[County court] records show human hopes, strivings, speculations, and frolics: the successes and the failures. Researchers can observe the misdemeanors and the crimes, the full range of wrongs to person and property, and the offenses against the peace and dignity of the state. Pioneers become the human beings that they actually were — good, bad, and in-between. The circumstances — fortunate and unfortunate, in high places and low — under which they actually lived become real.¹

— W. N. Davis, Jr., Chief of Archives, California State Archives (1973)

*Rachael G. Samberg is a Reference Librarian at the Robert Crown Law Library at Stanford Law School and is a Duke Law School graduate (J.D. 2002). Before becoming a librarian in 2010, she practiced commercial litigation, and is currently earning her masters in library and information science from the University of Washington. She would like to thank Paul Lomio and Erika Wayne for giving her the opportunity to write this article, and for their sage advice and encouragement along the way. She would also like to acknowledge Stanford University student Tommy Fraychineaud for singlehandedly organizing the library’s trial court records collection, and diligently creating a finding aid that makes it possible for these records to be used for research.

INTRODUCTION

State trial court records illuminate a prism of life and legal history. With voyeuristic precision, they chronicle the dissolution of business partnerships or marriages gone sour. When aggregated, they offer insights into matters of legal heritage—like the defense of slaves against criminal prosecution, the demography of adoptions and probate administration, or the evolution of terminology used to classify crimes. For all of their research value, however, collections of historical trial court records can be tricky to find. Limited records management budgets and chockablock storage facilities can leave county clerks few options but to discard files once statutory retention periods expire. This is actually sound records management, but it constrains historical research. Certain files (particularly pre-twentieth century records) may be transferred to official state archives, but these archives—whether by statute or custom—often focus on collecting only appellate-level materials. As a result, researchers seeking particular trial court files, or to develop data sets for empirical research, can face difficulties determining even where to start.

---

2 Id. See also, William E. Nelson, Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760–1830 (1975) (using trial court records to trace common law development).


6 Davis, supra note 1, at 242–43 (explaining the crime of “cheating or swindling,” often applied to the theft of gold dust); Thomas R. Phillips, Justice in the New State Capital, 74 Tex. B. J. 195 (2012) (describing a crime for “marking an unmarked hog without the consent of the owner”).


8 See, e.g., David H. Flaherty, The Use of Early American Court Records in Historical Research, 69 L. Lib. J. 342, 344 (describing search “ odyssey”).
Recognizing trial court records’ research value and vulnerability, states have increasingly sought to protect them. Archives like those in Vermont and Utah have obtained grants to preserve such files *en masse.* In 2011, Texas overhauled its preservation laws when a task force reported that scores of county court files — including the trials of John Wesley Hardin and Bonnie and Clyde — were in jeopardy of deterioration or destruction. In 2012, a historian’s inability to locate a nineteenth-century murder file led the Missouri secretary of state to establish a “Local Records Preservation Project” for organizing and preserving that state’s trial records.

These preservation efforts suggest increased opportunities to use historical trial court records in scholarship. Yet, what are the mechanics of accessing the records? What conditions and rules shape their availability for research — particularly

---


beyond the courthouse, as in local universities, museums, or libraries? And by what processes or means have such third-party institutions developed their trial court records collections? This article probes the underexplored mechanics of conducting research with historical state trial court files. First, it examines factors shaping record availability, then discusses interstate variations in applicable preservation rules. Next, it describes the evolution of institutions’ right to collect California trial court files. Finally, it provides an overview of the Stanford Law School Library’s collection, using a 1905 dispute between oyster barons to reveal the types of research questions inherent within nearly every file.

I. STATE TRIAL COURT RECORDS PRESERVATION ISSUES

For more than a century, court clerks have bemoaned the volume and condition of the files they oversee.12 Their stories are eerily similar, and go something like this: Old records are piled floor to ceiling under leaky water pipes, or stacked against furnaces; they are left unorganized in musty basements where documents dampen and mold, or in sweltering attics where records grow brittle and crack.13 One 1912 Iowa court clerk described his records as having been filed in “pigeon holes,” heaped among “boxes, maps, brooms, and sweepings left by the charwoman.”14 As a result, he concluded that, “No investigator could work to advantage with the [court records] in their present condition. It would first require an archaeologist, in the sense of an excavator, to dig them out of the dirt they are in!”15

Retention standards for paper files certainly have changed in the past hundred years. Yet, even modern-day historians can wade fruitlessly through boxes at the courthouse, unable to obtain confirmation that the sought-after files still exist.16 Fault lies not with the clerks, but in the size of

---

14 Surrency et al., supra note 12, at 73.
15 Id.
16 See also Texas Report, supra note 13, at 30–31.