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THE VALUE OF HISTORICAL RESEARCH TO IN-HOUSE COUNSEL

BY STEPHEN G. SWISDAK

In-house counsel are often confronted with a need to locate and interpret critical records about their company's past in order to respond to legal and corporate crises, mitigate their company's risk exposure to future litigation, and leverage knowledge of their company's past to plan for its future. Beyond mere historical curiosity, there are myriad legal reasons for in-house counsel to research their company's past, including:

- **Litigation Matters.** Historical research is frequently required for successful defense of toxic torts, NRD cost allocation, historical land use, and CERCLA-related cases.
- **Real Estate Transactions.** Targeted historical research is a required component of environmental due diligence (all appropriate inquiries) for real estate transactions.
- **Government Contract and Insurance Searches.** Diligent research can uncover copies of historical federal contracts with specific companies, as well as historical insurance policies. Locating copies of historical contracts and contract correspondence can be particularly useful to in-house counsel serving current and former military and atomic energy contractors, as these records can contain valuable government indemnifications (under Public Law 85-804, 10 U.S.C. § 2354, or the Price-Andersen Act) against unusually hazardous risks.

In some cases, historical research is a prerequisite to a company doing business. For example, companies that want to do business with several American cities, including Chicago, Detroit, Los Angeles, Milwaukee, Oakland, Philadelphia, Richmond, and San Francisco, must disclose whether they or their predecessors historically profited from slavery. These slavery-era disclosure ordinances require

companies with deep and complex corporate histories (e.g., many financial institutions) to trace their corporate lineage, research their and their predecessors' historical ties to slavery, and disclose their findings in order to do business in these jurisdictions.

Corporate historical research, though, need not be solely reactive, that is, in response to outside legal drivers. Proactive historical research—researching a company's past before being compelled to do so by a legal or corporate mandate—can help in-house counsel advise senior management in a variety of business decisions, including their company's potential exposure to certain liabilities and the monetary level of their company's environmental reserve fund. Indeed, historical research can uncover a wealth of potentially valuable records about companies, including copies of historical contracts and insurance policies, photographs and maps depicting the historical uses of certain corporate facilities, records describing the federal government's wartime oversight of corporate facilities, and historical corporate records such as annual reports and board minutes that can provide key information about corporate governance matters. Of course, proactive historical research may unearth proverbial skeletons in a company's closet. However, I would argue that companies would prefer to learn about these skeletons themselves rather than from an outside party.

In researching their company's history, in-house counsel should first assess their company's current knowledge of its past. Are there existing histories of the company and/or its predecessors? Can the company trace its complete corporate lineage, including all predecessor companies? What products did the company (and its predecessors) historically manufacture and for whom did they manufacture them? Does the company maintain a corporate archives?

This latter question is especially significant—by definition, a corporate archives contains historically significant records on a company's past, which makes such facilities the logical place to begin researching a company's history. However, if (as is often the case) a company's "archives" is scattered across various boxes, file cabinets, and offices, or even stored at an off-site records management facility, in-house counsel should first insist that their company gain institutional control of their corporate records. Professional archivists and historians can aid companies in this process by assessing a company's record management needs, processing and cataloging existing corporate records, and developing record management policies for future use.

In-house counsel should also be sure to interview select former employees about the company's history and inquire if they maintain their own archives of corporate records (e.g., company newsletters, photograph collections, annual reports, etc.). In identifying former employees to interview, do not solely focus on members of senior management, as file clerks, engineers, inspectors, and other employees may also possess valuable historical knowledge about the company.

If their company's corporate "memory" (e.g., published histories, corporate archives, former employees, etc.) is sufficiently broad and deep, in-house counsel may be able to answer their historical research questions simply by reviewing available in-house records. Most companies, though, can benefit from conducting targeted historical research into public archives and records collections to learn more about their and their predecessors' history. What follows is a brief, thumbnail guide to some of the electronic and print sources and records repositories that professional historians typically target when conducting company specific research.

- **Business Directories.** Researchers can locate basic corporate information in readily available electronic and print business directories such as *Moody's Manuals* (now *Mergent's*), which provides a basic overview of individual companies, and *Dun & Bradstreet's* series of industry-specific business directories.
- **Corporate Filings.** Following the 1933 Truth in Securities Act, publicly traded companies doing business in the United States had to file certain reports, including corporate annual reports, with the U.S. Securities and Exchange 6 Commission (SEC). While recent corporate filings are available on-line through the SEC's EDGAR database, there is no single records repository for historical corporate filings. Most of these filings, though, can be located at the SEC library, the Library of Congress, the National Archives, or through the *ProQuest Historical Annual Reports* electronic database.
- **Newspapers.** The *ProQuest Historical Newspapers* electronic database offers searchable, full-text access to historical "newspapers of record," including the *New York Times*, *Wall Street Journal*, and *Washington Post*. Targeted searches of these newspapers can uncover articles on historical business transactions and profiles of select companies and industries.
- **Trade and Professional Literature.** Another key source for company-specific information is historical trade and professional literature, which can shed light on historical business, manufacturing, and marketing activities. Researchers can find indices to this sometimes obscure literature through various print and electronic sources, such as the *Applied Science and Technology Index*, *Business Periodicals Index*, and *Industrial Arts Index*.
- **Maps.** In delving into a company's past, you should not neglect historical maps,

which can be used to trace the physical growth of a company's industrial plants over time. As a first step, researchers should consult historical fire insurance maps (e.g., Sanborn maps), which are available at the Library of Congress and other major libraries and depict in minute detail the commercial, industrial, and residential sections of thousands of American cities. In addition to fire insurance maps, you should also consult city and county atlases, plat maps, and local topographical and engineering maps for information about a company's physical growth over time.

- **Photographs.** Researchers can also use historical aerial and street-level photographs to trace a company's physical growth over time. You can purchase historical aerial photographs from various vendors and can research aerial photographs at several records repositories, including the U.S. Geological Survey library, the National Archives, and via the Whittier College (California) Fairchild Aerial Photography Collection. You can locate copies of street-level photographs and postcards at state and local historical societies and libraries, and even for sale on Internet sites like eBay.

Such readily available records, though, are only the tip of the records iceberg, as diligent historical research can yield caches of company-specific records currently stored at any of hundreds of federal, state, and local records repositories scattered across the country. For example, while recently researching the complex history of an Indiana-based company founded in 1907, I discovered that a Wyoming archives maintains a collection of company records. As it turns out, a former company executive deposited his personal collection of corporate records at his "hometown" records repository in Wyoming. These records provided key information about the skein of companies formerly associated with the Indiana-based company, as well as information about corporate mergers and acquisitions.

As this example suggests, a basic challenge in researching a company's past is knowing both what to search for and where to find it. Here, professional historians can help, as they can provide valuable contextual knowledge about the history of particular companies and industries, the current location of potentially relevant records, and information on how to navigate idiosyncratic record-keeping systems at the federal, state, and local levels.

When researching the history of companies, in-house counsel should not overlook federal government records, as the federal government historically had an oversight role in many American industries, especially during wartime. Researchers can learn much useful information about specific companies, industries, products, and manufacturing processes by targeting historical federal government records at the National Archives and federal libraries (e.g., the Library of Congress and federal agency libraries such as the Department of Interior library, Department of Labor library, SEC library, etc.).

All companies have a history—a history that can inform in-house counsel as they manage modern legal and corporate crises. Through diligent historical research, in-house counsel can learn this history and leverage this knowledge to advise senior management in a variety of business decisions. Especially in these troubled economic times, companies should invest in understanding their past, as this understanding can potentially help to mitigate current and future legal liabilities. ■

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