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# Millions of US court records bound for shredder

By MICHAEL TARM, Associated Press – 6 days ago

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CHICAGO (AP) — Wrestling with the challenges of documents in the digital age, U.S. officials are destroying millions of paper federal court records to save storage costs — and raising the ire of some historians, private detectives and others who heavily rely on the files.

The U.S. National Archives and Records Administration says at least 10 million bankruptcy case files and several million district court files from 1970 through 1995 will be shredded, pounded to pulp and recycled. Files designated as historically valuable, however, will be kept in storage.

Federal archivists spent years consulting legal scholars, historians and others about which files to purge after realizing that sorting and digitizing just the bankruptcy cases would cost tens of millions of dollars. None of the civil or criminal cases up for destruction went to trial, and docket sheets that list basic information such as names of defendants and plaintiffs will be saved from each case.

Such reassurances haven't allayed concerns of some of those whose work relies on the paper documents.

Cornell Law School professor Theodore Eisenberg said it's precisely the mundane, every day records with no clear historical significance that, when looked at as a whole, are critical to establishing legal trends upon which court policy is often based.

"Something really important will be lost here," said Eisenberg, a former clerk at the U.S. Supreme Court for the late Justice Earl Warren. "We would lose any ability to assess trends over time. This is not just a matter of history, it is a matter of influencing basic policy today."

Christina Boyd, who teaches public law at the University at Buffalo, said only about 2 percent of federal court cases ever make it to trial and little research has been done to explain why that percentage dropped from about 12 percent in the 1960s. One question, she said, is whether federal judges began pushing settlements in the 1970s and 1980s as public aid to indigents dramatically increased, possibly to the advantage of corporations or other institutions being sued by the individuals.

"This was a crucial period in legal history," she said. "We need to understand the trends — and that means looking at files that could be going away."

Marvin Kabakoff, a senior analyst with the NARA who himself holds a Ph.D. in history, told The Associated Press on Thursday that he sympathizes and ideally would want all the records digitized, "but keeping everything is just not realistic." He said it would be "outrageously expensive" and since some documents are mashed or stapled together, merely sorting through the millions of papers would be a gargantuan, labor-intensive task.

By the end of the year, 140,000 boxes of civil case files — out of a total of around 270,000 from the 25-year period — are expected to be destroyed, Kabakoff said. Starting next year, about 390,000 of the 400,000 total boxes of bankruptcy case files from the same period will be destroyed and a far smaller number of criminal case files — about 40,000 boxes — would be destroyed later.

Preparing for this first-of-its-kind destruction, federal archivists decided to keep thousands of records deemed historically relevant or that fell into other categories. With the civil files, for instance, authorities decided to save about 110,000 boxes, including all civil rights or government corruption files regardless of whether those cases went to trial.

Federal documents meticulously detail which files should be saved, including those related to the shooting down of Korean Air Lines Flight 007 by a Soviet jet fighters in 1983 and files on young men accused of trying to evade the Vietnam War draft.

"We tried to be very careful about what we are destroying," Kabakoff said

The issue came to the fore as the federal court system, like other government entities, struggled to cut costs. The pre-1995 files posed a particular challenge because they were created before nearly all court documents were kept electronically. Comparatively, few paper-only documents were created after 1995.

Also, 1970 to 1995 was a period of explosive growth in litigation, creating mountains of paperwork that could only be stored in boxes at courthouses or federal archive centers with dwindling space.

Historians argue that it is impossible to say what records will be historically significant in 10, 50 or 100 years, since a file deemed inconsequential today might one day shed light on someone who emerges to prominence, from a presidential candidate to a murder suspect.

Beyond scholars, among those concerned is Don Haworth, a 35-year veteran private investigator in Chicago who said he frequently uses those same 1970-95 federal records. In his work, the slightest clue in the seemingly most mundane records could make or break a case.

He said that applies to run-of-the-mill bankruptcy records that could show a pattern of a businessman over a 30- or 40-year period of opening a business, then declaring bankruptcy and jilting creditors. He recently found that a target of his investigation lied when she said she'd never been involved in a federal case: She showed up as a witness in a federal case decades ago.

"While a record may not be pertinent to one individual, they may be a gold mine to others," Haworth said.

He also runs into other private investigators, scholars, historians and even writers doing research at Chicago's Federal Records Center, which houses records from Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

But certainly not everyone in the law business is alarmed.

Most trial attorneys deal with civil and criminal cases that arose in recent months or years, and they aren't likely to need decades-old archives. Chicago-based bankruptcy attorney Brad Foreman said he usually only needs to do research dating back seven or eight years, which is readily available online.

"As a lawyer, I am not concerned," he said. "In bankruptcy cases, I can't think of ever once having to go back as far as 1995."

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