Title Company v. County Recorder: A Case Study in Open Records Litigation, 1874–1918

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Abstract

The common-law tradition inherited by the United States restricted access to public records to those with a direct and tangible interest in the information, such as parties to a lawsuit. During the late nineteenth and early twentieth centuries, however, state appellate courts ruled in a series of cases that revolutionized legal thought on this subject. By the end of World War I, these tribunals increasingly assumed that citizenship itself provided sufficient justification for access to public records. Abstractors and insurers of real estate titles, whose interests were commercial, led the assault upon the common-law tradition that had imposed the more restrictive standard. Suits initiated by those concerned with the misuse of public funds and honest elections played a relatively small role in bringing about this change. The story of this landmark litigation between title abstract companies and local government officials again demonstrates that custody of public records carries with it risks and responsibilities all too familiar to modern archivists.

Prior to the mid-1870s, state appellate courts reported relatively few open records cases. During the forty-four years between 1874 and 1918, however, the amount of litigation in this area increased dramatically. Several factors contributed to this trend, including a belief that open access to public records could reduce electoral fraud, discourage the misuse of public funds, and make government officials more accountable. This increase in litigation also represented an attack upon the English common law tradition that restricted access to public records to those with a direct and tangible interest in the information, such as parties to a lawsuit. By the early twentieth century, state courts had established the notion that citizenship itself provided a sufficient justification for access to public records, a change that revolutionized legal thought on this subject.[1]

[1] 42 Am. Dig. Cent. Ed. 698; Simon Greenleaf, *Treatise on the Law of Evidence* (Boston: Little, Brown, 1854), 329–30; "Inspection of Records," *American and English Encyclopedia of Law* (Northport, N.Y.: The Edward Thompson Company, 1896–1905), 24:182–86.

Interestingly enough, abstractors and insurers of real estate titles, whose interests were commercial, led the assault upon the common law tradition that imposed the strict standard of direct and tangible interest. The cases initiated by these businessmen far outnumbered those concerning the misuse of public funds and honest elections, the next closest categories of cases. Title abstractors did more than any other single group to establish the assumption that public records are the public's business. Their efforts have had an important impact on the professional lives of subsequent generations of public records custodians, including archivists.

Traditionally, attorneys had verified chain of title for individual real estate transactions. During the late nineteenth century, however, rural-to-urban migration, the growth of cities, and the declining number of Americans engaged in agriculture caused a dramatic increase in the buying, selling, and subdivision of real property. Americans increasingly viewed land as a commodity rather than patrimony. Meanwhile, the methods that local governments employed to record and retrieve deeds, liens, and other information used to document chain of title had not kept pace with the fast-growing demand. Abstractors and insurers of real estate titles offered a solution to this problem.[2]

Typically, title companies sent employees to the offices of local government officials to duplicate records in mass, not for individual transactions, but in anticipation of future sales. Many firms prospered by this device, but they encountered opposition from the custodians of public records. County recorders of deeds, for example, voiced concerns not unlike those that modern archivists might raise: the hordes of abstract men who threatened to invade their offices would disrupt established procedures, interfere with the rights of others, and damage the materials in their custody. Furthermore, many local government officials depended upon the fees they generated through title searches and duplication of records to pay salaries and office expenses. Title companies threatened this source of income, so the stage was set for litigation. The 1880s and 1890s brought a flurry of title company cases, which began to decline following the turn of the century and slowed to a trickle following World War I. By then, the battle over access to public records had been won.[3]

In 1874, the Georgia Supreme Court issued its decision in *Buck v. Collins*, the grandfather of title company cases, which typified a strict interpretation of the common-law concept regarding access to public records. The dispute involved a title abstractor who wanted to station his employees in the Fulton

[2] Lawrence M. Friedman, *A History of American Law*, 2nd ed. (New York: Simon & Schuster, 1985), 433–35; Michael J. Petrick, "Inspection of Public Records in the States: The Law and the News Media" (Ph.D. diss., University of Wisconsin, 1970), 170–73; Harold L. Cross, *The People's Right to Know: Legal Access to Public Records and Proceedings* (New York: Columbia University Press, 1953), 28–29.

[3] W. B. Martindale, *The Right to Inspect Public Records*, 22 Central Law Review 341 (April 1886); Ardemus Stewart, *The Right to Examine Public Records*, 37 Central Law Review 395 (July 1893); *Public Records, Inspection, Abstractor of Titles*, 35 American Law Register 721 (November 1896).

County register of deeds' office, where they would remain for the duration of the time necessary to duplicate all county records relative to real estate. The plaintiff intended to create a set of title abstracts, planned to perform his search without the register's aid, and refused to pay the statutory search fee. The court ruled that the state created and maintained deeds out of necessity, but this did not imply the right to flaunt "private matters before public gaze." Furthermore, the register had a responsibility for the integrity of information in his custody. A full-time title abstractor may not have required assistance, but he did require supervision, which justified the fee. The Georgia Supreme Court subsequently upheld this decision in another Fulton County case, even though the plaintiff argued that the prohibitive cost would destroy the title abstract business in that state.[4]

Between 1877 and 1900, the New Jersey appellate courts issued a series of opinions regarding payment of statutory search fees. In the first instance, Harvey M. Lum's attorney sought to search a particular title without payment of the fee. The New Jersey Court of Errors and Appeals concluded that county clerks lacked the sole authority to conduct title searches and could not charge fees for those who undertook the work themselves. Later, the West Jersey Title & Guarantee Company asked for access to all land records in the custody of Robert L. Barber, the Camden County clerk, in order to create a set of title abstracts. Based on the authority of the Lum case, the New Jersey Chancery Court ruled in favor of the company, but Barber appealed to the state supreme court, which reversed the decision. The Lum case had concerned an individual attorney searching a particular title, but West Jersey Title wanted to occupy the clerk's office, duplicate all the records, and establish a rival business, an entirely different situation.[5]

In 1900, the New Jersey Supreme Court ruled in *Fidelity Trust Company v. Clerk of the Supreme Court*. The facts were that the clerk kept two sets of indexes to real estate judgments. One was volume-by-volume, as required by law, and the other cumulative but not required by law. When the clerk first undertook the cumulative index, he was not a salaried official, but had been compensated through fees, including those generated by searches of the cumulative index. In 1896, however, the clerk went on salary. Now, Fidelity Trust sought free access to the cumulative index, the clerk denied the request, and the company asked the supreme court for relief. In its decision, the court noted that the salaried clerk served two publics. The smaller one included Fidelity Trust and had an immediate interest in access to records in his custody; the larger taxpaying

[4] *Buck v. Collins*, 21 American Reports 236 (Ga. 1874); *Land-Title Warranty & Safety-Deposit Company v. Tanner*, 27 S.E. 727 (Ga. 1896).

[5] *Lum v. McCarty*, 10 Vroom 287 (N.J. 1877); *West Jersey Title v. Barber*, 24 A. 381 (N.J. 1892); *Barber v. West Jersey Title*, 32 A. 222 (N.J. 1895).

public had an interest in the revenue generated by the clerk's office; and the two were mutually exclusive. The court concluded that the larger interest of the taxpaying public governed the case. Fidelity Trust was denied free access to the cumulative index.[6]

In addition to the loss of revenue, local government officials also feared that title companies would disrupt others' access to the records in their custody. In 1883, for example, a representative of the New York Title Company approached Samuel Richards, the register for Kings County, New York, who had custody of approximately four thousand large books that contained records of real estate transactions. New York Title asked to station from twelve to twenty-five employees in the register's office in order to compile abstract books from these records. Richards responded that more than three Title Company employees would disrupt access by the general public and the court upheld his argument. The following year, the New York Supreme Court ruled that the Title Guarantee and Trust Company could consult records in the custody of the register of deeds for the city and county of New York, but noted that the local official had a duty to prevent the company from interfering with the rights of others.[7]

The Michigan Supreme Court devoted as much attention to title company litigation as any tribunal in the land. In 1880, that body heard the case of a title abstract company based in Jackson that sought access to records housed in the county register of deeds' office. The register considered the proposal, but denied the company's request. Eventually, the case came before the Michigan Supreme Court, where the company claimed both a common-law and a statutory right to inspect the records. The court disagreed. The common law limited this right to specific documents in which the applicant had a direct and tangible interest. This was not the case with a title company, which sought to duplicate large volumes of material for speculative purposes. The logical conclusion of complying with such a request could overwhelm public officials with similar demands. Furthermore, the statutory language provided no clear answer. Given the potential for disrupting public business, the court refused to accept the implication of the title company's right to inspect the records.[8]

Three years later, the Michigan Supreme Court heard arguments from the Delaware-based Diamond Match Company, which owned thirty thousand acres of pineland in Ontonagon County. Because of problems with conflicting titles, the company sought to occupy space in the county register's office in order to construct a complete abstract of all relevant documents housed there. The register of deeds denied the request and the company sought a writ of *mandamus*,

[6] *Fidelity Trust Company v. Clerk of the Supreme Court*, 47 A. 451 (1900).

[7] *People v. Richards*, 1 N.E. 258 (N.Y. 1885); *People v. Reilly*, 38 Hun 429 (1886).

[8] *Webber v. Townley*, 5 N.W. 971 (Mich. 1880).

which would compel compliance. The Michigan Supreme Court declined the petition of Diamond Match, which it deemed a private, out-of-state corporation, relying upon state comity to support its request.[9]

Following the Diamond Match Company case, the Michigan state legislature enacted a law that gave the public broader access to records created by state and local officials. In 1889, Detroit attorney and businessman Clarence M. Burton tested the statute when he sought to gather information regarding tax liens that the City of Detroit held on private property. Thomas P. Tuite, the city treasurer and custodian of the books where the city tax collector recorded this information, refused to comply with Burton's request. The case eventually reached the Michigan Supreme Court, which upheld the new statute. The court's opinion noted that the plaintiff's motives exercised no bearing upon the case. Attorneys routinely consulted these records for private gain, and title companies should enjoy the same right. Excluding those motivated by private gain left records open only to buyers, sellers, and holders of particular lots, and their unpaid representatives. Three years later, the court upheld this decision in ruling that "a tax-title sharp" enjoyed the same right as any citizen to examine public records.[10]

In 1893, and again in 1894, the Michigan Supreme Court qualified its decision in the Burton case by emphasizing the obligation of officials to impose reasonable regulations on access to public records. The first dispute involved Homer A. Day, who requested access to records in the custody of James A. Button, register of deeds for Genesee County, in order to create a set of title abstract books. Button objected on the grounds that Day monopolized the limited space available in the register's office, hindered performance of official duties, and delayed access to the records by the general public. The court ruled in Day's favor, but noted that the title man's right to access did not permit him to monopolize space in the register's office.[11]

The second case again involved Clarence M. Burton, this time against Henry M. Reynolds, the clerk of Wayne County, who charged title companies twenty-five dollars per month to offset the cost of hiring additional help for the volume of requests generated by these businesses. Burton sought use of the special service without payment of the fee. Again, he asked the Wayne County Circuit Court to compel compliance with his request. The court refused, and Burton appealed to the Michigan Supreme Court. This time the supreme court ruled in favor of the county official. Reynolds had the right to establish reasonable regulations, which could include the payment of a fee for special services.[12]

[9] *Diamond Match Company v. Powers*, 16 N.W. 314 (Mich. 1883).

[10] *Burton v. Tuite*, 44 N.W. 282 (Mich. 1889); *Aitcheson v. Huebner*, 51 N.W. 634 (Mich. 1892).

[11] *Day v. Button*, 56 N.W. 3 (Mich. 1893).

[12] *Burton v. Reynolds*, 60 N.W. 452 (Mich. 1894).

Colorado followed a pattern similar to Michigan's: initial denial of access, passage of a statute that loosened the constraints, and finally emphasis of the county official's duty to protect records through reasonable regulations. The state supreme court first addressed this issue in 1884, when a title company sought long-term quarters in the Gunnison County clerk's office in order to abstract land records in the custody of that official. The company argued that all records in the clerk's office were open to full public inspection, but the court disagreed. The opinion noted that granting access to one company could lead to similar requests from others, the endless multiplication of which would impose unreasonable expenses upon the clerk's office.[13]

Following the Gunnison County case, title abstractors persuaded the legislature to enact a statute that explicitly granted them access to county land records. Carlos W. Brooks tested the new law when he asked to consult records in the custody of the Pitkin County clerk, Fred H. Stockman. Stockman refused and Brooks asked the district court for relief. The court complied and the clerk then appealed. The Colorado Supreme Court affirmed the district court decision, but noted that the clerk could implement reasonable regulations governing use of the documents in his custody.[14]

The Colorado Supreme Court reaffirmed local government's right to impose reasonable regulations when F. D. Catlin demanded access to the Montrose County clerk's office during all business hours in order to abstract and duplicate records housed there. County Clerk William Upton denied the request. The Montrose County Court ordered Upton to allow access on the basis requested by Catlin and the clerk appealed to the Colorado Supreme Court. The court noted that the statute specifically granting title abstractors access to county land records had been upheld in the Stockman case. On the other hand, the clerk had a statutory responsibility for the safekeeping of the records, which implied a power to impose regulations. Those regulations should include supervision of third-party use, which because of limited staff was not possible during all business hours. Upton had posted written rules regarding access, which the court deemed a reasonable use of his discretionary power.[15]

In 1885, the Minnesota state legislature granted title abstractors the right to occupy portions of county buildings as offices, subject only to reasonable regulations. Title companies had lobbied for passage of this act in order to circumvent uncooperative county officials. Two years later, the state supreme court upheld this law, but as in Michigan and Colorado later qualified its position. This occurred in 1901, when the Clay County Abstract Company requested access to records in the custody of G. D. McCubrey, clerk of the district court, in

[13] *Bean v. People*, 2 P. 909 (Colo. 1884).

[14] *Stockman v. Brooks*, 29 P. 746 (Colo. 1892).

[15] *Upton v. Catlin*, 31 P. 172 (Colo. 1892).

order to identify judgments affecting the titles to various lands. McCubrey offered to make the examination himself upon payment of the statutory fee. The title company then asked the Clay County District Court for a writ of *mandamus*, the court denied the request, and the company appealed.

The Minnesota Supreme Court's opinion noted that the district court clerk received no salary and depended upon fees for the operation of his office. Furthermore, the clerk had statutory authority to charge a fee when searching for records of judgments affecting titles. The abstract company considered the statute unconstitutional because it deprived them of rights enjoyed by others; discriminated against those searching for judgments affecting titles; and deprived them of property without due process. The supreme court disagreed. The common law did not extend the right to examine public records to all citizens, but the state legislature had done so. The legislature further provided that such access was free of charge, except in the case of statutory fees, which applied in this instance.[16]

In 1887, title cases first appeared on the dockets of appellate courts in North Carolina, Alabama, Kansas, and Wisconsin. The North Carolina Supreme Court ruled that no one enjoyed the right to duplicate records in the county register of deeds' custody without payment of a search fee, in part because the register was compensated through this device. The Alabama Supreme Court ruled that a county probate judge could limit the right of a title company to inspect public records because those engaged in such speculation often inhibited access by public officials. The Kansas Supreme Court ruled that unlimited access by title abstractors endangered the integrity of records in the custody of the county register of deeds, but the following year concluded that this limitation did not apply in the case of an individual who was investigating liens upon lands that belonged to his employer. In 1887, the Wisconsin Supreme Court ruled against the Waushara County Register of Deeds, who had argued that the right to inspect documents in his custody was imited to those interested in a particular item and did not extend to those concerned with private gain.[17]

Thirteen years later, the Wisconsin Supreme Court issued its opinion in another title company case that illustrated how far that state had moved toward more open access to public records. The facts were that in 1880, the Rock County Board of Supervisors decided to install a patented title abstract system in the county register of deeds' office. The board purchased the system and contracted with the county register to implement it. The register completed the task, the county accepted his work, and the board of supervisors established a fee schedule for private individuals who wished to obtain abstracts. Subsequently, the county board prohibited the register from allowing anyone

[16] *State v. Rahac*, 35 N.W. 7 (Minn. 1887); *State v. McCubrey*, 87 N.W. 1126 (Minn. 1901).

[17] *Newton v. Fisher*, 3 S.E. 822 (N.C. 1887); *Randolph v. State*, 2 So. 714 (Ala. 1887); *Cormack v. Wolcott*, 15 P. (Kan. 1887); *Boylan v. Warren*, 18 P. 174 (Kan. 1888); *Hansen v. Eichstaedt*, 35 N.W. 30 (Wisc. 1887).

"to make abstracts for sale from the county books." In 1909, however, a new register purchased several blank books from the county and began copying the abstracts with plans to enter that business when he left office.

Upon learning of this activity, the county board ordered the register to cease, offered to return the purchase price for the blank books, and sued in Rock County Circuit Court to recover the information that the register had duplicated up to that point. The circuit court ruled in favor of the defendant, the county appealed, and the Wisconsin Supreme Court affirmed the earlier decision. The county abstract books were public records subject to duplication by any citizen, even one who intended to create a rival set. Furthermore, the county could not recover the copies solely for the price that the register paid for the blank books, for he had expended $900 in transcribing information into them.[18]

Disputes between title abstract companies and local government officials became particularly bitter in Cook County, Illinois, where in 1871, the Chicago fire had destroyed public records of land transactions. In 1886, the board of commissioners instructed the county register, Wiley S. Scribner, to prohibit use of records in his custody by title abstract companies. Handy & Company asked the Cook County Superior Court for an injunction to prevent implementation of this policy, the Superior Court agreed, and the county register took the case to the Illinois First District Court of Appeals. That tribunal ruled in behalf of the register, for in granting the title company's request the Superior Court had circumscribed Scribner's statutory duty to prevent damage to the records in his custody.[19]

In 1887, following initiation of the Scribner case, Illinois passed statutes that opened the county registers' records to public inspection, empowered these officials to create abstracts of real estate titles, and authorized them to sell the information contained in the county abstracts. Subsequently, the Abstract Construction Company duplicated Cook County abstract books that had been prepared since the 1887 statute, but in 1905, the register attempted to stop this practice. Initially, the Illinois First District Appellate Court ruled in favor of the local official. The relevant legislation clearly gave the title company access to the original records used to compile the county abstract books, but not to the abstract books themselves. The court ruled on the side of caution in saying that wholesale duplication of the latter might interfere with use of the same by the recorder and the general public. Abstract Construction continued to press its case, and in 1908, the Illinois Supreme Court ruled in its favor.[20]

[18] *Rock County v. Weirick*, 128 N.W. 94 (Wisc. 1910).

[19] Friedman, *History of American Law*, 433–35; *Scribner v. Chase*, 27 Ill. App. 36 (1888).

[20] *Davis v. Abstract Construction Company*, 121 Ill. App. 121 (1905); *Chicago Title & Trust Company v. Danforth*, 137 Ill. App. 338 (1907); and 86 N.E. 364 (Ill. 1908).

Meanwhile, in 1895, the Illinois legislature attempted to reform the state's system for recording real estate titles by allowing counties the option of adopting a plan developed by the Australian Sir Robert R. Torrens. Under the Torrens system, land submitted for registration underwent a rigorous and expensive title review, but emerged "fresh and free of taint." The Illinois State Bar and the Chicago Real Estate Board favored adoption, but title companies vigorously opposed it. One Chicago title abstract company fought the measure "with all the power and intellect . . . its money could bring to bear." The Illinois Supreme Court declared the 1895 act unconstitutional, the legislature passed a revised version two years later, and Cook County adopted it. Nevertheless, the prohibitive cost discouraged widespread use of the Torrens system in Illinois. It also failed to take hold in other states.[21]

Title company cases first appeared before other state appellate courts during the last decade of the nineteenth century and the first two decades of the twentieth. In 1890, Maryland upheld a statutory search fee that supplemented the salary of a local government official. In 1905, Florida struck down a search fee, but not without a strong dissenting opinion. The following year, the Nevada Supreme Court ruled that a title company could examine, free of charge, records related to its current business transactions, but could not copy all the records to create an independent set of abstract books. The question of whether a title company could duplicate local government records wholesale still varied from state to state, but was moving in the direction of more open access in this and other areas.[22]

In 1918, the Tennessee Supreme Court issued a ruling that illustrated the shift that had taken place since the 1874 Georgia decision in *Buck v. Collins*. The facts were that the Shelby County Register of Deeds allowed the Memphis Abstract Company to station two of its full time employees in his office. The register contended that this was not an inconvenience and voiced no objection to the arrangement. Nevertheless, Shelby County sued the title company to recover rent for the space occupied, the court of civil appeals ruled in favor of the title company, and the county appealed to the Tennessee Supreme Court, which affirmed the previous ruling. The common-law tradition had been that only those with a direct and tangible interest in such records had access to them. The Tennessee Supreme Court contended that this policy applied only to a feudal society where land was entailed, not held in fee simple. Present circumstances dictated an approach that allowed for freer distribution of information regarding land holdings. Abstract companies had a right to examine records under

[21] Friedman, *History of American Law*, 433–35; Seymour D. Thompson, *Constitutionality of the Illinois Torrens Land Transfer Act*, 31 American Law Review 254 (January–February 1897).

[22] *Belt v. Prince George's County Abstract Company*, 20 A. 982 (Md. 1890); *State v. McMillan*, 38 So. 666 (Fla. 1905); *State v. Grimes*, 84 P. 1061 (Nev. 1906).

reasonable regulations and the county could not charge rent for the space occupied, if the register of deeds supported the arrangement.[23]

Litigants seeking access to records documenting the misuse of public funds instigated approximately 20 percent of the open records cases reported during this period, but still ran a distant second to title abstractors. An early and influential case arose in Alabama when on 24 September 1878, attorney Charles J. Watson entered the office of Willis Brewer, state auditor, and demanded access to records documenting the work of his client, J. F. Boyles, who had served as tax collector in Monroe County. At the trial, it came to light that the state auditor had accused the former Monroe County tax collector of making "erroneous allowances." Boyles had hired Watson to investigate the charge. The Alabama Supreme Court acknowledged the common law standard that officials could deny access to those who lacked a direct and tangible interest in public records, but concluded that Boyles and his attorney met that test. Other decisions denied access on the basis of the same common-law principle. In 1899, the Pennsylvania District Court denied a journalist's request to consult financial records held by the commissioners of Clearfield County. The court held that the commissioners needed some degree of privacy in their deliberations and that public interest and public curiosity were not synonymous.[24]

Between 1903 and 1912, several state courts overruled the common law standard regarding access to public financial records. In 1903, the Tennessee Supreme Court held that political hostility did not warrant denial of access and directed the mayor of Memphis to allow inspection of municipal financial records by a political rival. Three years later, the Vermont Supreme Court ruled that a private citizen possessed the right to inspect records held by the state auditor of accounts. In 1910, the New Jersey Supreme Court declared that all citizens possessed an interest in railroad tax records held by the state board of assessors, in part because access to this material served the public interest. In 1912, New York rejected the common-law tradition in ruling that a taxpayer enjoyed the right to inspect records documenting the process for awarding public contracts.[25]

Disputes regarding election records ran third behind public finance cases, but comprised less than 10 percent of the open records decisions reported during this period. In 1885, the Missouri Supreme Court heard the case of an unsuccessful candidate for a St. Louis office who had been denied access to poll books and registration lists needed to contest the election. The court ruled that

[23] *Shelby County v. Memphis Abstract Company*, 203 S.W. 339 (Tenn. 1918).

[24] *Brewer v. Watson*, 61 Ala. 310 (1878); *Owens v. Woolridge*, 8 Pa. D. 305 (1899). The statistics used in this and subsequent paragraphs were derived from the cases cited in 42 Am. Dig. Cent. Ed. 698; 17 Dec. Dig. '06 1147; 19 2d Dec. Dig. 1084; and 23 3d Dec. Dig. 1176.

[25] *Wellford v. Williams*, 75 S.W. 948 (Tenn. 1903); *Clement v. Graham*, 63 A. 146 (Vt. 1906); *Fagan v. Board of Assessors*, 77 A. 1023 (N.J. 1910); *Eagan v. Board of Water Supply*, 98 N.E. 467 (N.Y. 1912).

allowing access to these materials did not compromise the secrecy of the ballot, for the information revealed only who voted and not how. In 1904, the West Virginia Supreme Court heard the case of J. M. Payne, who had been denied access to poll books and ballots in a contested election. The court sympathized with Payne's request, but ruled against him on a technicality. Nevertheless, one member of the tribunal wrote a strong dissenting opinion. He argued that the common-law rule, derived from a monarchical system, allowed the king and his officials to withhold information. The democratic rule, on the other hand, made public officials servants of the people, not the king. Individual citizens possessed a legitimate interest in honest elections.[26]

Parties concerned with misuse of public funds and honest elections appeared among the plaintiffs in open records litigation, but abstractors and insurers of real estate titles dominated the scene during these formative years. Title abstractors appeared as plaintiffs in more than 40 percent of the open records cases reported by state courts of appeal; they lobbied state legislatures; they advocated their position in law review articles; they demonstrated a consciousness of purpose that transcended jurisdictional boundaries; and they dominated the few federal open records cases that appeared between 1874 and 1918. They also viewed themselves as reformers, fully in tune with the sprit of the age. Title abstractors undoubtedly rejoiced when favorable court decisions thwarted petty local officials who stood in the way of the people's right to know. The efforts of these businessmen fall neatly into the well-worn grooves carved out by New Left historians of the Progressive Era who argue that the so-called reforms of the period were merely efforts to consolidate the strengths of various economic interests that advocated them. In America, the concept that public records existed to protect public rights included the right of individual entrepreneurs to make money at public expense.[27]

Many of the open records issues faced by late nineteenth- and early twentieth-century custodians of public records sound familiar to modern archivists. How can custodians of public records balance the demands of access and the need for security? When should they establish fee-for-service operations? To what extent can researchers legitimately circumvent these fees? When does an individual's right to privacy supersede the public's right to know? Between 1874 and 1918, state appellate courts answered these questions in part by saying that custodians of

[26] *Thomas v. Hoblitzelle*, 85 Mo. 620 (1885); *Payne v. Staunton*, 46 S.E. 927 (W. Va. 1904).

[27] "Right of Inspection of Records," *Lawyer and Banker* 17 (September–October 1924): 297–300; Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900–1916* (New York: Free Press, 1963), 3; James Weinstein, *The Corporate Ideal in the Liberal State, 1900–1918* (Boston: Beacon Press, 1968), ix; T. R. Schellenberg, *Modern Archives: Principles and Techniques* (Chicago: University of Chicago Press, 1956), 5. Between 1874 and 1918, federal courts reported nine cases regarding access to public records, four of which concerned title companies: *Commonwealth Title Insurance v. Bell*, 87 F. 19 (1898); *Bell v. Commonwealth Title Insurance*, 118 F. 828 (1901) and 189 U.S. 131 (1903); and *In re Chambers*, 44 F. 786 (1891).

public records had a responsibility to establish reasonable regulations that addressed these issues. Most importantly, this chapter in the history of access to public records again demonstrates that custody of such materials demands the acceptance of risks and responsibilities all too familiar to modern archivists.