State Archival Law: A Content Analysis

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Abstract: The content analysis technique provides a means for systematically evaluating the statutory authority for state archival and records management programs. This study analyzes state law in eighteen categories; its structure places the categories into one of three concept groups and defines each category with smaller component parts. States are evaluated on a possible score of fifty-four points; total scores range between a high of forty-four points and a low of eleven. Additional comments focus on the methodology and on qualitative strengths and weaknesses in the archival law of the fifty states.

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The author gratefully acknowledges the assistance of the following persons in the preparation of this study: Barbara Reed, Department of Journalism, California State University at Los Angeles; Frank R. Levstik, then State Archivist, Ohio Historical Society; and Nancy R. Bain, Department of Geography, Ohio University.

An earlier version of the paper was submitted to the Kent State University School of Library Science.

ONE OF THE FIRST PROJECTS of the fledgling Society of American Archivists was the development of a model law for state-level public records programs. In a report to the Society in 1939, a committee headed by immediate past president Albert Ray Newsome argued that "every state should have an official archival agency with authority to collect and administer non-current state and local records."[1] To aid this effort, the Society approved a "uniform state public records act," which pointed to the need for an agency and to the powers and duties the agency required.

In the mid-1940s the Society approved two more models related to state archival agencies.[2] While the "model" approach has not been utilized recently, basic state-level archival law has nevertheless continued to evolve. Given the needs of the profession and society at large, could it do otherwise? A law protecting the privacy of the individual, for example, has been incorporated into the basic archival statute in a handful of states. The expansion of electronic data processing systems presents archivists with a number of problems with public records unforeseen four decades ago, but here a lesser degree of adjustment to change is to be found.

What is the state of the art in archival law today? To ask this is to raise other questions as well. How well, for example, does the law provide for access to public records not excluded for reasons of confidentiality? What states have the best provisions for replevin of public records out of public custody? How do laws define the relationship between the archival or records management agency (or both) and other state agencies for carrying out the work of records management? More fundamentally, what is the overall quality of state archival law in the United States? How can such an assessment be made?

One tool that can shed light on the last question is the content analysis technique. It provides a means of evaluating the statutory authority that supports each state's archival program in both archival and records management aspects. Through using a set of common categories carefully defined for this purpose and structuring a scheme for quantification, one can employ content analysis to arrive at a systematic and rigorous assessment of state archival law.

Literature Survey

No study of state archival law has, to my knowledge, utilized the content analysis technique for assessing this law. Certainly, Albert Ray Newsome carefully scrutinized the archival law of the 1930s.[3] Ernst Posner's landmark *American State Archives*[4] judiciously examined the legal basis behind each state's program as part of his comprehensive study of these programs. Next to these, the body of literature on state archival law in the United States falls for the most part into three basic forms: surveys, model laws, and prescriptive statements.

Surveys have been the most popular form of study. Surveys on archives and records management topics appearing in recent decades include works by Mary Givens Bryan, Rex Beach and John T.

[1]"The Proposed Uniform State Public Records Act," *American Archivist* 3 (April 1940): 108. The model law is found on pp. 107–115.

[2]See "A Proposed Model Act to Create a State Department of Archives and History," *American Archivist* 7 (April 1944): 130–34, and "Model Bill for a State Archives Department," *American Archivist* 10 (January 1947): 47–49.

[3]Newsome's 1938 presidential address, "Uniform State Archival Legislation," *American Archivist* 2 (January 1939): 1–16, served as the impetus for the 1939 model law.

[4]Ernst Posner, *American State Archives* (Chicago: University of Chicago Press, 1964).

Caton, H.G. Jones, Thornton W. Mitchell, David Levine, Frank R. Levstik, and the National Association of State Archives and Records Administrators.[5] The Society of American Archivists utilized model laws three times between 1939 and 1947, as has been indicated. In 1960 the Council of State Governments proposed model laws for records management and essential records.[6] These are the most recent examples of this form. Prescriptive statements outlining the basic provisions to be included in a state-level law have appeared infrequently, but two, one each by Michel Duchein and H.G. Jones, appeared in 1980.[7]

An evaluation of the studies reveals useful and interesting data. The prescriptive statements offer advice distilled from years of experience. Though the two statements cited are limited in scope and range, they offer a clearer view of the basic needs for legislation than is provided by the models developed by the Council of State Governments. These two models covered their respective objectives; then they went beyond this to develop a comprehensive law. They overlapped, however, in such a way as to confuse the situation.[8] It would have been better to have covered just a small part and then to have suggested how to tie it into the archival law of each state. Surveys, in turn, have been varied and have proved the most useful and informative form for updating knowledge on state archival programs.

Yet there is a need to grapple more substantively with the subject matter. It may be said that *American State Archives* combined all three of the forms outlined above. The author first surveys the program of each state, then examines the basic parts for a law, and finally offers broadly-structured prescriptions for state archival and records management legislation.[9]

While this study examines only one aspect of a state's archival program—its law—it does go a step beyond the ordinary survey. It cannot, as a consequence, gauge the successes states may be making in collecting or managing records and administering programs. With the view that state law "is indispensable to, though not a guarantee of, effective archival administration,"[10] it examines the legal facet of the program to identify the strengths and weaknesses to be found in the laws of the fifty states. The study does this in a fashion by which the assessment can be replicated. Finally, it develops a rudimentary scheme for isolating the parts

[5]See Mary Givens Bryan, "Recent State Archival Legislation," *American Archivist* 19 (January 1956): 63-67; Rex Beach and John T. Caton, "State and Local Government Records Programs," *American Archivist* 24 (July 1961): 289-95; H.G. Jones, "State Archival-Records Management Programs in the United States," *Archivum* 11 (1961): 135-42; Thornton W. Mitchell, "State Records Management Programs: A Status Report," *Records Management Quarterly* 6 (April 1972): 9-15; David Levine, "The Management and Preservation of Local Public Records: Report of the State and Local Records Committee," *American Archivist* 44 (April 1977): 189-99; Frank R. Levstik, *Directory of State Archives in the United States* (Chicago: Society of American Archivists, 1980); and *State Archives and Records Management Terminology and Work Standards Study: Summary Report* (Atlanta: National Association of State Archives and Records Administrators, 1981).

[6]"Records Management Act" and "Preservation of Essential Records Act," *Suggested State Legislation Program for 1961* (Chicago: Council of State Governments, 1960), pp. 36-48.

[7]Michel Duchein, "Archives [Legislative Foundations]," *ALA World Encyclopedia of Library and Information Science,* 1980; H.G. Jones, *Local Government Records* (Nashville: American Association for State and Local History, 1980), pp. 24-25.

[8]Both define "record," for instance, but there are differences in these definitions. Both models call for annual reports—but only for the respective program they cover!

[9]Posner, *American State Archives,* ch. 3-4.

[10]Newsome, "Uniform State Archival Legislation," p. 2.

of archival legislation hierarchically into concept groups, categories, and component statements.

Methodology

A decade ago Ole Holsti defined content analysis as "any technique for making inferences by objectively and systematically identifying specified characteristics of messages."[11] Klaus Krippendorff has stated more recently that "Content analysis is a research technique for making replicable and valid inferences from data in their context."[12]

For the purposes of this study, the context is the statutory authority for state archival and records management agencies and their programs, generally gathered into one or two chapters of a state's code or annotated statutes. This body of law often shares common attributes such as a definition of public records, a statement on the public agencies covered by the law, a statement naming the archival and records management agency for the state, and so forth, all parts of which convey messages. By breaking the shared attributes down into a number of specific categories, then defining the categories to develop criteria for judging their comprehensiveness and clarity, and then giving this judgment a quantifiable score, one can develop a structure that allows for replication and allows the making of inferences about state programs from this body of law in a limited context.

Several steps were taken to reach this end result. These included gathering the data, selecting the categories to be used, writing definitions for the categories, developing the quantification scheme, conducting the coding run, and overseeing a reliability check. These steps are discussed in the following subsections.

Gathering Data: In March 1980 a letter was sent to the chief archival officer of each state requesting a copy of the respective state's statutory authority as of 1 January 1980 for both archival and records management tasks at the state and local levels.[13] Forty-three of the fifty states responded by sending photocopies of their law. Three others sent the code chapter or section references. Materials in a nearby law school library provided the necessary information for the four states that did not respond. This library was also used during the course of the work when it became apparent that the information supplied in several instances was incomplete.

Categories and Definitions: Simultaneously with the request for data, a preliminary list of categories was drawn up. This list, along with the concomitant definitions, was refined during the course of the study, especially in the earlier stages.

The 1939 SAA model law was an invaluable aid, particularly at the outset, in the task of drawing up the categories and accompanying definitions. That model, however, was constructed in the form of sections that do not lend themselves well to tight evaluation. A preliminary reading of the laws for a number

[11]Ole Holsti, *Content Analysis for the Social Sciences and Humanities* (Reading, Mass.: Addison-Wesley Publishing Co., 1969), p. 14.

[12]Klaus Krippendorff, *Content Analysis* (Beverly Hills, Calif.: Sage Publications, 1980), p. 21.

[13]The source for names was the *Pocket Directory of State and Provincial Archivists* (Chicago: Society of American Archivists, 1979).

Administrative codes were also requested where they existed. Those codes received were subsequently ruled out due to the small number received and the lack of any common style or content.

Some states have made changes in their law in the intervening time. I am aware of changes in 1980 in Nebraska and Ohio, and in Florida, Kansas, Mississippi, Rhode Island, and Utah in 1981. The changes in Nebraska, Ohio, and Utah were limited. Changes in the other states would alter the quantitative score in the later sections of this article. Readers should keep in mind that this analysis is based on the law in effect on 1 January 1980.

of states also showed that these laws are organized in a variety of ways, so that some categories are tied together by more than one section or chapter. This preliminary review also helped considerably in developing definitions in line with current expression in the laws.

Consequently, a new framework has been devised to examine the data in a hierarchically structured fashion. At the first level in this study are *concept groups,* here broken down into three groups: "legal concepts," "administrative concepts," and "standards concepts." At the second level are eighteen *categories,* such as "public record" and "vital records," each of which has been defined. At the third level are the smaller units, or *components,* to be found within the definitional statements. For example, the definition for the "public record" category contains components on materials, or transactions performed, and on the exclusion of non-record materials.

The eighteen categories, placed in their respective concept groups and accompanied by their definitions, are as follows:

LEGAL CONCEPTS

PUBLIC RECORD. The statutes or code[14] indicates the type of record materials, the necessity of an official transaction, and the exclusion of non-record items.

PUBLIC AGENCIES. The statutes or code specifies the inclusive offices—in the three branches and in the political subdivisions of the state—whose records shall be public records.

LEGAL CUSTODIAN. The statutes or code specifies the public office or official having legal custody over the office's active and archival records.

DELIVERY OF RECORDS TO SUCCESSOR. The statutes or code outlines clearly the responsibility of a public official or agency to turn over the records of the particular office to the successor and the manner for their delivery.

LEGAL EVIDENTIAL VALUE. The statutes or code provides for the use of copies as admissible evidence in court or other legal proceedings when certified by the proper officeholder or archival official.

ACCESS. The statutes or code stipulates with clarity the classes of public records open to inspection by the general public and the conditions under which those so open are available to the public.

REPLEVIN. The statutes or code gives the state authority for legally recovering a public record unlawfully out of the public custody.

SANCTIONS FOR VIOLATIONS. The statutes or code specifies the legal sanctions possible for violations of public records law provisions.

TIME/PRIVACY LIMITATIONS. The statutes or code stipulates the length of time in years before public records come under the umbrella of the state archival agency *OR* before public records lose the protection of provisions safeguarding the individual's privacy.

STATE ARCHIVAL/RECORDS MANAGEMENT AGENCY. The statutes or code specifies the agency or agencies with responsibility for state archival administration and for state records management administration and provides for the departmental or organizational location thereof.

ADMINISTRATIVE CONCEPTS

POWERS AND DUTIES OF THE STATE ARCHIVIST. The statutes or

[14]Some states prefer the term "code" while others prefer "statutes" or "annotated statutes." Both terms are used in the definitions in order to avoid confusion.

code outlines clearly and precisely the powers and duties—excluding records management—of the state archivist or archival agency.

POWERS AND DUTIES OF THE STATE RECORDS MANAGER. The statutes or code outlines clearly and precisely the powers and duties of the chief records management official or agency, whether included in or separated from the job of the state archivist.

AGENCY ASSISTANCE. The statutes or code outlines the responsibility of state agencies to name an agency records management coordinator and to assist actively in records management.

STATE RECORDS SCHEDULING PROCEDURES. The statutes or code specifies the body(ies) or official(s), or both, authorized to act upon state-level records schedules and the frequency of meetings.

LOCAL RECORDS SCHEDULING PROCEDURES. The statutes or code specifies the body(ies) or official(s), or both, authorized to act upon local-level records schedules and the frequency of meetings.

VITAL RECORDS. The statutes or code provides for the systematic identification and duplication of those records essential to the continuing operation of the state in the event of a natural or manmade disaster.

STANDARDS CONCEPTS

STANDARDS FOR MATERIALS. The statutes or code establishes specified technological standards for one or more selected materials—ink, paper, microforms, machine-readable tapes—used for creating or preserving public records.

FIREPROOF. The statutes or code establishes specified standards for the physical protection of records against fire and fire-related damage.

Most of the definitions are straightforward, addressing the basic categorical concerns and essential components of the law in an attempt to be precise but yet retain sufficient flexibility for broad application. Even so, perhaps some background is in order to explain the rationale for some of the categories and some of the components used. In the Legal Concepts group, the Time/Privacy Limitations category could possibly be split into two. Initially, very few states were expected to have statutory statements along the lines spelled out in the definition. Ultimately, seven states were found to have a significant provision on either a stipulated length of time or records with "data on individuals."[15] Next, the two categories in the Standards Concept group address the question of the preservation of records in different ways. The 1939 SAA model law emphasized the need for good records materials—paper, ink, typewriter ribbons—and called for vaults or other equipment to protect records from the ravages of fire. While the danger of fire is an ever-present one and while the need for high-quality paper and ink is still necessary if the paper copy of the record is to be retained, the initial impetus for the concern about these categories in the study came from a curiosity about the status of the two categories in the laws. First, do many states have a significant component for fireproofing, or is this a relic from the past? Second, what standards have states built into their laws for today's microfilm and computer storage back-up systems?

The wording of the definitions and even specific components are also subject to discussion. The definitions for

[15]See particularly *Kentucky Revised Statutes,* 171.580(2), for its provision for fifty years. The terminology "data on individuals" is from the *Utah Code Annotated,* 63-2-61(9).

some categories are phrased more generally, while others are quite precise and specific. Examples of the former are Replevin, Sanctions for Violations, and Powers and Duties of the State Archivist. The definitions for Public Record, Legal Custodian, and Access are examples of the latter. The inclusion of certain components may be viewed as arbitrary. Conceivable examples of this are the inclusion of all three branches and local records into the Public Agencies category, and the requirement for a stipulated frequency of meetings in the two Scheduling Procedures categories. If there is a problem in either definitions or components, it is one that is insurmountable at this point; and the generality or the exacting specificity was considered the best path.

Quantification: From the outset, the research design included plans for quantification in some fashion. This step was built in to provide a rating scale in each category and a means for ranking the states comparatively through the range registered between the highest and lowest total scores. The quantification scheme finally devised has a four-point scale ranging from zero (0) to three (3) for each of the categories. The scale is as follows:

0—NO MENTION. The category is not covered in the statutes or code of a particular state.

1—OBLIQUE OR SUMMARY COVERAGE. The category is covered in the statutes or code of a particular state by only an oblique or summary mention, or the concept behind the category is only covered in an oblique fashion.

2—DETAILED BUT AMBIGUOUS COVERAGE. The category, or the concept behind the category, is covered in the statutes or code of a particular state in a rather detailed fashion; but in substantive terms the coverage is ambiguous, contradictory, or less than fully inclusive in nature.

3—DETAILED AND EXPLICIT COVERAGE. The category and the concept behind the category are covered in the statutes or code of a particular state in a manner sufficiently clear and detailed so as to be explicit, thorough, and forthright in nature.

Within this scheme, the initial projection hypothesized that scores would tend to be on the high side in certain categories and on the low side in others. For example, the scores for the Public Record category were expected to be higher than average with mostly scores of 2 and 3 since this is basic to any archival law. Categories such as Vital Records or Fireproof were expected to yield a number of 0 and 1 scores.

Upon completion of the coding run, the figures for each category were recorded; and the total score for each state was tallied. The results are reported in Table 1.

Reliabilty: A requisite part of the content analysis technique is a check on the reliability of the research analyzing the data. According to Krippendorff, "A reliable procedure should yield the same results from the same set of phenomena regardless of the circumstances of application."[16] The means for checking reliability in this study, using Krippendorff's terminology and discussion, was neither "stability" nor "accuracy" but rather "reproductibility" or inter-coder reliability.[17] Two other coders or checkers—one a journalism educator familiar with the technique, the other a public records archivist—were used.

[16]Krippendorff, *Content Analysis,* p. 129. The statistical manipulations discussed below are derived from the discussion from pp. 130–40.

[17]*Ibid.,* pp. 130–31.

Each checker made a practice run prior to the test coding run. The first checker coded one state in the early stage of the coding run; the other checker coded two states toward the end of the coding run. The states so coded are identified only as "State M," "State V," and "State W."

As conducted, the reliability check involved, in statistical terms, a small sample on which to develop a strong coefficient of agreement. Between the researcher and the two checkers working on three states, each having eighteen categories, there were fifty-four possibilities for exact agreement. Of these fifty-four possibilities, there were only three instances in which the disagreement was greater than one point (e.g., a score of 0 versus a 2 or 3) on the four-point scale. Stated obversely, in fifty-one instances the researcher and the checkers arrived at a score that was the same or differed by only one point. The instances of a difference greater than one point occurred in three separate categories and involved two of the three states. This suggests that a modicum of agreement was reached.

A statistical test for measuring replication shows that the agreement is less than that contended above, strictly speaking. A calculation of the level of agreement between the researcher and the checkers yields a figure, on a state-by-state basis, of 61 percent for State M, 56 percent for State V, and 66 percent for State W. Since exact agreement may occur through chance alone, it is necessary to ask if the levels of agreement just reported exceed chance agreement. Using Krippendorff's procedure for measuring agreement over chance by observed matches against expected matches,[18] the results are as follows: State M, 20 percent above chance; State V, 12 percent; State W, 27 percent.

A third measure for testing reliability uses the formula (with a built-in correction for a small sample size):

$$(\text{Greek letter sigma})\ s = 1 - \frac{Do}{De}$$

where s equals the agreement coefficient; Do, the observed disagreement; and De, the expected disagreement. For State W, the most favorable state, the coefficient of agreement is .565. This approaches a high level of association.

Another perspective from which to evaluate the reliability check is to conduct a unit analysis for the particular categories. The purpose of this analysis is to see if some categories are weaker, or less consistently applied, than others. Here the researcher and the checkers were in absolute agreement in scoring five of the categories, in agreement in two of three instances for six categories, in agreement in one of three instances for five categories, and in disagreement for two categories. This is reported in specific detail in Table 2.

Looking finally, however, at the comparative total scores for the three states coded, it is important that the totals for the states tested are somewhat similar. The researcher was one point higher than the checker for State M while the checker was one point higher than the researcher for State V and four points higher for State W. In short, had the checkers coded the entire fifty states, they too would have arrived at a span in total scores from lowest to highest with a pattern resembling that at which the researcher arrived.

Findings

The findings will be reported or discussed under three areas. First, observa-

[18] *Ibid.*, pp. 138–40.

	Public Record	Public Agency	Legal Custodian	Delivery	Legal Value	Access	Replevin	Sanctions	Time/Privacy	A/RM Agency	Archival P&D	RM P&D	Agency Assist	State Schedule	Local Schedule	Vital Records	Standards	Fireproof	TOTAL
Alabama	2	2	1	0	2	1	2	2	0	2	2	2	0	3	3	0	1	0	25
Alaska	3	2	2	2	3	1	1	0	0	3	3	3	3	2	3	1	2	0	34
Arizona	2	3	1	0	3	1	0	0	0	3	1	3	3	2	2	2	1	0	27
Arkansas	3	2	3	1	0	3	3	3	0	3	1	3	3	3	3	0	0	0	34
California	2	0	1	0	3	1	0	0	0	2	2	3	3	0	0	2	3	1	23
Colorado	3	1	3	1	3	1	2	3	0	3	1	2	2	3	3	0	3	0	34
Connecticut	1	2	2	0	3	1	0	2	0	3	1	3	1	3	3	1	3	1	30
Delaware	2	1	2	2	3	1	0	3	0	3	1	1	0	2	2	0	2	0	25
Florida	3	2	3	3	3	3	1	3	0	3	3	3	3	0	0	0	1	1	35
Georgia	3	2	3	0	3	2	0	1	3	3	3	3	3	3	3	2	0	0	37
Hawaii	0	0	1	0	3	0	0	0	0	2	2	1	0	2	0	0	0	0	11
Idaho	3	0	1	0	3	2	0	0	0	2	2	3	0	1	2	0	3	1	23
Illinois	3	2	3	1	2	2	0	3	2	3	3	3	2	3	3	3	2	0	40
Indiana	3	3	3	2	1	1	1	0	0	3	3	3	3	2	1	1	1	0	31
Iowa	3	2	1	1	3	0	0	0	0	3	3	3	2	3	0	2	0	0	26
Kansas	2	1	2	1	3	1	0	1	0	3	1	0	0	2	3	0	3	0	23
Kentucky	3	1	2	1	2	2	3	3	3	2	3	3	2	2	1	0	1	0	34
Louisiana	0	1	2	0	0	1	1	0	1	3	3	3	2	1	0	0	1	0	19
Maine	1	2	3	2	2	2	0	3	0	3	3	3	1	2	3	0	0	1	31
Maryland	1	1	3	1	3	1	0	1	1	2	2	2	3	3	0	0	1	0	25
Massachusetts	1	2	2	3	3	2	3	3	1	1	1	0	0	2	2	0	3	3	32
Michigan	2	1	1	1	1	0	1	0	0	2	2	3	0	3	2	0	0	0	19
Minnesota	3	2	1	3	3	2	0	0	0	3	2	3	2	2	2	3	3	0	34
Mississippi	1	2	1	1	3	2	0	2	0	2	2	0	1	1	1	1	1	1	22
Missouri	3	3	1	3	2	2	1	3	0	3	2	3	3	3	2	0	2	1	37
Montana	3	2	2	2	3	2	0	0	2	3	2	3	3	2	0	3	2	0	34

Table 1: Category Score and Total Score, by State (Source: Law in effect on 1 January 1980)

	Public Record	Public Agency	Legal Custodian	Delivery	Legal Value	Access	Replevin	Sanctions	Time/Privacy	A/RM Agency	Archival P&D	RM P&D	Agency Assist	State Schedule	Local Schedule	Vital Records	Standards	Fireproof	TOTAL
Nebraska	3	3	1	0	2	1	2	3	2	3	3	3	3	3	2	3	1	0	38
Nevada	1	1	2	0	2	2	0	3	0	3	1	0	0	2	2	0	1	0	20
New Hampshire	1	1	0	0	0	0	0	0	0	3	2	2	0	1	2	0	0	0	12
New Jersey	2	2	1	0	3	0	3	3	0	3	1	2	0	3	0	0	3	0	26
New Mexico	2	2	3	1	3	3	3	1	0	3	3	3	3	3	2	0	1	0	36
New York	2	2	0	0	1	3	1	3	0	2	3	3	0	2	2	0	1	0	25
North Carolina	3	2	3	3	3	3	3	3	1	3	3	3	3	2	2	3	0	1	44
North Dakota	1	0	1	0	0	2	0	0	0	3	3	3	3	2	2	0	0	0	20
Ohio	2	3	1	2	3	3	2	3	0	3	3	3	2	2	2	0	2	1	37
Oklahoma	3	2	2	1	3	1	2	0	0	2	2	2	2	2	2	3	3	0	32
Oregon	3	2	3	1	2	3	0	1	3	3	3	1	0	1	1	1	1	0	29
Pennsylvania	2	1	3	0	3	1	0	0	0	2	3	2	0	1	3	0	1	0	22
Rhode Island	3	2	1	3	0	3	1	3	0	1	2	1	0	0	1	0	0	2	23
South Carolina	3	2	3	3	1	3	0	3	0	2	3	3	3	2	2	1	1	1	36
South Dakota	3	2	3	0	3	3	0	0	0	3	3	1	2	2	1	0	2	0	28
Tennessee	2	3	3	1	3	3	0	2	0	3	1	2	3	3	3	2	3	0	37
Texas	3	2	1	0	3	1	0	1	0	3	3	3	3	1	1	3	3	1	32
Utah	3	3	3	2	3	3	2	3	2	3	3	3	2	2	2	0	3	0	42
Vermont	2	2	2	0	2	3	1	3	0	3	3	3	3	2	0	0	0	0	29
Virginia	3	2	3	3	3	2	3	2	0	3	2	3	2	2	2	2	3	2	42
Washington	2	1	2	1	2	1	0	0	0	3	3	3	2	3	2	0	1	0	26
West Virginia	2	3	1	0	2	3	0	1	0	3	2	3	2	2	2	3	1	0	30
Wisconsin	2	2	3	3	3	3	0	2	1	1	1	3	0	2	3	1	3	0	33
Wyoming	3	2	3	3	3	3	1	3	0	3	3	3	3	3	3	0	2	1	42

Level of Agreement	Listing of Categories
Full Agreement (3 out of 3)	Legal Custodian, Replevin, Sanctions, State A/RM Agency, and Powers and Duties of the State Archivist.
High Agreement (2 out of 3)	Public Record, Delivery to Successor, Access, Time/ Privacy Limitations, Agency Assistance, and State Records Scheduling Procedures.
Low Agreement (1 out of 3)	Public Agency, Legal Evidential Value, Powers and Duties of the State Records Manager, Vital Records, and Fireproof.
No Agreement (0 out of 3)	Local Records Scheduling Procedures and Standards for Materials.

Table 2: Unit Reliability Between Researchers and Checkers

tions will be offered on the reliability and validity of the content analysis technique in this application. Second, patterns to be seen in the total scores for the fifty states will be pointed out. Third, remarks and observations on the categories, along with suggestions for changes in the content or style of expression for selected components currently employed in state archival law, will be given.

The Content Analysis Technique: Given the small sample size of the study for purposes of statistical analysis, the best method for measuring reliability would be that of stability or intra-observer reliability despite the weaknesses inherent in that method. By having the researcher code one state repeatedly, say once a month for six consecutive months, there would be a more sufficient sample for strict statistical analysis. This would certainly test for consistency, but it would beg the question of replication by another individual and thus raise the separate question of validity.

On validity, Krippendorff writes, "We speak of a measuring instrument as being valid if it measures what it is designed to measure."[19] Does this study have validity? The results discussed in the previous section as well as the following subsection demonstrates that the content analysis technique does have validity in this application. The study does measure and does evaluate the quality and the comprehensiveness of state archival law in an essentially objective manner.

Patterns in the Total Scores: The broad range between the lowest and the

[19] *Ibid.*, p. 155.

highest total scores for the fifty states is revealed in Table 1. Scores vary from the high of forty-four out of a possible fifty-four for North Carolina to the low of eleven for Hawaii. Five states (10 percent)—North Carolina, Virginia, Utah, Wyoming, and Illinois—reached scores of forty or above. Four states (8 percent) —Hawaii, Louisiana, New Hampshire, and Michigan—scored totals below twenty.

The states can be divided into quartile groups by total score. In this assessment, the twelve states with scores of thirty-six and above are in the first quartile group. The thirteen states with scores of thirty-one through thirty-five land in the second quartile. The third quartile includes the thirteen states with scores between twenty-five and thirty. Finally, the twelve states with scores below twenty-four are in the fourth quartile. These groups are listed in Table 3.

Geographically speaking, no strong regional patterns emerge. While the South Atlantic coastal states are well represented in the first quartile, for example, only two of the New England states are in the top half; overall, each quartile splits fairly evenly into states east and west of the Mississippi River. Of the five most populous states in the 1980 decennial census, only Illinois is in the top quartile; Texas is in the second quartile, while California, New York, and Pennsylvania fall in the bottom half of the states.

Categories: The law in some states is more comprehensive in its coverage than it is in other states. No state scores in all eighteen categories, but two states—North Carolina and Virginia—have only one no mention or 0 score. Eight states --Utah, Wyoming, Illinois, Nebraska, Missouri, Ohio, South Carolina, and Kentucky—follow with two 0 score blocks. Of these ten states, only Kentucky is not in the first quartile group. The conclusion to be drawn is that the states with a more comprehensive coverage tend to fare better in the ratings. A further examination of the gaps registered in these ten states reveals that they are spread over six categories (one-third of the total): Time/Privacy Limitations (five deficiencies), Vital Records (five deficiencies), Fireproof (four deficiencies), Replevin (two deficiencies), Delivery to Successor (one deficiency), and Standards for Materials (one deficiency).

Several other conclusions can be drawn from the data in Table 1. Ten states do not have an adequate definition (a score of 2 or 3) for Public Record in their law. Only thirty-five states define Public Agency in an adequate manner, while forty-seven designate the agency(ies) responsible for archival and records management functions adequately. States tend to spell out the powers and duties of the State Records Manager with greater clarity than they do those of the State Archivist (forty-one to thirty-nine, and with a higher number of 3 scores). Only twenty-nine states speak to Access in their law in an adequate manner, while thirty-two provide for Agency Assistance in a meaningful way. Forty states make adequate provisions for State Records Scheduling Procedures, but only thirty-four do the same for Local Records.

Beyond strictly quantitative concerns, it is possible to observe and comment upon a number of qualitative points. They crop up most readily in that portion of the research dealing with the component statements in the various categories of the law. This is true first of all for the Public Records category, particularly in the components dealing with materials. After reviewing today's state of the art, the best course is to include *all* record materials as "public records," *then* to separate out, through a process of exclusion, those materials that may be considered non-record items or must be

First Quartile

Georgia--37
Illinois--40
Missouri--37
Nebraska--38
New Mexico--36
North Carolina--44
Ohio--37
South Carolina--36
Tennessee--37
Utah--42
Virginia--42
Wyoming--42

Second Quartile

Alaska--34
Arkansas--34
Colorado--34
Florida--35
Indiana--31
Kentucky--34
Maine--31
Massachusetts--32
Minnesota--34
Montana--34
Oklahoma--32
Texas--32
Wisconsin--33

Third Quartile

Alabama--25
Arizona--27
Connecticut--30
Delaware--25
Iowa--26
Maryland--25
New Jersey--26
New York--25
Oregon-29
South Dakota--28
Vermont--29
Washington--26
West Virginia--30

Fourth Quartile

California--23
Hawaii--11
Idaho--23
Kansas--23
Louisiana--19
Michigan--19
Mississippi--22
Nevada--20
New Hampshire--12
North Dakota--20
Pennsylvania--22
Rhode Island--23

Within each quartile group, states are listed alphabetically, and the total score accompanies the state.

Table 3: List of States in Quartile Groups by Total Score

considered confidential, hence not open to public inspection. At this point, this category overlaps into the Access category. In line with the tension that exists in our society between the right to privacy and the freedom of information, states such as Tennessee, West Virginia, and Wyoming have built detailed component statements for the types of confidential records so excluded into the basic archival law.[20]

Turning next to the Public Agency category, SAA's model law called for the inclusion of all agencies—the three branches and local governmental units—into the definition of an agency. Certainly, the definition today should be stated clearly to include local jurisdictions; but the primary concern here is with the three branches at the state level. "Agency" is generally defined broadly, so that it is not explicitly clear if the governor or other constitutionally elected officials are included in the definition. Are these officials included, or are they not? If so, to what extent? Perhaps these officials are understood to be covered implicitly; but is it not best to mention them specifically in the law?

While the above concerns the executive branch alone, it is also true that the legislature and the judiciary create records. Is there a straight way through the concept of "separation of powers"? The best current solution, which appears to suffice, is one that is found in a dozen states or more. Here the law provides for the archival/records management agency(ies) to render services to these two branches upon an invitation for this assistance.[21]

The 1939 SAA model law also called for the "availability" of public records for "convenient use . . . by all persons." It required that the state archival administrator or deputies have access to "all public records in the state" for the purpose of examining records and reporting on conditions related to their care and preservation. In nearly 60 percent of the states, current archival law includes a statement for at least one of these two Access components. Technically speaking, where the provision for generally open access is included, the public records archivist can insist upon the right to inventory all records. Even where general access is allowed, however, the general public does not usually have, and probably should not have, access to attic and basement storage areas. Both Access components must be included in order to allow the archival and records management administrator(s) full access for inventorying and preserving records and to allow the general public full access to records open to public inspection under the oft-used "reasonableness" principle (records available within a reasonable time; copies available at reasonable cost). The two components should operate in tandem. Ideally, this could assist the archival agency in its efforts to gain intellectual control over the historically important records and provide the citizenry a legal basis for insisting upon access.[22] Then again, why not go a step

[20] *Tennessee Code Annotated,* 15-305; *West Virginia Code,* 29-B-1-4; *Wyoming Statutes,* 9-9-103. For an excellent discussion on public records and public access, see "Public Access to Public Records," *Carolina Comment* 27 (March 1979): 2-16.

[21] *Arizona Revised Statutes,* 41-1345(B); *Maine Revised Statutes Annotated,* 5-95-7; *Revised Statutes of Missouri,* 109-240; *Tennessee Code Annotated,* 10-7-303.

[22] The problem arose in Ohio in early 1982. Ohio law contains a provision for general access, *Ohio Revised Code,* 149.43. A county official, appointed by the local judge to be custodian of the courthouse vault, was reluctant about letting me into the room to locate records for microfilming under a filming project. We did work out a satisfactory agreement; but if the official had been adamant, there was no simple legal basis to allow me access as a deputy of the State Archivist.

further? The law in Wyoming and Nebraska empowers the archival agency to go in and straighten up messy situations, while the Michigan law empowers the state auditing office to make compliance findings against agencies not developing or following records management procedures.[23]

The two categories for standards also deserve comment. The 1939 SAA model law, in considering standards for materials—paper, ink, typewriter ribbons—and standards for storage conditions, reflected an age when microfilm was just beginning to offer a medium other than paper for preserving records. Consequently, it called for standards for paper and for ink with "durable quality"[24] and for fireproof filing facilities. Today, a few states still call for standards for paper, pens, and typewriter ribbons and for vaults for storage even though our society has the technology for a paperless office. It is a wonder that there is no greater degree of sophistication over standards in archival law than currently exists.

Certainly standards are needed for paper and ink where the original document is to be preserved for historical purposes, but the most commonly mentioned explicit set of specific standards for materials spelled out in state archival law is for microfilm, particularly that of the National Bureau of Standards or the American National Standards Institute. This mention is further complimented at times with a statement requiring off-site storage of the camera negative or the use of certificates of authenticity on each roll. Perhaps this mention aids the program in a state by alerting officials to the fact there are standards to be followed, but in no instances were such essential terms as "resolution" or "background density" included in the microfilm components of the statutes.

While the standards for microforms as expressed leave a good bit to be desired, there are none at all for computers and on-line systems. The technology behind photocopiers, word processors, and light pen optical character readers continues to change; but a good proportion of states has yet to add "magnetic tapes" or "electronic data processing" to the materials component of the Public Record category. Is it not time for all states to deal more forthrightly with the computer in state archival law?

With respect to storage conditions for records, the situation is one of extremes —from thorough coverage to no coverage. A few states, Massachusetts in particular, call for fireproof vaults and filing units, while a greater number of states stipulate that microfilm is to be stored in a fireproof vault.[25] Here it ends. No state's archival law was found to encourage the guidelines for record centers developed by the National Fire Protection Association nor was any seen to encourage the use of smoke detectors in state or local government buildings. Such mentions may lead to steps being taken that will offer better protection than by no mention at all. Perhaps this is not necessary in the archival law; but if it is, then it should be dealt with more

[23] *Wyoming Statutes,* 9-3-961; *Revised Statutes of Nebraska,* 84-1214.01; *Michigan Compiled Laws,* 18-13(d).

[24] Newsome, "Uniform State Archival Legislation," p. 9, notes that the law in a number of states was more specific in its requirements then.

[25] See particularly *Massachusetts Statutes,* 66-11; *General Laws of Rhode Island,* 38-1-3; *Code of Virginia,* 42-1-87. For examples of microfilm storage, see *Idaho Code,* 9-334 and 50-908; *Mississippi Code,* 27-103-75; *Revised Statutes of Missouri,* 109.120; and *Ohio Revised Code,* 9.01.

directly than is presently the case.[26]

Beyond these comments, there are a few other categories and components deserving brief mention. In the Legal Custodian category, for example, the best statements today spell out the custodian for the active record (the office), the inactive record (the records center), and the archival record (the archives). In the Delivery to Successor category, both Missouri and Wisconsin include a component to cover the delivery of records in the event of the death of the officeholder.[27] In the Replevin category, the states of Massachusetts, New Mexico, North Carolina, and Virginia outline the procedure to be followed *in the courts* for reclaiming records unlawfully out of the public custody.[28] Finally, a small but apparently growing number of states, including Georgia, Illinois, Oregon, and Utah, have added provisions for the research use of selected confidential records after a set period, generally seventy-five years,[29] thereby striking a balance between the need for privacy and the need for historical analysis.

Conclusion

State archival law has evolved in the four decades since the SAA's model law was drawn up. Microfilming, for instance, has matured and is now included in the law. Records management has become a field in its own right and is now a central part of the law. Xerography and computers have become a part of daily life, giving users solutions and records managers bulky problems. And today's law, reflecting the society, has components that speak more explicitly to the part of public records excluded from public scrutiny and to the right of access to public records than was previously the case.

This study has examined the current state of the statutory authority behind the archival and records management agencies in the fifty states. The study demonstrates that the content analysis technique may be successfully employed to assess and evaluate this body of law with its many common attributes. The categories selected for this analysis provide a comprehensive coverage of the parts of these statutes and codes, and the quantitative scheme devised for the study reveals a qualitative difference in the laws that support the state agencies and programs.

The study also points out that the majority of states can stand improvement in their law, some in a radical fashion. It may be asked if changes in the law are so necessary; certainly a good professional staff, sufficient financial support from the state government, and detailed, clearly expressed administrative regulations are other vitally important factors contributing to the successes or failures

[26]The problem is pervasive. One need only look to the Federal Military Personnel Records Center fire near St. Louis in 1973 to see how storage conditions contributed to the destruction. At the state level, the Ohio Historical Society suffered a fire in the archives in the early 1950s; but the Ohio Historical Center, completed around 1970, has no sprinkler system although it does have heat-sensitive detectors. The fire at the courthouse in Gallia County, Ohio, in January 1981 showed the benefit of vaults, as no essential records were lost when the structure, built in 1879, was gutted. A new structure, if and when built, may not have the same protection.

For the National Fire Protection Association (NFPA) materials, see Codes 232 and 232AM, both updated in 1980. The former is in volume 10, and the latter is in volume 15 of the 1981 *National Fire Code* (Quincy, Mass.: NFPA, 1981).

[27]*Revised Statutes of Missouri,* 109.020 through .040; *Wisconsin Statutes,* 19.21(3)-22.

[28]*Massachusetts Statutes,* 66-13; *New Mexico Statutes Annotated,* 14-5-6 through -7; *North Carolina General Statutes,* 132-5.1; *Code of Virginia,* 42.1-89 through -90.

[29]*Acts and Resolutions of the General Assembly of the State of Georgia, 1978,* Section 12; *Illinois Revised Statutes,* 116-43.10; *Oregon Revised Statutes,* 192.496; *Utah Code Annotated,* 63-2-89. In selected instances in some statutes, records may be released as early as twenty-five years after their creation.

of a state's program. The law can also be a double-edged sword. If a state has a fully comprehensive law but does not provide the resources to meet this commitment, this reality may make a mockery of the law. If, however, the state provides the resources without providing a comprehensive legal basis for its programs, this can lead to sticky legal situations in which our historical heritage is the loser. This archivist favors a comprehensive law as the better course. Is it not a sad commentary that ten states do not define a public record adequately in their basic archival law? Is it not a sad commentary that two of the five most populous states are ranked here in the lowest quartile group? As Ernst Posner wrote nearly two decades ago, "States still lacking adequate legislation can find examples of good laws in other states."[30]

Will changes for the better be made? If so, at what pace? It remains to be seen how quickly this might transpire,[31] but the challenge does exist and should be met.

[30]Posner, *American State Archives,* p. 311.

[31]H.G. Jones, "The Pink Elephant Revisited," *American Archivist* 43 (Fall 1980): 473–83 offers a highly pessimistic viewpoint.