in Atlanta, they needed to find a way of conveying exactly what was at stake.

Our initial interview was an exercise in what had come to be identified in professional parlance as a question of “archives and society.” By the early 1990s, archivists in the United States had been discussing for several years the public perception of archives and archivists, and they had been searching for ways to extend an appreciation of professional issues to a wider public, including especially those who had never visited an archives.⁵ The two lawyers, who spent about an hour and a half in my office one afternoon, had already done their homework. They had contacted the Society of American Archivists (SAA) for relevant literature, and it became clear in the course of our conversation that they had read my textbook, *Understanding Archives and Manuscripts*, which had been published two years before. They were quick studies (as all litigating attorneys must be), and they came primed with well-defined questions. At the time, I looked on our conversation as a teaching opportunity, a chance to promote a wider understanding of archives. It was not until later that I realized that, beyond the technical questions, the lawyers were also assessing me and my potential as a witness. In addition to researchers who had used the collection, they also wanted to put on the stand a witness who could explain archives to the twelve ordinary citizens of Boston who would ultimately decide the case. Was I someone who could do that? Was I, to be blunt, presentable? Were there any quirks of personality that might get in the way of the message and the information they wanted to convey? How clear could I make the sometimes arcane principles of archival practice? Apparently, I passed muster on all these counts and at the beginning of March agreed to act as a consultant and expert witness on behalf of the King family and the center in Atlanta.

Almost immediately, I became immersed in the details of the case. Thick packages of depositions and other pretrial materials arrived at my office at school and at home—neighbors wondered what all these parcels arriving by taxi were—and I analyzed them for the archival issues that were involved. Especially important were copies of the finding aids that BU had prepared for the King Papers, and an initial review of these proved very troubling. The papers had become jumbled physically in the shipping from Georgia to Massachusetts nearly thirty years before, and the inventories suggested that little or no effort had subsequently been made to restore the original order. There was one run of correspondence, for instance, filed alphabetically and covering the years 1956–1957 that had not been put back together after having been separated in packing and transit: Files for the letters A–G were in boxes 13A–17 of the collection, while the files for the letters H–Z were in boxes 60–67. A series arranged alphabetically by state was similarly disordered: Boxes 10–13A contained New York through Wyoming (with Oklahoma under “U,” for some reason), while boxes 48–51A held Alaska through Montana. I was subsequently asked how I knew that these separated pieces actually belonged together—well,

I just did, but finding a way to explain that archivally obvious perception took some effort. The conclusion nevertheless seemed clear: Some of the most basic work of physical and intellectual arrangement had not been done during the period in which BU had held the King Papers.

These impressions were confirmed when I visited the university's archives and special collections department to examine the papers in person. This visit had been carefully arranged in advance and was conducted according to an elaborate protocol. Together with two Goulston and Storrs lawyers, I met in the morning at the offices of BU's attorney, and we all went from there to the school's library. After registering according to the normal procedures, we were taken into the stacks to view the collection, which was housed on standard library shelves in the familiar gray acid-free boxes. The climate control and fire detection systems seemed adequate enough, but the collection was shelved directly under a large sewer pipe; there was no evidence that there had ever been any leakage from this pipe, but it seemed a cause for concern nonetheless. The three of us then returned to the reading room and spent the rest of the day calling for and examining the contents of approximately sixty boxes from the collection, while a paralegal from the BU lawyer's office sat watching us.

This examination confirmed my fear that even the most basic archival work of arrangement and description had not been performed, and I later testified to this at the trial. The intellectual disorder of the inventories matched the physical disorder of the collection. There were a great many misfilings, and some individual documents had been removed from files, with very imprecise "separation" records. A letter to King from Malcolm X, for example, had been removed and replaced with a photocopy marked "original removed, on display," apparently a reference to a long-ago exhibit; the current whereabouts of the letter were unknown. In sum, it seemed to me that, when the files had arrived in Boston, they had simply been unpacked and put on the shelves in that same random order, with no effort to reconstruct the record series in which the collection had been compiled in the first place. In fact, it seemed an example of the mistake I had seen beginning archival students make many times over the years—that of thinking that the physical order in which they first encountered a collection was the intellectual "original order" that archival theory demanded that they respect.

During a second visit to the library a few weeks later, we again examined some boxes from the King Papers, but we also looked at other collections to get a sense of BU's overall archives and manuscripts effort. How did the condition of the King Papers compare with that of the papers of other individuals? The department was well known in the Boston area and nationwide for its Twentieth Century Archives. Under the leadership of its longtime director, Howard Gottlieb, BU had come to specialize in collecting the papers of well-known figures in contemporary America, particularly those whose prominence was grounded in popular culture. Beginning at a time when many other archives had spurned such collections, perhaps because they were judged not "serious" enough, BU had actively solicited and preserved the papers of actors, movie

stars, musicians, popular authors, and others; it was now an important center for research on such topics. Unfortunately (as it seemed to me), BU had apparently taken better care of some of these collections than it had of the papers of Martin Luther King, Jr. In contrast to the jumbled and disorganized inventory of the King Papers, the eleven-page finding aid for the Gene Kelly Papers was a model of clarity; the two-volume inventory of the Roddy McDowell Papers (designated as “restricted until the year 2100”) seemed frankly laughable in its detail, including an itemized description of some of the costumes McDowell had worn in several of his movies. I concluded that, while the King Papers had essentially languished unorganized, the archives had lavished attention on collections that, while not valueless, were certainly of lesser historical significance.

Throughout all the pretrial activity, I was repeatedly called upon to explain professional archival matters, and indeed archival thinking, to the attorneys. This was not only challenging in its own right—(How did one convey, in simple terms, the knowledge peculiar to one professional guild to members of another? How did one express to outsiders matters taken for granted by one’s own profession?), but it also demanded reflection on the source and validity of my own knowledge. How did I know what I thought I knew about records, and what evidence could I offer that I was correct? How, for example, did I know that those scattered alphabetical files of correspondence were really two parts of the same whole, even if physically separated? How could I be certain that they hadn’t been filed that way in the first place and that BU was indeed thus preserving the original order? Why did I say that the informal and legally imprecise means of transferring the papers to BU in the early 1960s had been common among archives at the time? More seriously, were there ethical issues involved in my criticizing the way an archive with which I had had no previous contact had set its priorities and done its work? I was concluding in my own professional opinion that BU had not cared for the King Papers as it should have, but was there a difference between merely thinking that privately and testifying to it in court? Addressing these questions threw me back on my experience and on the professional literature, which itself had to be mediated for nonprofessional understanding. As we moved toward the trial itself, much time was spent in conversation with the attorneys, as I attempted to express these issues clearly and they pressed me for greater precision.

THE TRIAL

The trial that would decide the fate of the King Papers opened on Wednesday, April 21, 1993, in the Suffolk County Courthouse in Boston. I attended only some of the initial proceedings. After jury selection and opening statements, testimony began with the examination of Howard Gottlieb by Mrs. King’s attorneys, during which time I was present. He spoke of the preparation of several successive inventories, each supposedly more “refined” than the previous one, but this did not correspond with my assessment. A security microfilm had