

PRESERVING LEGAL HISTORY IN STATE TRIAL COURT RECORDS:

Institutional Opportunities and the Stanford Law School Library Collection

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[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)

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¹ W. N. Davis, Jr., *Research Uses of County Court Records, 1850–1879: And Incidental Glimpses of California Life and Society, Part I*, 52 CAL. HIST. Q. 241, 242 (1973).

INTRODUCTION

State trial court records illuminate a prism of life and legal history.² With voyeuristic precision, they chronicle the dissolution of business partnerships or marriages gone sour.³ When aggregated, they offer insights into matters of legal heritage — like the defense of slaves against criminal prosecution,⁴ the demography of adoptions and probate administration,⁵ or the evolution of terminology used to classify crimes.⁶ For all of their research value, however, collections of historical trial court records can be tricky to find.⁷ 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.⁸

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).

³ See, e.g., “Complaint,” *Glinka v. Wundsck*, No. 10472 (Alameda Super. Ct. Oct. 18, 1894) (business dispute); “Complaint for Maintenance,” *Heringer v. Heringer*, No. 10431 (Alameda Super. Ct. Oct. 3, 1894) (divorce). Both files are available in the Stanford Law School Library collection, described *infra*.

⁴ See, e.g., Jenni Parrish, *A Guide to American Legal History Methodology With an Example of Research in Progress*, 86 L. LIB. J. 105 (1994).

⁵ See, e.g., Jamil S. Zainaldin, *Emergence of a Modern American Family Law: Child Custody, Adoption, and the Courts, 1796–1851*, 73 NW. U. L. REV. 1038 (1979) (using court records for tracing adoption social characteristics); Robert A. Stein & Ian G. Fierstein, *The Demography of Probate Administration*, 15 U. BALT. L. REV. 54 (1986) (probate demography).

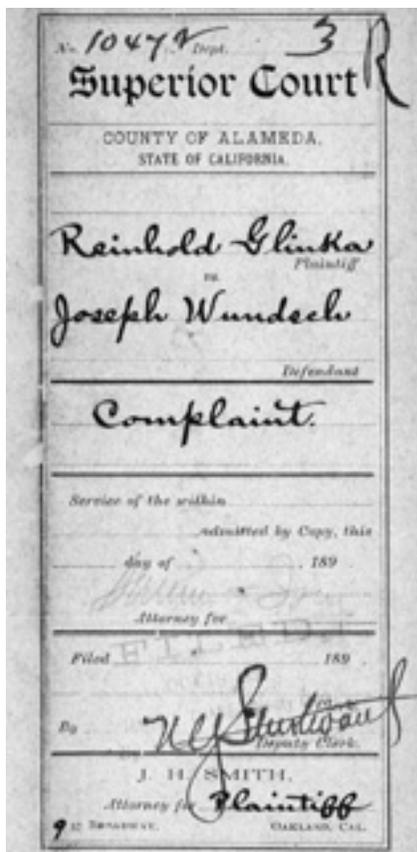
⁶ Davis, *supra* note 1, at 242–43 (explaining the crime of “cheating or swindling,” often applied to the theft of gold dust); Thomas R. Phillips, *Justice in the New State Capital*, 74 TEX. B. J. 195 (2012) (describing a crime for “marking an unmarked hog without the consent of the owner”).

⁷ See generally Rodd E. Cheit, *The Elusive Record: On Researching High-Profile 1980s Sexual Abuse Cases*, 28 JUST. SYS. J. 79 (2007) (addressing difficulty of finding and accessing state trial court documents).

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*.⁹ 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.¹⁰ 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.¹¹

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



⁹ See *Vermont State Archives Awarded Grant to Preserve Court Records*, VSARA'S QUARTERLY NEWSLETTER (August 2011), http://vermont-archives.org/publications/records/Fall2011/Fall2011_news_grant.html; see also *District Court Records*, UTAH DIVISION OF ARCHIVES AND RECORDS SERVICES (May 13, 2008), <http://archives.utah.gov/research/guides/courts-district.html> (last visited Oct. 5, 2012).

¹⁰ Bill Kroger, *A History of Texas in 21 State Court Records*, 74 TEX. BAR J. 190 (2012); Ken Wise, *The Trial of John Wesley Hardin*, 74 TEX. B. J. 202 (2012); James Holmes, *State of Texas v. Frank Hardy and the Bonnie and Clyde Murders*, 74 TEX. B. J. 214 (2012).

¹¹ Stephanie Claytor, *Truman Students Help Preserve County Court Records*, HEARTLAND CONNECTION (Apr. 18, 2012), <http://www.heartlandconnection.com/news/story.aspx?id=743744#UEUBSfIQmw> (last visited Oct. 5, 2012).

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

¹² Edwin G. Surrency et al., *Legal History and Rare Books*, 59 L. LIB. J. 71, 73 (1966).

¹³ *Id.*; see also Texas Court Records Preservation Task Force, *Report on the Preservation of Historical Texas State Court Records* (hereinafter *Texas Report*), SUPREME COURT OF TEXAS, at 3, 30–31, 51 (Aug. 31, 2011), <http://www.supreme.courts.state.tx.us/crptf/docs/TaskForceReport.pdf> (last visited Oct. 5, 2012).

¹⁴ Surrency et al., *supra* note 12, at 73.

¹⁵ *Id.*

¹⁶ See also *Texas Report*, *supra* note 13, at 30–31.