



INTRODUCING AND INTERPRETING FACTS-IN-EVIDENCE: THE HISTORIAN'S ROLE AS EXPERT WITNESS

BY MIKE REIS AND DAVE WISEMAN

When faced with a legal matter requiring the understanding and presentation of a complex set of facts about past events, lawyers can employ a number of strategies. They can rely on the testimony of eyewitnesses—if such witnesses are still alive, have a good recollection of the events in question, and can present their inherently limited perspective of the events effectively within the context of other available evidence. Lawyers can present the story themselves, but in the end, arguments by advocates can raise questions of bias that obscure, rather than clarify, the historical facts at issue. Another less-utilized but viable strategy is to turn to professional historians. These witnesses can employ contextual knowledge and a disciplined approach to research and analysis to gather, synthesize, and present the available evidence in a thorough and compelling manner. Of course, these strategies are not mutually exclu-

sive, but engaging a historian as an expert witness is still uncommon. Nevertheless, we often encounter attorneys who wish they had considered using a historian as an expert witness in previous cases with a significant historical dimension.

Here are just a few reasons why:

Historians know how to find critical

historical information. Professional historians use their training and experience to develop and execute a research plan informed by knowledge of the individual and institutional actors involved, the historical context of the events in question, and the information already gathered. By employing such a targeted research plan, they often find new information and—just as importantly—reduce the likelihood that opposing counsel will produce surprises later. When addressing more recent events, this research often points to additional participants who might provide eyewitness testimony. The documentation found can be crucial to placing eyewitness testimony in proper context and providing critical historical evidence upon which other technical experts base their testimony.

Historians present authentic evidence. Professional historians are trained to handle source materials and thoroughly document

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WEATHER CONTROL: GETTING A HANDLE ON ELECTRONIC RECORDS

BY JOE NEUMANN

“Everybody complains about the weather,” Mark Twain’s friend and co-author Charles Dudley Warner famously quipped, “but nobody *does* anything about it.” That sentiment could well apply to electronic records management (ERM). By the early 1990s, experts had identified the need to figure out how to store electronic records permanently—notable examples include the Council on Library and Information Resources’ 1996 report *Preserving Digital Information* and its 1998 documentary *Into the Future*—but nobody had developed concrete solutions to the problem.

Today, those solutions are becoming clear. Information professionals now understand that they need a mix of policies, principles, and technologies to ensure the long-term stability and preservation of electronic records.

As with any challenge, the first step is recognizing the problem, and evidence suggests that this step has been taken. A recent survey conducted by the European Preservation and Long-Term Access through Network Services (PLANETS) Project found that 93 percent of respondents were aware of the ERM issues facing their organizations. High percentages of survey participants also reported that their

organizations were including ERM in their operational and financial plans. Results were released in a March 2010 white paper, *The Digital Divide: Assessing Organizations’ Preparations for Digital Preservation*.¹

Knowing is one thing; *doing* is more complicated. Tellingly, PLANETS also reports that slightly less than half of surveyed organizations had actually designed a digital preservation policy or appropriated funds for such a policy. A well-thought-out digital preservation policy must drive an organization’s efforts, or no matter how good the intentions, outcomes could be disastrous.

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OUR PICKS FOR HISTORICAL VACATION SPOTS

It's hard to believe, but backpacks and school supplies are on sale and Labor Day is just around the corner. Before we say goodbye to the long, sunny, and relaxed days, check out some of our favorite vacation sites that focus on history for one last hoorah before summer comes to a close.

LA PURISIMA MISSION STATE PARK, LOMPOC, CALIFORNIA

Gabriele Carey recommends La Purisima Mission, which was founded in 1787 and restored by the Civilian Conservation Corps in the 1930s. The area around the mission is not overly developed, and the mission grounds are extensive and restored to resemble their original state, including period vegetation and outbuildings. This is the one historic site that allows the visitor to gain an inkling of what mission life must have been like. Visit the state park site to plan your trip: www.lapurisimamission.org/.

MONTICELLO, CHARLOTTESVILLE, VIRGINIA

Nancy Crenca recommends a trip to Charlottesville to visit Thomas Jefferson's home at Monticello, followed by a stop at one (or several) of the twenty-one wineries in the area. Virginia is the fifth largest producer of wine in the United States, and you can plan your trip along the Monticello Wine Trail here: www.MonticelloWineTrail.com.

STEAMTOWN NATIONAL HISTORIC SITE, SCRANTON, PENNSYLVANIA

If you are interested in railroads and large man-made objects, Ken Durr recommends Scranton's Steamtown National Historic Site. He also suggests a stop in nearby Lanesboro to see the Starrucca Viaduct, the last of the great stone viaducts on the Roman model built by the Erie Railroad in the 1840s. Top the day off by visiting the impressive 100-year-old Tunkhannock Viaduct on the old Delaware and Lackawanna line at Nicholson. Check it out at: www.GribbleNation.com/papics/eng/tunkhannock.html.

THE FREEDOM TRAIL, BOSTON, MASSACHUSETTS



Erica Haakensen loves walking the Freedom Trail in Boston, whether it is a self-guided or guided tour. The 2.5-mile walking trail connects sixteen historic sites including King's Chapel, the Boston Common, Faneuil Hall, and the USS *Constitution*. "Boston is a great walking city, and it is terrific that so many interesting sites from America's history are within a short walking distance of each other," says Erica. Visit www.TheFreedomTrail.org to make your tour plans.

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Faneuil Hall along Boston's Freedom Trail.

GETTING A HANDLE ON ELECTRONIC RECORDS

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What constitutes a successful ERM policy? Fundamentally, it is built upon traditional records management and archival principles. ERM is not simply an IT problem; input from information specialists is necessary in both policy creation and the management of electronic materials.

ERM expert Carol Brock stresses this point: the ERM policy development process must include technologists and archivists working together to create stronger, more durable, and sustainable electronic records management systems in order to provide an invaluable asset to the organization. In her June 17, 2010, testimony before a subcommittee of the House Committee on Oversight and Government Reform, she made this point when she argued that "technology is not a constant, but principles can be . . . if technology is not a reliable constant, there is a role for processes and procedures based on generally accepted principles for record keeping."²

If you are currently developing an ERM policy, comprehensive assessment and auditing tools have been created to evaluate your organization's readiness and policy fitness. These approaches use a variety of criteria to assess all aspects of your organization's readiness to handle its electronic records, including its technological capacity and financial and structural capabilities:

- DRAMBORA (Digital Repository Audit Method Based on Risk Assessment)
- TRAC (Trustworthy Repositories Audit & Certification)
- NESTOR group (Network of Expertise in Long-Term Storage of Digital Resources)

What do information professionals, like the archivists and records managers at History Associates, bring to the ERM policy development process? Information professionals can help you employ these

analytics to describe an organization's needs, identify shortcomings, assess its state of readiness, and prescribe solutions. The end product is a roadmap for targeted policy development that embodies collaboration between technologists and archivists/records managers, leading to the desired outcome: successful, sustainable control of—and access to—an organization's electronic records over the long term.

Joe Neumann is an archivist and records manager at History Associates, where he has conducted diverse projects for both government and corporate organizations. For more information on our ERM services, contact Michele M. Tourney at 301-279-9697.

¹ Pauline Sinclair, "The Digital Divide: Assessing Organisations' Preparations for Digital Preservation," PLANETS Project White Paper, March 2010, <http://www.planets-project.eu/docs/reports/planets-market-survey-white-paper.pdf>.

² House Committee on Oversight and Government Reform, Hearing of the Subcommittee on Information Policy, Census and National Archives, "Federal Electronic Records Management: A Status Report," June 17, 2010, <http://oversight.house.gov/index.php?view=article&id=4985>.



STAFF HIGHLIGHTS: WILLIAM ARMSTRONG

Historian William Armstrong works as a researcher, writer, and project manager on a variety of litigation and museum projects, specializing in topics relating to military and aviation history. Author of *Images of America: Baltimore in World War II* (Arcadia, 2005), Will is so committed to military history that he often continues research and writing on his free time. He has assumed the role of “unofficial historian” to Marine Air Group 25, a group of airmen (including his grandfather) who flew Douglas R4Ds in the South Pacific during the Second World War. He has even been known to extend research trips (on his own dime) to explore nearby historical landmarks. In Will’s opinion, “There is no better means of studying human nature than to study World War II. I know of no other place in time where there are so many recorded examples of both pure evil and pure altruism.”

THE HISTORIAN’S ROLE AS EXPERT WITNESS

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their research strategies and findings. At History Associates, our historians adapt this methodology to ensure that the records we collect can be presented to the court as authentic. We can also investigate how existing evidence was collected by others to help authenticate (or challenge) that material.

Historians synthesize information into well-documented, compelling stories. As professional researchers and informed interpreters—rather than advocates—historians weigh available sources to relate an accurate and defensible fact pattern. An understanding of historical context helps historians piece together the story from an often-incomplete record and present a history that is compelling because of its transparent and careful reliance on the facts in evidence. Because they are trained to convey their findings in plain language to general audiences—and yet defend those findings under close scrutiny by their peers—our professional historians are well qualified to serve as expert witnesses.

Lawyers, judges, arbitration panels, and mediators all rely heavily on credible third-party experts, whether testifying or consulting, to define, explain, and substantiate the evidence presented in legal matters. When the case involves a historical fact pattern, consider the value History Associates can add to your legal team. We have served as expert witnesses and historical consultants on a range of topics including industrial operations, environmental regulation and practice, government contracts, public health, water rights, land use, and Native American claims.

Litigation Research Division director Michael C. Reis manages a diverse range of litigation projects. Historian David

Wiseman conducts historical and litigation research for History Associates. Mr. Wiseman previously worked as a trial attorney

in complex civil litigation matters. For more information on History Associates’ litigation services, contact us at 301-279-9697.

THE BEST CLIENTS IN HISTORY

AMERICAN BATTLE MONUMENTS COMMISSION:

began work on exhibits for three American military cemeteries in Europe, starting with Cambridge, England.

H.G. FENTON COMPANY:

continued writing the corporate history of San Diego’s H.G. Fenton Company, and we are now also organizing the company’s historical records.

LEGG MASON:

began arranging and describing historical materials to improve in-house access and storage.

MONMOUTH BATTLEFIELD STATE PARK, NEW JERSEY:

developing exhibits for a new visitor’s center for the national historic site marking the 1778 Revolutionary War battle.

THE OFFICE OF THE COMPTROLLER OF THE CURRENCY:

providing research support in the preparation of a book-length history on the Office of the Comptroller of the Currency and bank supervision in the United States.

NIH OMA OFFICE OF RESEARCH SERVICES/OFFICE OF RESEARCH FACILITIES:

conducting office-wide records inventories, preparing file plans for each office, and holding records management training sessions.

LITIGATION RESEARCH:

continued to research and analyze documents in federal, state, and local records repositories in California, Colorado, Idaho, Maryland, New Jersey, New York, Pennsylvania, Texas, Virginia, and Washington, DC.



For nearly thirty years, clients have turned to History Associates to tell their stories, preserve and manage their records, and answer their historical questions.

Histories
Books, websites, and oral history projects

Exhibits
Multimedia content development, image and artifact research, and scriptwriting

Interpretive Planning
Planning, research, writing, and mapping for any historic site

Historical Research

Research and analysis for litigation, regulatory compliance, and public relations

Archival Services

Appraisal, organization, description, and management of historical materials

Records Management

Records inventories, surveys, files management, and retention schedules

History Associates serves clients nationwide and around the world.

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TEST YOUR KNOWLEDGE

Our forty-four U.S. presidents have been defined by their politics, initiatives, speeches, and . . . hair styles. See if you can correctly guess the following three presidents.

For more information about presidential hair styles and their role in history, check out Penny Howell Jolly (et al.) *Hair: Untangling a Social History* (Portland, OR: Book News Inc., 2004).



A



B



C

Courtesy of the New York Times

E-mail the name of the presidents along with your contact information to Anne Strong at astrong@historyassociates.com. Correct responses will be entered into a drawing for a \$50 amazon.com gift card!

Congratulations to Karl Warner of Spacesaver Systems, Inc. He was the winner of the Winter 2010 Test Your Knowledge quiz. He correctly answered the following: (1) IBM, (2) UNIVAC, and (3) CD-ROM.

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