

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

AMERICAN CIVIL LIBERTIES UNION
OF MISSISSIPPI, ET AL.

PLAINTIFFS

VS.

NO. 3:77cv47B

KIRK FORDICE, ET AL.

DEFENDANTS

BRIEF IN SUPPORT OF ACCESS PLAINTIFFS' MOTION
TO OPEN NON-CONTESTED SOVEREIGNTY COMMISSION FILES
AND TO ALTER OR AMEND THIS COURT'S OPINION
AND ORDER OF NOVEMBER 25, 1997

The access plaintiffs request that the Court rule on the motion to open the non-contested Sovereignty Commission files before any claim can be made that the Court loses jurisdiction should the privacy subclass appeal.

The access plaintiffs make this request out of an abundance of caution since the general rule is that "Ordinarily an interlocutory injunction appeal under § 1292(a)(1) does not defeat the power of the trial court to proceed further with the case." 16 Wright Miller and Cooper, Federal Practice and Procedure, §3921.2, pp. 53-55 (1996) (*citing Railway Labor Executives' Assn. v. City of Galveston*, 898 F.2d 481, 481 n. 1 (5th Cir. 1990)).

Regardless of the questions which may or may not later be appealed, there is no reason not to open all the files except the ones identified to the Court by the State defendants' listing of requests received.

There is no remaining legal impediment to the opening of the

uncontested files. Archives and History asserts a managerial interest in releasing the files solely by way of computer viewing. There is no constitutional basis to this reason for delay. The computer scanning was originally proposed as a method of locating and redacting specific names or lines of type, not as a reason for delaying the opening of the files. As we have discussed, the computer processing techniques used in this Court's remedy did not even exist at the time the complaint in the action was filed. No computer searching is necessary to locate the uncontested documents. Vast quantities of the documents contain no contested material whatsoever, and should be made immediately open.

Other materials of sensitive nature and/or of fragile quality are routinely made available by Archives and History. As the affidavit of Ken Lawrence demonstrates, researchers have been able to use documents from the 18th and 19th centuries, in their original forms, without having to use copies, all as a normal part of the State Archives' practice.

Delaying the opening of the files exerts a chilling effect on efforts to publish, debate and analyze the materials otherwise available from the era. There is a chilling effect over discussion of documents that have been leaked (by the privacy class) from the files. Exhibit "A." There is a negative impact over publishing about the documents that are otherwise in the public domain. Exhibit "B." Finally, of course, the closure over the materials themselves directly restricts the exercise of speech and free press.

Access Plaintiffs request that a date certain be set for releasing all non-contested Sovereignty Commission materials.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Shirley Payne, hereby certify that I have this date mailed, postage prepaid, a true and correct copy of the above and foregoing Brief in Support of Access Plaintiffs' Motion to Open Non-Contested Sovereignty Commission Files and to Alter or Amend this Court's Opinion and Order of November 25, 1997 to Hon. Luke Dove, Dove, Chill & Calhoun, 1142 Deposit Guaranty Plaza, Jackson, MS 39201 and Hon. Dave Scott, Special Assistant Attorney General, P. O. Box 220, Jackson, MS 39205-0220.

This the 5th day of December, 1997.



SHIRLEY PAYNE