

A Source of Glorious Confusion (and Revenue): The Records Laws of Texas

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In 1862 William Pitt Ballinger, needing some information from the records of Brazoria County, asked a local associate to get it for him. His correspondent's response:

"If you have ever had occasion to make any personal examination of our records you are aware how crudely the index books and abstracts have been kept in and what a condition of glorious uncertainty and confusion they are in at present."¹

Brazoria County was not unique.

In 1854 the Supreme Court of Texas heard the case of Willis v. Jones. Leonidas M. Willis had succeeded Jones as District Clerk of Gonzales County. Upon taking office he discovered that Jones had left unfinished business; more specifically Jones had failed to make entries into the court records that were necessary "to show properly what had been done in the Court." Willis made the necessary entries and tried to collect the fees, some \$845 that the litigants had paid to Jones for that service. Jones refused and, not surprisingly, there was a law suit which was appealed all the way to the Texas Supreme Court which denied Willis the right to recover. It was, after all, Jones' fee as he was the clerk when the fees were incurred. And then, to add insult to injury, Justice Abner Smith Lipscomb stated that he hoped that Willis would prove a better clerk than his predecessor but doubted it because of Willis' submission to the Supreme Court: "Transcripts should be written in a plain, legible hand. It is difficult to read the one sent up."²

That problems were widespread is shown by another Supreme Court decision which included the startling statement:

"...for it is a matter of fact, of which the records brought to this court afford ample evidence, that the proceedings of the probate courts, in many, if not in most instances, are very defectively and imperfectly preserved."³

So, have things improved in the last 150 years? Yes, they certainly have—this is the Information Age. We have better technology, better practices, better laws, better theories, and organizations and agencies to ensure that public record keepers get the training and direction that they need to do their

¹ A. P. McCommick to William Pitt Ballinger, April 12, 1862, Ballinger Papers, Houston Public Library, Vol. 15. On February 7, 2012, while working on this paper, an associate who works for a title company called to tell me that he had recently reported to the Brazoria County clerk's office had failed to index a deed he had filed 15 years ago. The person he spoke to wasn't sure if they could do anything about the omission.

² 11 Tex. 594, 1854 WL 4317 (Tex.) For this and several other references to appellate cases, I am indebted to Bill Page of the Texas A&M University Library.

³ 15 Tex 557, 1855 WL 5084 (Tex.) 65 Am. Dec. 179.

jobs well. And we no longer depend on idiosyncratic communications and court cases to document the condition of our public records; we now have trained professionals and formal taskforces for the job.

In August 2011 The Texas Court Records Preservation Task Force reported:

“In many instances, counties are adequately preserving their Records. In other instances, however, counties throughout the State need substantial help. Many Records are decaying or being destroyed due to an influence of events and conditions, including (i) improper storage and handling, (ii) the effects of moisture and temperature fluctuations, (iii) the ravages of rats, bugs, and vermin; and (iv) the acidity of the ink and the poor quality of the paper.”⁴

There we have it, those things that historians love—change and persistence. We have resources and techniques that would dazzle clerks of yore, but yet we continue to lose historically-significant records to the ravages of time and neglect.

Why is this? Now, as then, the problem most often cited it is a lack of resources, or, to put simply, money. But is it? The reality seems to be that all too often records are appreciated more for their revenue generating potential than for their informational value.

From the beginning custodians of public records have collected money intended to pay for the creation and preservation of records, and from the beginning there have been other demands—often more pressing than spending resources on records that that would wait a little while longer—probably as long as the next administration.

Throughout the 19th and early 20th Centuries county and some other officials were compensated under the fee system. Succinctly, county clerks, district clerks, and other county office holders collected fees for each service they performed and from this income they paid salaries and—the evidence indicates—often met the other expenses of office. Tax dollars did pay for their offices and furnishings in the courthouse and frequently the statutes specified that the county was to purchase the books and stationery required. But evidence indicates that the fees of office were often expected to cover the expenses of office.

The statute creating justice courts, for example, stated that “every justice of the peace shall make a fair record in a book that he shall keep for that purpose, of the proceedings in all suits and examinations had before him.”⁵ That the justice was responsible for procuring his own books is evidenced by the fact that a number of 19th Century JP records at the Harris County Archives were used for other purposes both before and after they served as justice records—including business journals, notarial registers, and the City of Houston financial ledger for 1840-1853.

The first law, I found indicating that it might be the duty of the Commissioners to provide books and stationery was in 1846, and it was surpassingly vague. It provided:

⁴ The Texas Court Records Preservation Task Force, *Report on the Preservation of Historical Texas State Court Records, August 31, 2011, p. 1*. Hereafter cited as TCRPTF.

⁵ Gammel, Vol. 1 p. 1203.

“That the clerks of the county courts of the several counties of this State shall be the recorders for their respective counties: they shall provide and keep in their offices well bound books, in which they shall record...all instruments of writing authorized or required...”

But another section provided that:

“Each recorder shall provide suitable books and presses for his office, and shall keep regular and faithful accounts of the expenses thereof, and such accounts shall be audited by the county court and paid out of the county treasury.”⁶

Shortly afterward the Legislature was much clearer about the counties’ responsibilities for court records: “each county court shall cause a record to be kept of all its proceedings, in suitable books for that purpose, to be procured at the expense of the county.”⁷

The actions of the Burleson County commissioners in 1846 and 1847 give credence that the county was providing clerks with books and stationery. At that time the County was deep in debt and had issued warrants, or script, in payment to its creditors—mostly county residents. These IOU’s were receivable for taxes, fees and fines due the county but had no value to stationers providing books, forms and other supplies to the clerks. The commissioners, thus, decreed that a portion of the county tax (varying from a third to a fifth) had to be paid in hard money which was to be used to purchase stationery needed by the clerks.⁸

While Commissioner Court Minutes and Minutes of Accounts Allowed after 1845 indicate that what we would call the general fund being used to purchase supplies, the very fact that the statutes sometimes specified that was a county expense and sometimes didn’t, indicates that the commissioners may not have always picked up the record-keeping tab.

However the early books were procured, many must have been shoddy indeed because Congress and then the Legislature repeatedly passed bills authorizing county and district clerks and surveyors of numerous counties to transcribe the early volumes. The cost was borne by the county treasury, typically at 10¢ to 15¢ per 100 words.⁹ The legislature passed so many county laws authorizing the transcription of records that in 1870 it finally passed a general act permitting county records to be transcribed whenever they were “defaced, worn, or in any condition endangering their preservation.”¹⁰

While the early statutes required that officials keep records, they provided little guidance as to form or quality of material. The laws of Coahuila and Texas specified “bound” books and in 1837 the Republic upped the standard to a “well bound book,” a phrase that persevered into the 20th Century and which meaning was twisted to include microfilm on reels and cartridges.¹¹

⁶ Gammel, Vol. 2, p. 1542. It should also be noted that court clerks collected fees from litigants payable to other officials. The audit requirement may have also been meant to protect the interest of the others.

⁷ Gammel, Vol. 2, p. 1643. See Also Gammel, Vol. 3, p. 302 for the 1848 statute. Vol. 5, p. 1149 for 1866. By 1870 the law required commissioners court to provide books and stationery for the JP’s. Gammel, vol. 6, p. 285.

⁸ Commissioner Court Minutes, Burleson County, October Term 1846 and July Term 1847, no page number.

⁹ Gammel, too many to note fully but see Vol. 2, p. 1597 for Brazoria County (1846); Vol. 3. P. 15 for Red River County, 1848; Vol. 3, p. 511 for Red River (again), 1850;

¹⁰ Gammel, Vol. 6, p. 285.

¹¹ Gammel, Vo. 1, p. 360 & 1294.

By 1866 the Legislature momentarily got serious –very serious—about quality. It specified “a well bound record book, of good quality...containing at least eight quires of paper.” On top of that, the law provided that the State would pay for these books. And what were these records that the Legislature cared so much about? Well, the Tax Roll, of course, a copy of which went to Austin so that the State could make sure it got its due share.¹²

While we’re on the subject of money, I guess I should say something about the fees. The problem with that is that each office had its own fee structure and Congress and the Legislature frequently rewrote the laws. Fees were charged by the clerks of all courts from the county clerk to the supreme court, by justices of the peace, sheriffs, constables, surveyors, district attorney, and other officials. Thus, this subject can quickly grow tedious. But a few examples may be in order:

To issue a marriage license: \$1.

For a writ, 50¢.

Docketing a case, 15¢.

Copy of a petition, 15¢ per 100 words

Filing and recording each deed, 15¢ per 100 words.

Surveying a tract of land \$2 an English mile.¹³

As *shocking* as it sounds, some officials were more concerned with their fees than performing a public service. Indeed, right here in Harris County, Chief Justice Andrew Briscoe wrote to President Lamar complaining of District Attorney A. M. Tomkins who held “the most profitable office in the nation.” Briscoe claimed that the prosecutor “has too many necessities for money to be always honest in the discharge of his official duties.” One specific complaint was that “he has entered a *nolle prosequi* on many indictments by the Grand Jury of this county, on the defendant’s confessing Judgment for costs, so that he could get his fee as on a successful prosecution.”¹⁴

Briscoe also had some harsh things to say about Tomkins’ character and habits. Nevertheless, holding public office was usually a part-time job and officials typically pursued other interests. In Tomkins’ case, for instance, even while he was a prosecutor he continued his private legal practice and among other things, defended in city court a number of free blacks charged as being in Texas unlawfully.

Nevertheless, being a public official could be profitable, and that would help to explain why officials sometimes demonstrated a proprietary interest in their records. An extreme example of this was a claim Harvey Mitchell of Brazos County submitted to the State Comptroller with an attachment which read:

¹² Gammel, vol. 5, p. 1064. (NOTE: As time permits, check the earlier statutes for assessment and collection of taxes to ascertain if they include similar provisions.)

¹³ Gammel, Vol. 1, p. 1294, Vol. 2, pp. 719-720.

¹⁴ Lamar Papers, pp. 450-451. County officials were not alone in valuing fees more than justice. In 1861 Lt. Edward Ingraham, of the 1st Regular Confederate Cavalry wrote that local authorities in San Antonio “commenced putting my men in jail to collect fees and make a fund off them.” One man was actually innocent, but the authorities insisted on a substantial fine before releasing him. Ingraham refused reporting “...I informed them I would pay the fine of no soldier under any circumstances whatever; that the police only took them for speculation and I’d be no party to any such nefarious proceedings, that they might keep him in jail for the period prescribed by law, but if he was compelled to do one particle of work there, I would sue the city.” Quoted in Richard B. McCaslin “United State Regulars in Gray: Edward Ingraham and Company A, 1st Regular Confederate Cavalry,” *Southwestern Historical Quarterly* Vol. CXVIII No. 1, July 2014, p. 38.

“Know all men by these presents that I James D. OVERTON formerly Clerk of The District Court for Brazos County for a valuable consideration to me in hand paid by H. MITCHELL of the State of Texas & County of Brazos have this day sold and by these presents do assign all my right title interest and claim in and to the Books in the office of the said District Court, of said Brazos County, together with all and singular the fees and [illegible] therein charged, both in civil and criminal cases tried or instituted during the period of my service as said District Clerk. In testimony whereof I herewith sign my hand and seal for seal this 13th day of July 1850. J.D. OVERTON. “¹⁵

The problem of outgoing officials failing to turn over the records and properties belonging to the office must have been common because in December 1836 Congress passed the bill organizing the Supreme Court; it included the following provision:

“The successor in office of any clerk shall receive into his possession, all papers, books, stationary (sic), and everything belonging to the said office; and should the person or persons having possession of the same refuse to give them up on demand made, it shall be the duty of the clerk to give information thereof to the attorney general, who shall prosecute such person or persons in the name of the republic....[and] the person so offending shall be fined in the sum of ten thousand dollars, for the use of the republic.”¹⁶

Similar laws were passed for other offices, but even today in every election cycle we seem to read of some newly elected official taking office and finding that his predecessor had removed all the records of the office. Consequently, the current law for local government records now reads:

“RECORDS TO BE DELIVERED TO SUCCESSOR IN OFFICE. (a) A custodian of local government records shall, at the expiration of the custodian’s term of office, appointment, or employment, deliver to the custodian’s successor, if there is one, all local government records in custody. If there is no successor, the governing body shall determine which officer of the local government shall have custody.”¹⁷

That early Texans disapproved of culprits stealing, defacing, or falsifying official records is demonstrated by the law approved on December 21, 1836 that provided that the penalty for such offenses was a fine not to exceed \$1,000 and—at the discretion of the court—50 lashes on the bare back.¹⁸ By 1858 Texas had become a more civilized state and the new criminal code no longer provided for flogging such miscreants but provided for prison sentences ranging from 2 to 7 years.¹⁹

Except for actual criminal acts, the early law, as far as I can tell, provided no recourse for dealing with failings of public officials except (1) that wronged individuals could bring suit against the official and his

¹⁵ Audited Claims, Texas State Archives. For this I am indebted to Bill Page at the Texas A&M University Library. Among the strange things about this claim is that Mitchell did not succeed Overton as the district clerk—Mitchell served as County Clerk.

¹⁶ Gammel, Vol. 1, p. 1142.

¹⁷ Local Government Code 201.005.

¹⁸ Gammel, Vol. 1, p. 1251.

¹⁹ Gammel, Vol. 4, pp. 1033 & 1053.

bondsmen and (2) by voting them out of office at the next election—and sometimes even that was not an option.

Illustrating this is an episode in Trinity County in 1867 when the military was relieving serving officials and appointing new ones left-and-right. When the office of county clerk became vacant there was no one suitable who could take the ironclad oath. The closest the county judge could come up with was William L. Culbreath “the only man with us who could take the oath” as he had not participated in the Rebellion—he was, in fact, a veteran of the War of 1812—over 50 years before. He was well respected in the community and was acceptable to the authorities, but he had problems: he was hard of hearing and could not communicate well with his associates, which was actually only a minor inconvenience as he quickly forgot most of what he heard anyway probably because of what we now call Alzheimer’s. But a mental disability was no bar to public office, so the county judge decided to nominate the old man and found men of property to go his bond, with one condition—that Culbreath deputize Z. Norton to perform the duties of office. That worked out well enough until the deputy decided to return to Georgia at which point the bondsmen withdrew their bonds being unwilling to subject themselves to the financial hazards of guaranteeing the old man’s performance in office.²⁰

As Texas grew and developed during the late 19th and early 20th Centuries record keeping did not change all that much. Typewriters and adding machines replaced pens and iron gall ink and stationers provided better and better well bound books, including some designed for typewritten pages, but clerks still transcribed documents word-by-word.

Joseph Allen Myers, County Clerk of Brazos County from 1886 to 1890 wrote:

“I tried hard to make one of the best Clerks that the County had ever had. I worked from 5 AM to 8 PM nearly every day. I have recorded as many as twenty-five deeds in a day but that took work and tested the strength of my poor old crippled right hand.”²¹

There were no guidelines as to what records and documents could be discarded so the volume grew and grew until unused records were stored wherever the county had unused space. And, the records suffered. I once found a volume of Probate Minutes for 1846-1851 that had the following inscription:

“These old books are very valuable and historic relics. They ought to be rebound & securely locked in a vault.

“These are originals. I hope the commissioners court some day will look after these old land marks of our fathers. The courts pay no attention to me.

“They were junked when I found them 1929.

J. J. Faulk

“They were still junked 10 years later. May 25th 1939.

²⁰ B. F. Harper to James W. Throckmorton, July 4, 1867, 301-55, Folder 26; Z. Norton to J. W. Throckmorton, May 7, 1867, 301-54 Folder 21; B. F. Harper to E. M. Pease, August 10, 1868 Folder 43, Governors Papers, Texas State Archives.

²¹ Joseph Allen Myers, “Life of Joseph Allen Myers Written in the Month of November 1927,” William Allen Myers (ed.), p. 29. unpublished manuscript. Bryan Public Library.

J. M. Boulding

“They are still junk in 194[?] John L. Chambers”²²

By 1897 the fee system of compensating officials was falling out of favor because the compensation of officials in the larger counties was often “out of all proportion to the value of the services rendered, and to the compensation received by the great majority of officers in the state, including the highest....” In consequence, the legislature passed a new fee bill limiting the amount officials in the larger counties could retain.²³ An added impetus came in 1913 when newly-appointed Harris County Auditor Harry Washburn brought the first of 25 suits against county officials who had failed to remit the county’s share of money they had collected. These suits brought in \$500,000—the equivalent to some \$10,750,000 today. The Depression was another factor and in 1936 the legislature made the fee system of official compensation optional. Counties were given the choice of retaining the current fee system or keeping all the fees collected by the elected officials and paying them a set salary.

Need I say which option prevailed?

Today Texas local officials still collect even more fees than their predecessors as the Legislature is fond of funding desirable initiatives by imposing fees on court cases—especially criminal cases.

The fees that concern us here are the ones for the preservation, management, and automation of records. The Texas State Library and Archives initially proposed fees in the 1980s to fund its local records program. The county and district clerks rebuffed the Library, but in 1991 the county clerks secured passage of SB 770 providing them with a \$5 Records Management and Preservation Fee. In 1993 the district clerks and county commissioners each got bills filed on their behalf with the outcome being SB 1058 which provided designated fees for the county and district clerks and for the county-wide records management program with commissioners court having oversight.

Things have blossomed since then and now Harris County’s accounting system tracks records preservation fees in three different funds with a total of 10 object codes. For 2011, Harris County projected its collections at \$5,549,453. We have 16% of the state’s population and, according to the Texas Judicial Council, account for 16% of all civil and criminal cases filed in county and district courts during FY 2009-2010. Assuming that all other counties are as conscientious as we are in Harris County about collecting the fees and that Harris County is a sufficient sample that translates to well over \$34,000,000 state wide.²⁴

²² Published in *The Local Record* Spring 1988. (I do not recall what county this was.)

²³ 35 Tex. Civ. App. 421, 80 S. W. 656; Gammel, Vol. 10, pp. 1445-1453 & Vol. 11, p. 25. The 1897 Fee Bill limited county clerks of the most populous counties to \$2,500 plus ¼ of fees collected in excess of \$2,500 after payment of deputies and office expenses.

²⁴ Harris County Auditor’s Office, Final Estimate of Available Resources, Fiscal Year 2012. This report is available to county employees on the Auditor’s Intranet but not to the general public except by request; Statistics for types of cases filed by each county in Texas is available from the Texas Judicial Council at <http://www.txcourts.gov/statistics.aspx>. Accessed on January 27, 2012. Municipal courts can also collect a records management fee, but I have no estimate of those collections. They will be a pittance compared to the counties.

And this is just for money earmarked for records management and preservation. It does not include money the clerks collect for other purposes. But the bottom line is that public records generate vast amounts of money.

And how is this money used? The short answer is just about any way that the records custodians and commissioners court can agree on, or in some cases, get by with.²⁵ The Supreme Court's task force makes the point that there is no state-wide reporting system for the collection and use of records management and preservation fees.²⁶

Some counties spend large sums for records preservation hiring companies to clean, repair, de-acidify, image, and encapsulate case files and bound volumes.²⁷ Others upgrade HVAC and security systems, and others hire records managers and establish records centers with their funds. The Attorney General, however, has ruled that the funds may not be used to purchase archival documents or to pay any part of a salary that is not associated with records management and preservation.²⁸

Enough about filthy lucre: let's get back to the records themselves.

After World War II record keeping practices began to change because of the volume of business and technology. Between 1905 and 1911 the Harris County Clerk averaged 10,000 deeds a year but by 2006 the number had risen to over 855,000.²⁹ Clearly, the old system had to be replaced and after World War II, microfilm became a recording media.

The Legislature, presumably at the request of the clerks, responded to this new process by enacting laws for various county offices authorizing and regulating microfilm.³⁰ By 1973 when I started working as a field archivist for the Texas State Library and Archives Commission, there were three different microfilming laws—one for the county clerk, another for the district clerk, and the third for everyone else; they were not uniform—but they were onerous.

The legislators had gone a bit overboard and they wrote into laws detailed procedures that included targets before and after the documents being filmed. One of these documents was the camera operator's certificate of authenticity. I cannot vouch for this, personally, but the late Sam Sizer (one of my more interesting former supervisors) maintained that the original wording in the law required this document to be "singed" by the camera operator. Perhaps, but I never saw any charred certificates, only signed ones.

²⁵ Attorney General Opinion DM-492 (1998); See also TCRPTF p. 61.

²⁶ TCRPTF, p. 61.

²⁷ On the whole I approve of this work but some of it is of questionable value. I've seen many bound books that merely needed to be cleaned and rebound get the full treatment. The finished product is lovely, but volumes of encapsulated pages weigh three times as much as the original. And I know of a set of case files from the Republic and Early Statehood periods that were in dire need of conservation work that was bound before being processed and arranged so that papers and cases were intermixed in no particular order.

²⁸ Attorney Generals Opinions GA-0118 (2003) and GA-0521 (2007).

²⁹ Harris County Clerk, Ink-blotter (with statistics attached), at Harris County Archives; 2006 numbers provided by Chief Deputy Kevin Mauzy.

³⁰ I may be wrong, but this seems to be the first time the legislature regulated the mechanics of record keeping. I have never seen a law permitting the use of typewriters or post binders.

The County Clerk's law permitting the substitution of microfilm for the original record required that the original, paper records be retained 5 years after filming, a requirement that was not repealed until 1987. The House sponsor of the repeal was a little-known Democrat from Haskell named Rick Perry.

In 1978 the local records department of the State Archives took a giant step forward when it issued the first edition of the *Texas County Records Manual* listing records commonly found in county offices and identifying some as of permanent value and providing retention periods for records without permanent value. Two sentences in the *Manual* summed up the situation: "Laws affecting disposal of county records are so scattered throughout the statutes that it is virtually impossible for officials to know them all. Many of them also appear to conflict with each other or to be vague."³¹ One example suffices to demonstrate this. The statute addressing County Auditor's records was simple and logical, if not particularly rational. A bound auditor's record—no matter how trivial—was permanent and unbound records—no matter how important—had a 10-year retention period.

And we made mistakes. The *Manual* provided for a 5-year retention of motor vehicle registration records but the statutes required a 7-year retention, a fact that went unnoticed until in 1981 Comptroller of Public Accounts Bob Bullock notified the Tax Assessors-Collectors that the Legislature had reduced the retention of those records to 4 years—still leaving the *Manual* out of sync with the law. Moreover the Comptroller had given the counties leave to dispose of their old registration records without reference to other statutes regarding record retention.³²

In the 1970s there were three ways county officials could lawfully dispose of unnecessary records: (1) prepare a records retention schedule—something that few of them had ever seen—and dispose of records at the end of the retention period after getting the expressed permission of the State Librarian. (2) Offer the records to the State Library for permanent preservation. And (3) microfilm the originals and then dispose the paper copies.

The information the State Library's field archivists provided to officials probably discouraged attempts at records management rather than helped it. We told them they needed to:

1. Conduct a records inventory.
2. Prepare a records retention schedule.
3. Prepare a records implementation plan.
4. File the retention schedule and retention plan with the County Clerk and the State Library.
5. File notices of records to be destroyed with both the County Clerk and the State Library.

The situation with municipalities was both more confusing and less severe. Unlike counties, cities are not all cast from the same mold and have great discretion as how they are organized and even less oversight from state agencies. City records are (at least in my opinion) less important and less interesting than county records; hence, there has never been as great an effort to inventory Texas city records as there was with county records in the 1930s and 1970s. Hence the *Municipal Records Manual* was not issued until 1985.

This is not to say that cities were more virtuous than counties in managing and preserving records. Indeed, I still recall the response of an official of a city a bit to the north of us when I asked if his municipality had a records disposition policy. "Yes," he answered, "we dispose of records by neglect."

³¹ *Texas County Records Manual (1978)*, p. A-5.

³² Robert Schaadt to Marilyn von Kohl, 10-23-81 (in my 1978 *County Records Manual*)

And, indeed, he was truthful. There was a semi-derelict building near city hall where they moved records that were no longer needed. And when it rained records near the broken windows were ruined so there was no recourse but to send them to the landfill.

But the situation has greatly improved over the last few years. The Local Government Records Act in 1989 and the subsequent issuance of comprehensive retention schedules by the State Library cleared up a lot of the problems with managing records, but still our Legislature is capable of both foolish and wise decisions. In 1919 it had passed an act providing for recording military discharge records. Section 2 of the act read:

“The fact that such persons should have their names and official discharges recorded in the permanent archives of the State creates an emergency and an imperative public necessity demanding the suspension of the constitutional rule... [delaying passage of bills].³³

And in 1921 it also appropriated \$5,000 to the Adjutant General to purchase steel fire-proof cabinets for storing and filing the veteran Records describing them as “priceless information.”

But in 2003 the Legislature was more concerned with identity theft than recognizing our veterans and legislators filed eight bills to close the same records on the theory that they contained Social Security numbers. It didn't occur to them that there were no Social Security numbers for another 20 years. The end result was one of those vague laws that address an issue without solving it. Veteran's records filed after the passage of the act are now off limits until they are 75 years old but those filed previously are still open.³⁴

Over the years other laws (including the Public Information Act) have closed many other public records—some for good reason and for a short period while a sensitive matter was being resolved but other important records have been closed in perpetuity even though they were open when created. Happily a breakthrough also occurred in 2011 for which the Texas State Historical Association can claim at least partial credit with the lion's share going to Senator Jeff Wentworth who, after meeting with a delegation led by David Gracy, sponsored and secured passage of SB 1907 providing that records closed by the Public Information Act become open when 75 years old unless they contain the Social Security numbers of living persons. It also reduced the period that birth and public health records were closed from 100 to 75 years. In an upcoming session we hope to secure passage of another bill that will open all closed and confidential public records when 75 years old unless a statute provides another period.

Conclusion

Perhaps the most unfortunate thing about the history of record keeping in Texas is that it is really not all that unique. One hears similar stories from archivists and records managers throughout the United States. Out-of-state readers of an early draft of this paper recognized these problems and reported

³³ Gammel, Vol. 19, p. 155.

³⁴ Local Government Code, 192.002; Government Code 552.140. At the time, there were several similar reports circulated by e-mail and service-related journals of the apprehension of would-be identity thieves who had used discharge records to obtain Social Security numbers. I contacted several of the individuals responsible for the reports but no one had any firsthand knowledge of the alleged incident. Nor was I able to find confirmation in the professional news media. I am satisfied that this was only an urban legend, but hoaxes do affect public policy.

similar episodes in their own communities and states. Indeed, in many respects Texas has been in the forefront of states coping with the challenge of preserving its documentary heritage while managing the burgeoning demands of the Information Age.

Records, unfortunately, are the perfect victim. They waste away silently and, it is rare that those responsible for their loss can be called to account. At any given time custodians can explain their inaction to a lack of resources. But the lack of resources has seldom been the real cause for the loss of records. There is now and there almost always have been sufficient fiscal resources to preserve our documentary heritage. First, the Congress of the Republic of Texas and later the Legislature provided a funding mechanism through the fees of office. Yet the same dollars that could buy resources to manage and preserve records can also be used for maintaining the community's infrastructure, providing human services, or tax relief and there are always many supporting these demands. Records, in contrast, have few advocates.