

**Report on the Preservation of
Historical Texas State Court Records**

By:

**The Texas Court Records
Preservation Task Force**

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Members of the Task Force 2011 - 2012

Chair: Bill Kroger, Partner, Baker Botts L.L.P., Houston

Vice Chair: Mark Lambert, Deputy Commissioner, Archives and Records,
Texas General Land Office, Austin

Bob Brinkman, Texas Historical Commission, Austin

Cheryl Carrabba, Conservator, Carrabba Conservation, Austin

Hon. Mark Davidson, Judge, Multi-District Litigation Asbestos Court, Houston

Hon. Sarah Davis, Texas House of Representatives, District 134, Houston

Hon. Craig Eiland, Texas House of Representatives, District 23, Texas City

Jan Ferrari, Texas State Library and Archives Commission, Austin

Deana Galloway Uhl, Marathon Oil Company, Houston

Jim Grace, Partner, Baker Botts L.L.P., Austin

Daniel Guajardo, Office of the Attorney General of Texas, Austin

Mary Hayes, Archivist, Fort Worth

Hon. Laura Hinojosa, District Clerk, Hidalgo County, Edinburg

James Holmes, Owner, Law Offices of James Holmes P.C., Henderson

Hon. Joan Huffman, Texas Senate, District 17, Houston

Hon. Donna Kay McKinney, District Clerk, Bexar County, San Antonio

Hon. Jason Murray, District Clerk, Galveston County, Galveston

Alexandra Myers, Director of Archives, State Bar of Texas, Austin

Eric J.R. Nichols, Partner, Beck Redden & Secrest L.L.P., Austin

Hon. Shelia Norman, District Clerk, Bell County, Belton

James W. Paulsen, Professor, South Texas College of Law, Houston

Carl Reynolds, Executive Director, Office of Court Administration, Austin

Hon. Amalia Rodriguez-Mendoza, District Clerk, Travis County, Austin

Laura Saegert, Texas State Library and Archives Commission, Austin

Tiffany Shropshire, Archivist, Supreme Court of Texas, Austin

Dr. Andrew J. Torget, Department of History, University of North Texas, Denton

Hon. Olen Underwood, Presiding Judge, Second Administrative Judicial District, Conroe

Hon. Ken Wise, Judge, 334th Judicial District Court, Harris County, Houston

Hon. James T. Worthen, Chief Justice, Twelfth Court of Appeals, Tyler

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EXECUTIVE SUMMARY

Texas has a unique collection of historical state district and county court records (“Records”)¹ that date back to the Republic of Texas. These Records are among the most important historical documents in the State. They contain important information about famous Texans, and record the lives of ordinary Texans during historic eras (such as the Republic of Texas, the Civil War, and the Great Depression). For some Texans (such as African Americans), these documents may contain the only written records that exist about their ancestors. These Records are maintained by district and county clerks, and are stored in more than 500 storage facilities located in counties throughout Texas.

The Texas Court Records Task Force (“Task Force”) has spent two years volunteering time to study and learn about the preservation of these Records. The Task Force learned about Record preservation practices and procedures from the clerks, and also inspected Records and storage facilities. In many instances, counties are adequately preserving their Records. In other instances, however, counties throughout the State need substantial help. Many Records are decaying or being destroyed due to a confluence of events and conditions, including (i) improper storage and handling, (ii) the effects of moisture and temperature fluctuations, (iii) the ravages of rats, bugs and vermin; and (iv) the acidity of the ink and the poor quality of the paper. Many Records have been destroyed by fires, hurricanes, or other natural disasters. In some instances, Records have been given away in the past by government officials or stolen by thieves and sold

¹ The scope of the Task Force’s commission by the Texas Supreme Court is to examine preservation of historic Texas and county court records. For this report, the Task Force has defined a “historical court record” as a court record dating before 1951, the preservation date under Texas State Library and Archive Commission standards. The Task Force has studied only state district and county court records, and thus has not studied (i) appellate court records, (ii) court records of the federal district or (iii) non-court records found, for example, in county court archives. In this report, the term “Records” generally refers to historical, pre-1951 Texas state district and county court records. However, some district courts have historical records that are not strictly court records, such as immigration documents, which are also included in this definition of “Records.”

on the Internet. Many counties do not supervise public access to their Records. In many instances, these historic Records are stored in dilapidated buildings (with no air conditioning or climate controls), and even in railcars and storage bins. Sometimes they are stacked on floors, or in rooms with cleaning supplies and holiday decorations. The condition of these Records make them hard for the public to safely access. In many instances, just unfolding the Records will cause them to break. The clerks are skilled in the management of electronic and other modern court records, but typically are not trained in historical record preservation. While clerks now have access to some preservation funds, many clerks, especially those in some of the oldest counties with small populations, have not been able to collect enough money to preserve many Records. Many, many clerks have asked the Task Force for help.

In this report, after describing and documenting these problems, the Task Force has identified numerous action items, including better training for clerks, the adoption of better Record handling, storage, and preservation policies and procedures, and better enforcement by state officials against thieves who are stealing these documents. These steps are necessary to protect these Records so that they will be available to future generations of Texans.

OVERVIEW

In his classic song, *Hardin Wouldn't Run*, Johnny Cash sang that outlaw John Wesley Hardin was a steadfast man. Truth is, Hardin was not so firmly fixed. After shooting Deputy Sheriff Charles Webb in Comanche County in 1874, Hardin fled Texas and headed east. Texas Ranger John B. Armstrong pursued Hardin and found him on a train outside Pensacola, Florida several years later. Armstrong overtook Hardin after Hardin got his pistols tangled up in his suspenders when he tried to draw. He was brought back to Comanche County, Texas, and put on trial before a jury of twelve citizens of the county. Bob Dylan, in his Hardin song, sang that “no crime held against him could they prove.”² That is also incorrect. Unlike Jesse James and Billy the Kid, who were both gunned down, John Wesley Hardin, who killed many people in multiple states, was convicted of murder in 1878 and sentenced to prison in Huntsville, Texas.³

The historical documents that record the true story about the trial and sentencing of Hardin are at risk of being stolen, destroyed, or lost. The District Clerk of Comanche County is so worried about these records that she keeps the case file in a secret place in her office. This case file is fragile and could easily break into pieces the next time it is handled. The minute books that contain information on the trial and sentencing are stacked unpreserved on shelves in a side room; old water damage is visible in the ceiling above. The Task Force offered assistance to protect these records; the District Clerk readily agreed – she understood the importance of these documents. The Task Force has now preserved these records through donations by the State Bar of Texas and the law firm of Baker Botts L.L.P.

² B. Dylan, “John Wesley Harding,” from the album *John Wesley Harding* (1967). Dylan, maybe recognizing that his “Harding” was not like the historical “Hardin,” added a “g” to his name.

³ Hardin served time and was later released. He then tried to practice law in El Paso. Not surprisingly, he had a hard time finding clients. He was later shot in the back of the head by John Selman Sr. in 1895. The Chair of the Task Force has seen court papers from Selman’s killing of Hardin for sale on the Internet.

The Hardin records are not unique. Thousands of other Records are stored in hundreds of Texas district and county clerk archives. Some of these facilities are excellent; some of these Records are preserved, or in the process of being preserved. But many of the oldest Records – especially those that date back to the Republic of Texas, early statehood, or the Civil War – are at risk of being lost forever, unless measures are soon taken to help district and county clerks protect them.

The Task Force was formed to study and report on the preservation of historic Texas state district and county court Records. This report is a first step towards outlining the problems facing Record preservation, and developing a preservation plan for these important documents.

I. Background

The Task Force was commissioned on November 16, 2009, by order of the Supreme Court of Texas, to study Record preservation, and issue a report on its findings. The members of the Task Force include lawyers, judges, district clerks, historians, archivists, and conservators. All members are volunteers. It also includes representatives of branches of Texas government and state agencies, including the Supreme Court of Texas, the Texas Legislature, the Texas State Library and Archives Commission, the General Land Office, the State Bar of Texas, the Texas Office of Court Administration, and the Office of the Attorney General. The Task Force was recommissioned in July 2011, with some changes in membership for the next term. Bill Kroger, Partner, Baker Botts L.L.P., is Chair of the Task Force, and Mark Lambert, Deputy Commissioner, Archives and Records, Texas General Land Office, is Vice-Chair.

During the past two years, the Task Force gathered and examined information important in reaching the conclusions and recommendations expressed in this report. One important source of information came from district and county clerks who are ultimately responsible for the preservation of their local Records.

Each county has a district clerk, and that clerk is the custodian for all state district courts in that county. Some counties have one district court, while others (like Harris, Bexar, and Travis counties) have many district courts. The district courts are the basic criminal and civil trial courts in the state, and handle the larger lawsuits in each county based upon the amount in controversy.

Each county also has a county clerk, and that clerk is the custodian for the county courts in that county. County courts handle cases with smaller dollar amounts in controversy than district courts. Additionally, county clerks are custodians for probate records, which are an

important source of historical information. County clerks are also custodians for other types of records, such as property records. In some counties, the county clerk also functions as the district clerk.

The Office of Court Administration (“OCA”) publishes manuals for both district and county clerks that describes their responsibilities for retaining court records and carrying out other clerk responsibilities.⁴ District and county clerks are also allowed to charge fees for the preservation of their local records. Thus, the responsibility for preserving Records falls within the job duties of the district and county clerks.

The Task Force sent all district and county clerks a comprehensive survey to gather information on the historical importance and condition of each clerk’s Records and problems encountered with their security and preservation. More than 197 responses were received from district and county clerks. Most of the references in this report to statements from clerks come from these survey responses, which are posted on the Task Force website.⁵

Task Force members also visited district and county clerk archives where Records could be directly inspected and wrote more than 20 reports on these visits. The Task Force tried to inspect collections that contained significant historical documents or that appeared to be at greatest risk of loss, based on survey responses. These site visits produced valuable information, which sometimes differed from responses provided in the surveys. Task Force members have only visited a relatively small number of the archives. Many more collections merit inspection.

In addition, the Task Force has had numerous meetings, conference calls, and other exchanges of information among its members for the purpose of understanding, examining and

⁴ The District Clerk Manual can be found at: <http://www.courts.state.tx.us/pubs/manuals/dc-manual.asp>. The County Clerk manual can be found at: <http://www.courts.state.tx.us/pubs/manuals/cc-manual.asp>.

⁵ <http://www.supreme.courts.state.tx.us/crptf/about.asp>

assessing the present status of Record preservation. Finally, while writing this report, the Task Force issued a shorter, informal inquiry to clerks on specific topics, and received approximately 30 additional responses.

The Task Force could not have accomplished its work without the support and participation of many district and county clerks throughout this state. The majority are passionate about their Records and the need to do more to preserve these documents. Many are frustrated that they do not have more money, staff, training, and other resources for preservation. They are often overworked and understaffed and, yet, so many of them set aside time to answer Task Force questions or to meet with Task Force members. The district and county clerks in office today did not cause the problems described in this report – the problems have materialized over time – but they are an important part of any solution to address preservation concerns going forward.

II. The Importance of Historical Texas State Court Records

A. Overview

Some of the earliest Texas court records date back to 1837, the early days of Texas independence. The oldest Texas courts were formed only months after Texas achieved its independence from Mexico. However, because there was an existing Mexican legal system in Texas prior to the Texas Revolution, some archival collections (like those in El Paso and Bexar counties) contain Records that predate Texas independence.

Each of the 254 counties in Texas has at least one district court and one county court. Texas state courts were formed as counties were created, so that the oldest Records are generally found in the oldest counties, such as those in East Texas. There are more than 500 Record archives located throughout the State. This count may underestimate the actual number, because some Records are archived in multiple locations.

Although many Records still exist, significant numbers have been lost, stolen, or destroyed over time, and many more may suffer the same fate in the future. There are many instances over the past 160 years in which Texas courthouses have been destroyed by fire, floods, hurricanes, and other disasters. Approximately 50 courthouses were destroyed by fire.⁶ Despite these events, Texas probably has one of the largest collections of historical court records in the United States.

The importance of these Records cannot be overstated. The County Clerk for Leon County stated simply and accurately: “Preserving these court records for historical value is extremely important.”

⁶ Mavis Parrott Kelsey and Donald H. Dial, *The Courthouses of Texas: A Guide* (College Station: Texas A&M University Press 1993), p. 12.

The archive holdings of the district and county clerks contain a diverse mix of documents. For example, the District Clerk of Fort Bend County, like many district clerks, has historical civil and criminal case files, index books, court minutes, tax suits, divorce records, medical registers, naturalization records, records of declaration of intention, trust fund records, and grand jury minutes. The District Clerk of Galveston County also has these types of records, as well as admiralty records from the First Judicial District of Texas, maps and even volumes that contain personal notes of 19th century judges.

Nearly every district and county clerk reported that their Records contain important historical information about their communities. For example, the Chambers County District Clerk gave a compelling description of the importance of its records:

Anahuac was a port of entry for early Texas colonists. Our county history dated back to 1824 with Texas colonists protesting against Mexican tyranny leading to the Texas Revolution of 1836 and although all of this information may not be found in the District court records, the family histories, land disputes, oil and gas production, farming and irrigation systems, and cattle production by such great men as Governor Ross Shaw Sterling, Thomas Jefferson Chambers, for whom the County of Chambers is named, Solomon Barrow, James Taylor White, and others are sprinkled throughout our records, some still to be discovered by historians.

B. Historic Texans

During the past two years, the Task Force has become aware of many examples of Records that contain information about historic Texans. Many of these Records are unknown outside of their relevant counties:

- Several counties have Records associated with Sam Houston. The Henderson County Clerk has the probate records of Sam Houston. Nacogdoches has pleadings and other records pertaining to Sam Houston. The Kerr County Clerk has “a certification of election signed by Gov. Sam Houston dated 1860.” The Lavaca County Clerk has “Sam Houston signed land grants.” And the Harris County District Clerk has court records on a lawsuit that Mirabeau

Lamar filed against Sam Houston for damages that Houston allegedly caused to the Republic of Texas presidential home shortly before leaving office. The first minute book from the Harris County District Court reflects that Sam Houston was in attendance the first day the court opened for business. *See Photo 12, below.*

- There are probably fewer Records concerning Stephen F. Austin because he died in December 1836, shortly after the struggle for Texas Independence. But Austin County has various court records signed by Stephen F. Austin.
- Many counties have Records concerning Texans who fought for Texas Independence. For example, the Harris County Clerk has “one probate record book of Alamo defenders” and “one book of Goliad defenders.” Fort Bend County has probate records for Jane Long, an early pioneer considered by some to be “The Mother of Texas.” The Harris County District Court has records pertaining to William Fairfax Gray, who helped secure the original financing for the Republic of Texas.
- Many counties have Records pertaining to famous Texas governors and other politicians. Gonzales County has Records pertaining to J. Pickney Henderson, the first Governor of Texas. *See Photo 11, below.* Travis County has the case file for an election fraud lawsuit filed by Governor Ross Sterling against Governor Miriam “Ma” Ferguson in 1932, in which Sterling accused Ferguson of election fraud by, among other things, letting African-Americans vote in the Democratic primary. Williamson County has the criminal cases that future Governor Dan Moody filed against members of the Ku Klux Klan in the 1920s.
- Many counties have Records about cases handled by prominent Texas judges and lawyers. Harris County has records pertaining to Judge Peter Gray and Judge James A. Baker; McLennan County has court records for Judge R. E. B. Baylor; and Comanche County has

records from Judge Oran Roberts, maybe the greatest Texas jurist of the 19th century. *See Photo 7, below.* The Pecos County Clerk has “bonds for Judge Roy Bean.” Some of the district court minute books from the Republic of Texas (such as those in Galveston and Harris counties) contain rules of procedure and even court opinions that have not been reported or otherwise published outside of these records.

- Many clerks also have Records pertaining to infamous outlaws. In addition to Comanche County, the Navarro County District Clerk also has Records concerning John Wesley Hardin (which were once stolen and later recovered). The Lee County District Clerk has Records concerning the outlaw Bill Longley. The Mason County Clerk has the arrest warrant for the gunslinger Johnny Ringo. Several counties have records pertaining to Bonnie Parker and Clyde Barrow.

- There are also many Records about famous ranchers, cattle drives, and cattle brands that date to the great ranching era of the late 19th century. Donley County has Records pertaining to Charles Goodnight, the famous Texas Ranger and Texas Panhandle rancher. Hidalgo County has Records pertaining to the South Texas ranchers Richard King and Mifflin Kennedy. *See Photo 17, below.*

- There are also Records concerning famous Texas athletes, as well as musicians and other artists. The Galveston County District Clerk has the only surviving Records from the arrests of the prize fighters Jack Johnson and Joseph Choynski for illegal prize fighting in 1901. This was Jack Johnson’s first professional fight. The Bowie County District Clerk has Records concerning the criminal conviction of Huddie Ledbetter, who supposedly sang for his freedom and later became the famous blues singer Leadbelly. McLennan County has the lawsuit that future Governor Wilbert Lee “Pappy” O’Daniel filed against Bob Wills and Tommy Duncan,

seeking to enjoin them from performing on the radio after they left O'Daniel's Light Crust Doughboys to form their own band, the Texas Playboys.

- Many clerks have Records concerning the formation and growth of important Texas businesses and industries. The Chambers County District Clerk has early 20th-century Records for famous Texas companies such as Humble Oil & Refining and Sterling Oil. The Harris County District Clerk has Records pertaining to William Marsh Rice, Jesse Jones, Howard Hughes, the formation of the first Texas banks, the first Texas railroads, the Houston Medical Center, and the Houston Ship Channel. The Galveston County District Clerk has Records pertaining to its maritime industry and some of the earliest retailers in Texas.

C. Historic Events

The Records also contain important information about Texas struggles and tragedies from the 19th and early 20th century. For example:

- In 1842, years after the Battle of San Jacinto, a still bitter Santa Anna directed one of his generals to invade San Antonio. On September 11, 1842, General Adrian Woll (a French-born soldier of fortune) and his force of 1600 entered San Antonio and took some 62 prisoners, including the District Court Judge Anderson Hutchinson and District Clerk James Truehart. The hostages were force marched to Perote Prison just outside of Vera Cruz, Mexico. They were held there for nearly two years; and upon being released, they had to make their way home on foot. Bexar County has the court records and minute books in its archives that date from this difficult time period.
- Records from the 1860s contain lawsuits, probate records, and other documents reflecting the physical and economic hardships caused by the Civil War. For example, one of the difficult legal issues addressed by Texas courts shortly after the Civil War was whether

Confederate debts had to be repaid in U.S. dollars. Another common problem was the collection of unpaid debts that fell into default during the Civil War. The archives contain many Records concerning these issues. A Harris County District Court minute book from 1865 contains the observations of Judge James A. Baker on the closing of the court in May 1865, shortly before the war ended.

- Many Texas clerks possess important records on Reconstruction. These records reflect the changes in practices and personnel as new Reconstruction judges replaced their predecessors. Contrary to popular perception, many of these Reconstruction judges re-opened the courts and restored law and order in the state.

- The Galveston County District Clerk has Records from shortly before and after the Galveston Hurricane of 1900, the worst natural disaster in the history of the United States. The Records are remarkable for how mundane they are – they reflect that the staff of the Galveston County District Court worked tirelessly and heroically to open the court for business within a few weeks of the storm. The Galveston County District Clerk also has the original blueprints for the Galveston Seawall.

D. Historic Information About Ordinary Texans

The Records also contain important information about the lives of ordinary Texans during different, and sometimes difficult, times in Texas. As stated by the County Clerk for Goliad County: “The records we have are very important to the people who have lived here in the past and now.” There are many examples:

- All Texas counties have important Records about the lives of women during the 19th and early 20th centuries. For example, many county and district clerks have Records that concern the rights of women at different times in history to own property, to run businesses, and

to marry (or seek divorce). The historian Angela Boswell wrote a book on the rights and lives of women in Texas between 1837 and 1873 based solely upon Records from Colorado County.⁷ The Harrison County Clerk has probate and property records for Rebecca McIntosh Hawkins Haggerty, a daughter of a famous Creek Indian chief who accumulated property (including slaves) over many years and who, at the time of the Civil War, may have been the wealthiest woman in Texas. The Harris County District Clerk has an 1872 deposition transcript of Charlotte Allen, the woman whose money purchased the land that became the City of Houston. Allen was the first woman to move to Houston and was the individual responsible for naming the city after Sam Houston.

- Many Texas counties have important Records pertaining to the history and struggles of Mexican Americans in Texas. The Hidalgo County District Court has records pertaining to Juan Cortina, the Mexican rancher who invaded Texas and captured Brownsville, instigating the so-called “Cortina War.” See Photo 5, below. Bexar County has records pertaining to early Mexican American patriots like Jose Navarro and Juan Seguin.
- Many counties have Records that chronicle the difficult lives of African Americans during 19th century Texas. For example, Texas probate records provide an important source of information about the horrors of slavery in antebellum Texas. In his definitive history of slavery in Texas, *An Empire for Slavery*,⁸ Randolph B. Campbell, after exhaustive research, concluded that “[p]robate records may be the single most important local source on slavery and society in antebellum Texas.” Probate records contain the names, ages, values, and other

⁷ Angela Boswell, *Her Act and Deed: Women’s Lives in a Rural Southern County, 1837-1873* (Sam Rayburn Series on Rural Life, sponsored by Texas A&M University).

⁸ Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas* (Louisiana University Press 1989), at Appendix 3 (pp. 268-271).

information about slaves, who are identified and described in property records. For some African Americans, these probate records may contain the only surviving information about their ancestors. Important Records pertaining to African Americans are also found in district clerk archives. Professor Campbell found that “District Court Records constitute a second major set of local government documents that are highly revealing of a slaveholding society’s concerns.” *Id.* Clerks also have Records pertaining to African Americans who were free and living in Texas during the time of the Republic of Texas, as well as the early experiences of African Americans freedmen. From his research, Professor Campbell found important records concerning slavery in district court and county clerk archives in 47 counties. *Id.*

- Some clerks have records pertaining to Native Americans, even though 19th century conflicts between Native Americans and Anglo settlers largely occurred outside of courthouses. The Jack County District Clerk has the only surviving Records from the trial of Kiowa Chiefs Santanta and Big Tree in July 1871, one of only two instances in which Native American chiefs were put on trial. Some counties, such as the aptly-named Comanche County, have Records that reflect the degradation of settlements when soldiers were withdrawn from Texas during the Civil War, and Indian attacks terrorized Texan communities. The county clerk for Grayson County also found that “Grayson County borders the State of Oklahoma and some probate files contain information regarding Indian territory and wills of Native Americans.”

- Many, if not most, district and county clerks have Records pertaining to the citizenship of their residents. Most Texas district and county court archives contain naturalization and immigration records on Texas immigrants. The Galveston County District Clerk probably has the largest collection because Galveston was for decades a national immigration center. The Galveston district clerk even has photographs taken upon the arrival of

new Texas immigrants that date from the early 20th century. *See, e.g.*, Photo 10 below. Most counties have minute books that contain references to immigrants from other countries who emigrated to Texas and sought permission to reside in the state. Many counties also have “declarations of intention” from the early 20th century, in which Texans declared their loyalty to, or intentions to become citizens of, the United States.

- All counties have Records that reflect the morals and customs of Texas citizens during the past 175 years. There are many examples where courts used the judicial system to try to dissuade residents from gambling, drinking, and engaging in prostitution and other unsavory behavior. The Task Force saw many Records, for example, that describe the illegal gambling games popular with certain Texans during the 19th and 20th centuries. The Galveston District Court has Records pertaining to the closing of the infamous Balinese Ballroom. All of the district courts have Records reflecting punishments for early Texans who failed to show up for jury service. The Colorado County District Clerk has Republic of Texas Records pertaining to a theft in which the thief’s punishment was lashes and branding. All district and county clerks have information on early possessions and belongings of Texans. The Galveston District Court, for example, has many cases in which 19th century Texans failed to pay for goods and services purchased from retailers of the era.

E. Records Hard to Access

Historians who are familiar with the Records appreciate the wealth of information they contain. The Montgomery County District Clerk recounted a report from one historian who recently looked at the Records:

We have a letter from a local historian, Kameron Searle, expressing his concern that many of these court documents are in danger of being lost through deterioration. He has done extensive research on the history of Montgomery County and states, “documents found in two of [the Montgomery County District

Clerk] case files have been especially important to his research regarding the large pre-Republic of Texas settlement in Stephen F. Austin's Colony known as the Lake Creek Settlement. It had been forgotten for over a hundred years until [he] began [his] research."

There are untold stories about the lives of both famous and ordinary Texans in these Records. There are many instances where this Task Force reviewed large collections of Records from the 19th century that do not appear to have been opened or examined within the past 160 or more years. Some of these stories will be important to historians; others will be important to Texans living today and in the future, looking for information about their ancestors. To give just one example, the Chair of this Task Force took a photograph of an immigration record pertaining to one of thousands of immigrants who came to the United States through Galveston. The Chair then searched this person's name on the Internet and found a website where descendants of this person were trying to find information about him. The descendants had assumed that their ancestor had come into this country through Ellis Island in New York, and were surprised to learn that he had entered the United States from Galveston. There are presumably thousands and thousands of individuals looking for information on ancestors who have no idea that the information is buried in the archives of the Texas courts.

F. Importance of Texas Judicial System

And, finally, the Records tell the important story about how the Texas legal system, with its laws and a mature and independent judiciary, played an important role in the growth and development of Texas. By the 1840s, Texas had a formal written set of rules governing the practice of law and a network of courthouses staffed with capable judges. Lawyers could subpoena witnesses; take depositions on written questions; cross examine witnesses; file complex pleadings, briefs, and pleas; try cases before juries; record deeds and other real property records; probate wills; and enforce contracts. Criminals were typically tried in a court before

juries and represented by counsel. Ordinary Texans showed up for jury service when the court was in session, and were punished regularly if they failed to appear. The Texas legal system was fundamental to the creation of complex businesses such as early Texas banks, utilities, oil and gas companies, and railroads. The importance of the early Texas courts is reflected in the development of many Texas towns, where the center of the county seat was not a church, army base, or shopping mall, but the courthouse.

These records chronicle the story of how our state became Texas, and of the many struggles, fights, and difficulties our forebears endured and overcame. These records contain important lessons and historical data. Lawyers and judges would be well-served to consult these Records and the stories they reveal when reflecting upon their own roles and responsibilities in their communities. These Records will be studied and appreciated by historians, lawyers, and ordinary Texans as long as they are made available and preserved for such purposes.

G. *Photographs of Examples of Historical Records*

There are thousands of important, historical court records. Here are photographs of just a few that illustrate the types of records that exist in these archives.

PHOTO 1: Republic of Texas Form showing transition of “Harrisburg County” to “Harris County” (Harris County).

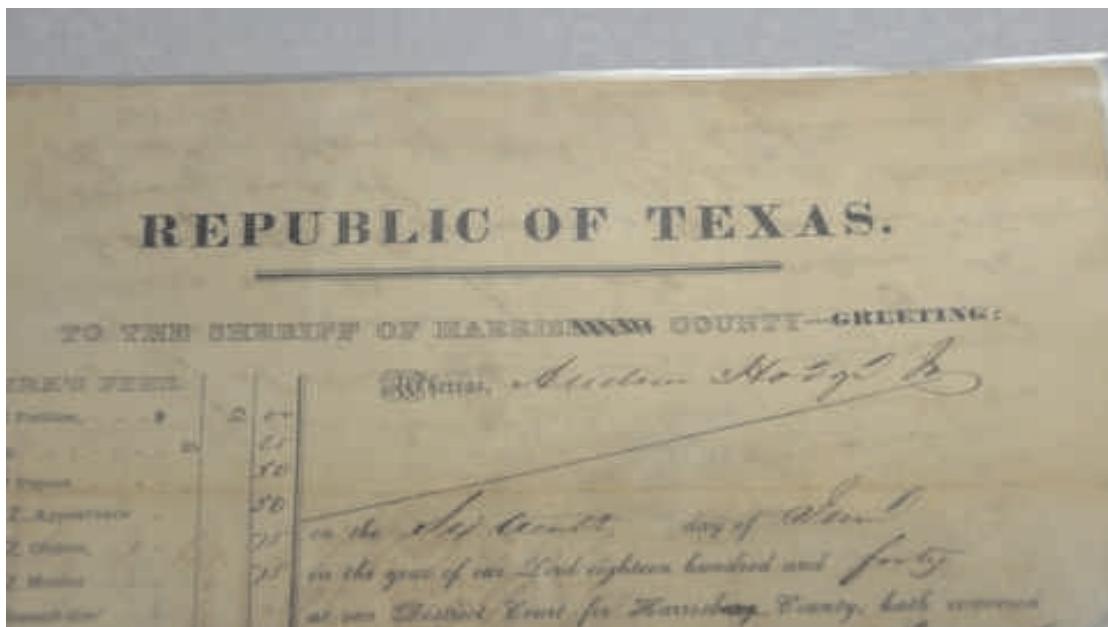


PHOTO 2: Box of unpreserved court records pertaining to Howard Hughes and his father (Harris County).

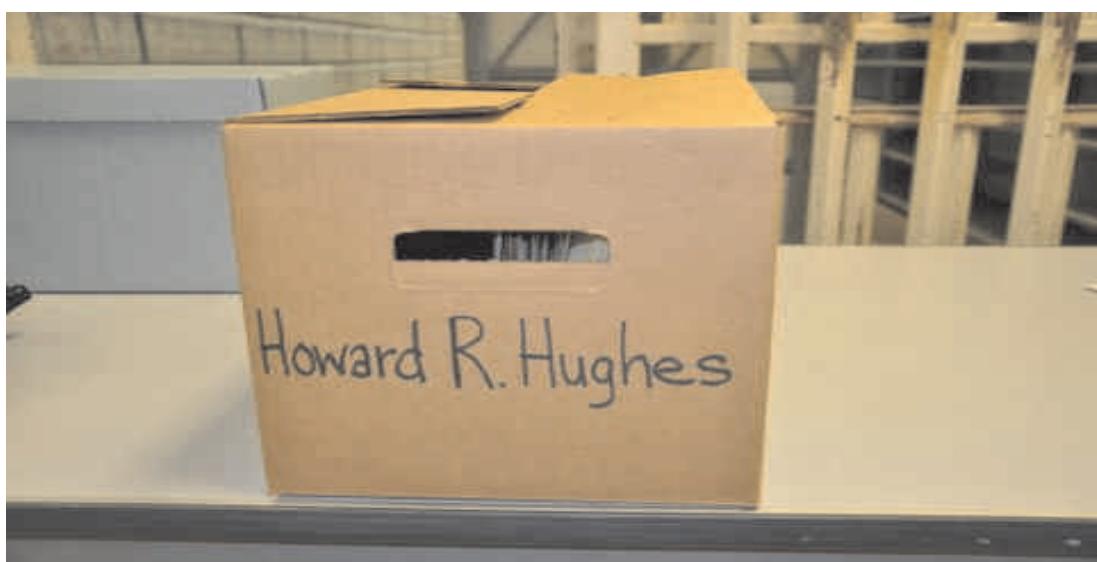


PHOTO 3: Example of restored minute book from 1837 (Harris County).

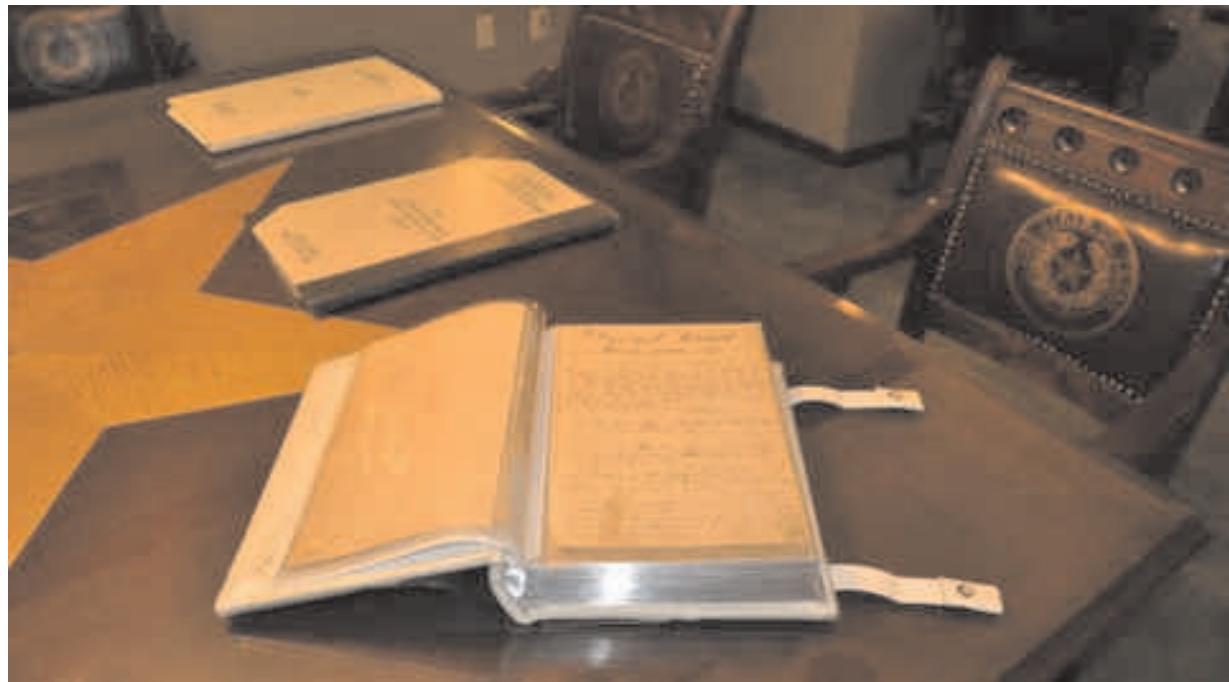


PHOTO 4: Example of preserved minute book from the Civil War era (Harris County).

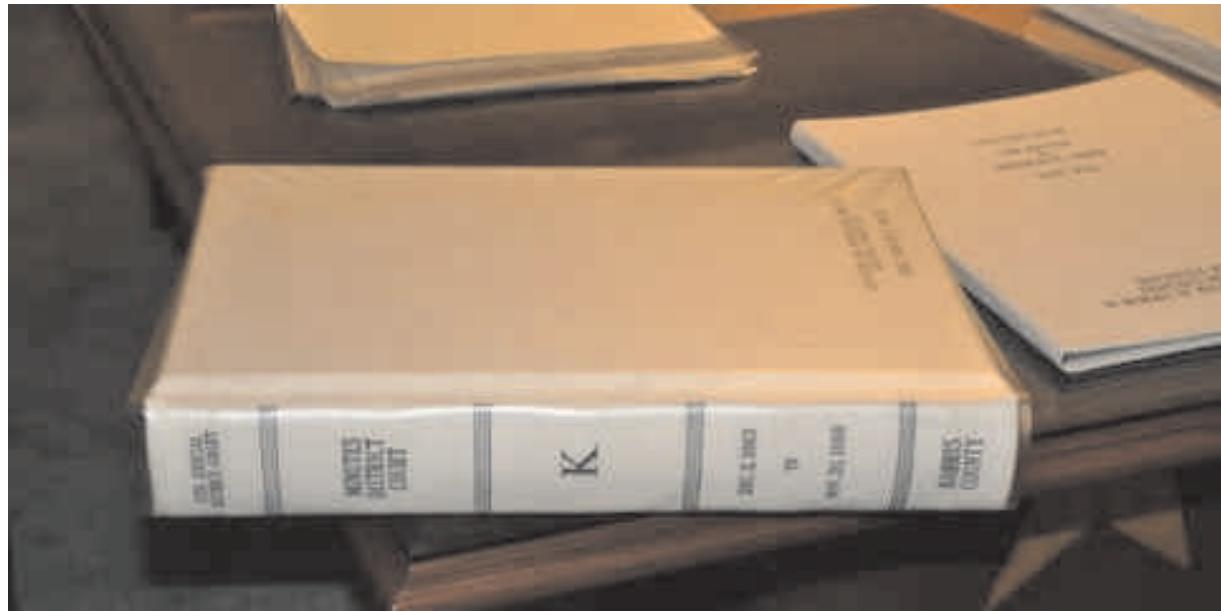


PHOTO 5: Two Indictments Against Juan Cortina for stealing cattle on April 27, 1859 (Cameron County).

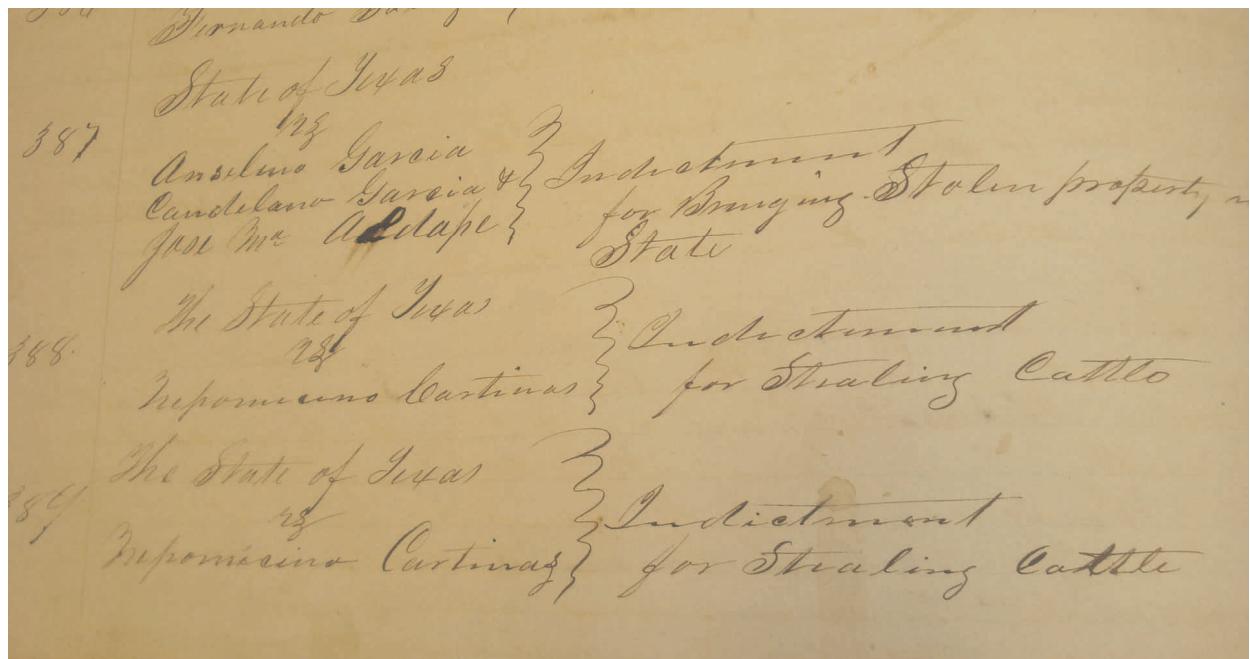


PHOTO 6: Minute book record from the trial of John Wesley Hardin (Comanche County).

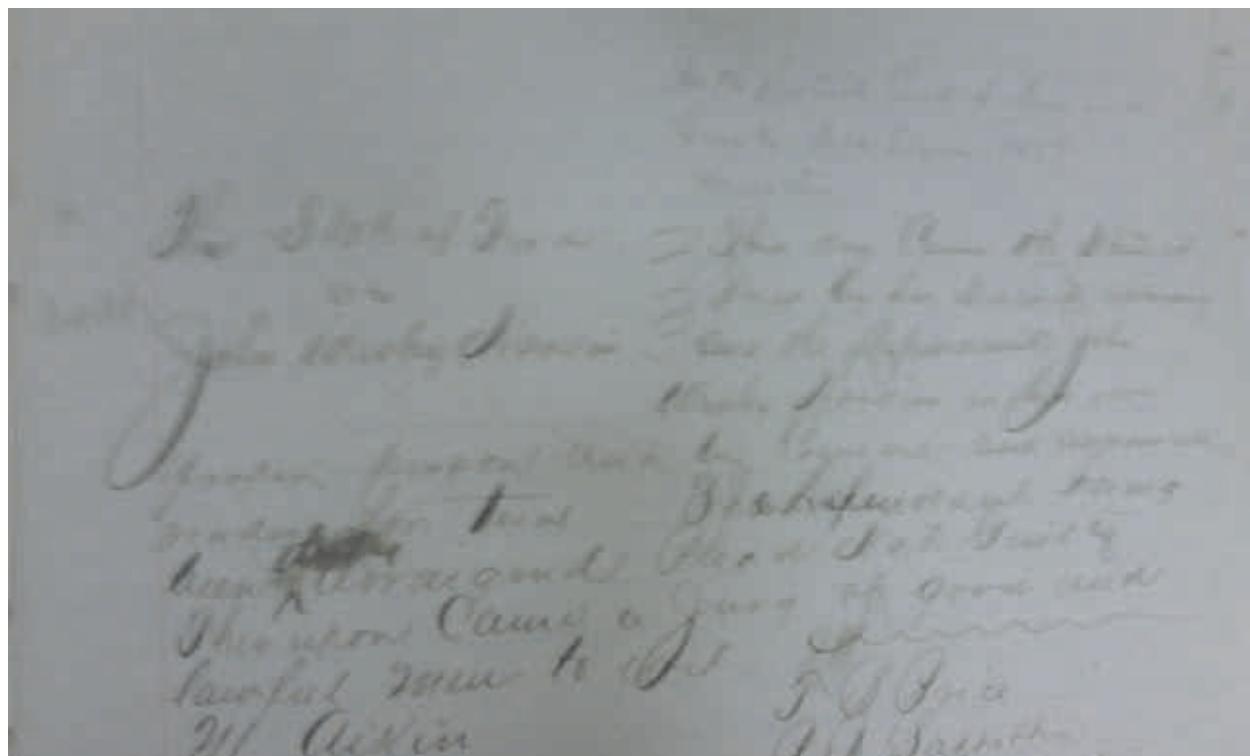


PHOTO 7: Close-up of minute book from Ellis County. Reflects Judge O.M. Roberts, one of the greatest Texas lawyers of the 19th century, presiding over a matter (Ellis County).

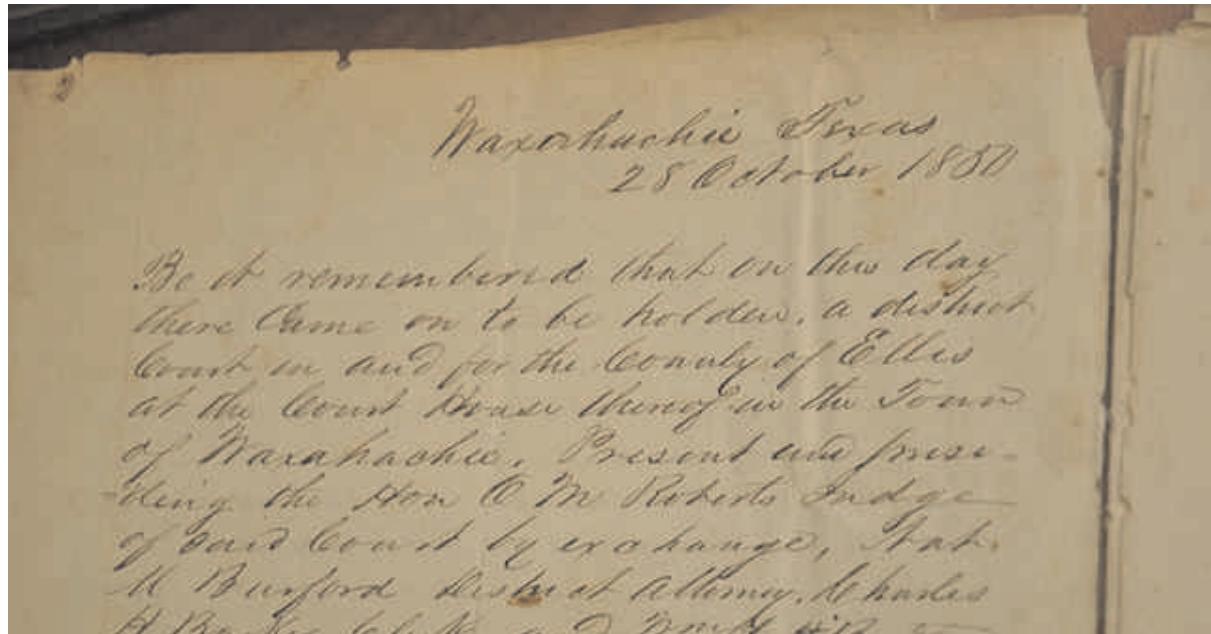


PHOTO 8: Minute book from 1850s containing an early map of Galveston Island (Galveston County).

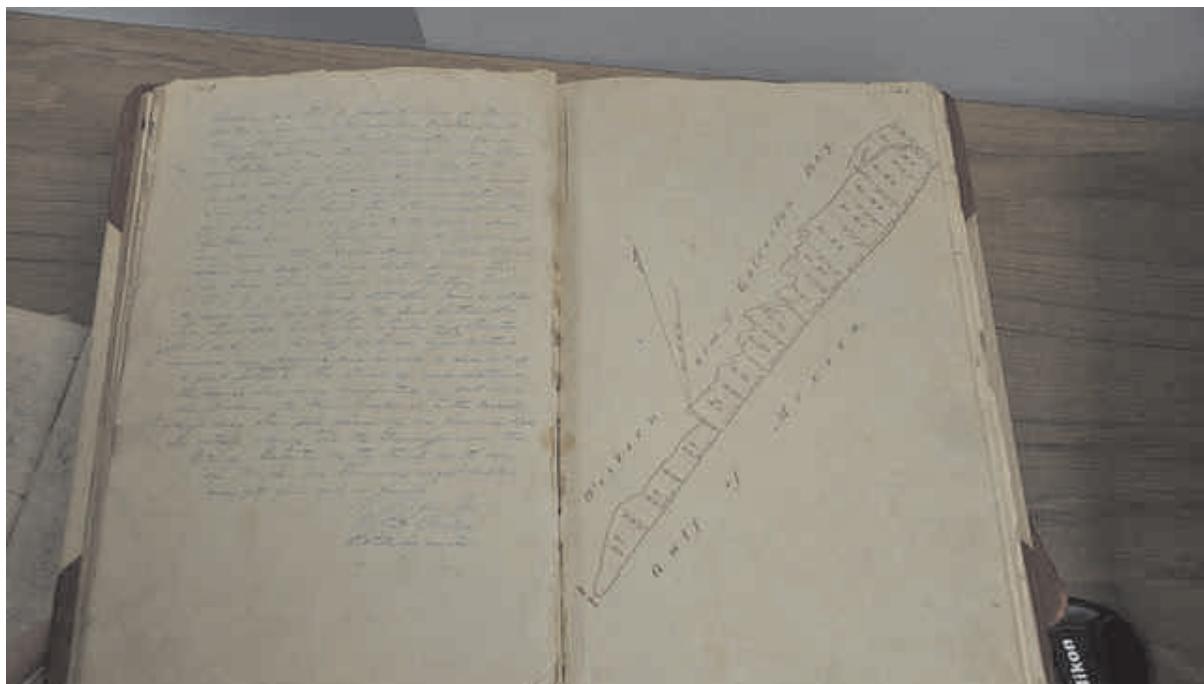


PHOTO 9: Galveston minute book from 1850s. The clerk who made this drawing must have had time on his hands (Galveston County).

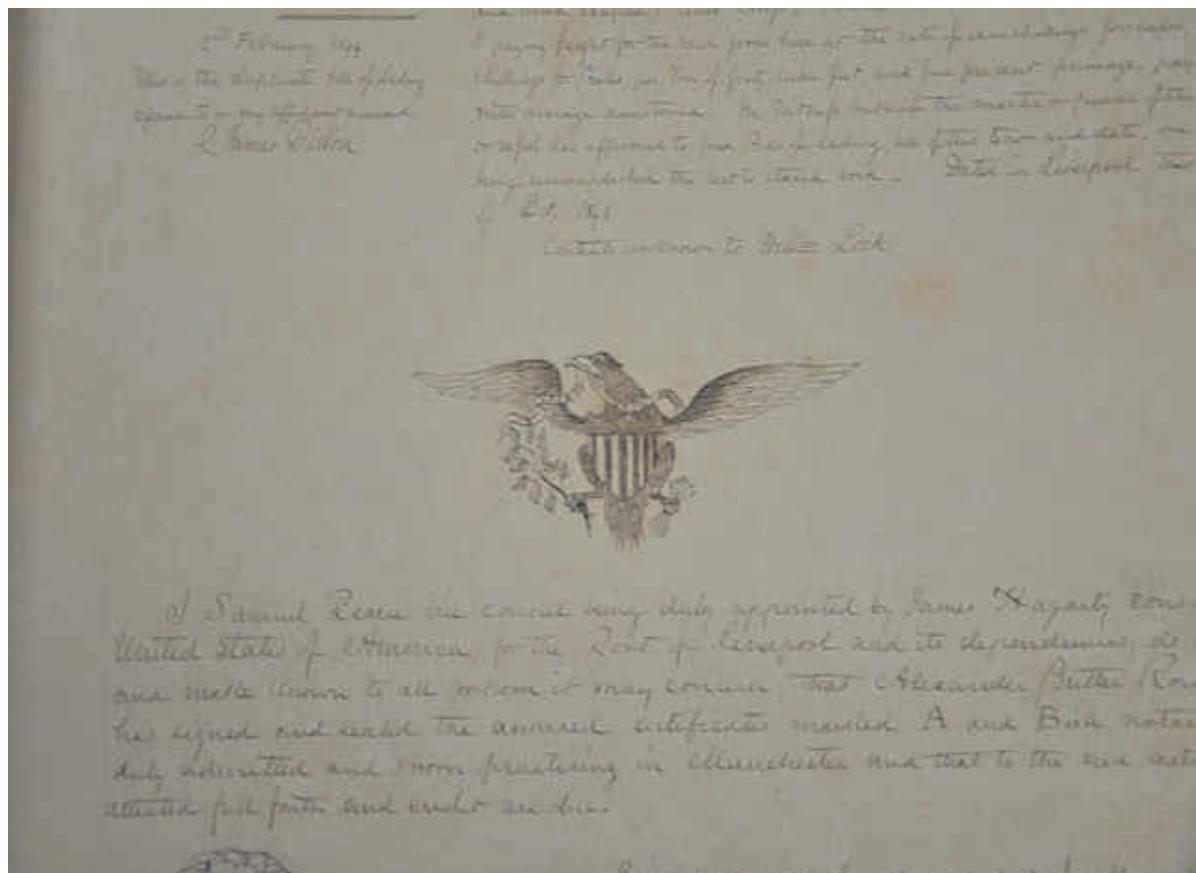


PHOTO 10: An example of a Galveston Declaration of Intention from the early 20th century that contains a photograph and other information on a new American citizen (Galveston County).

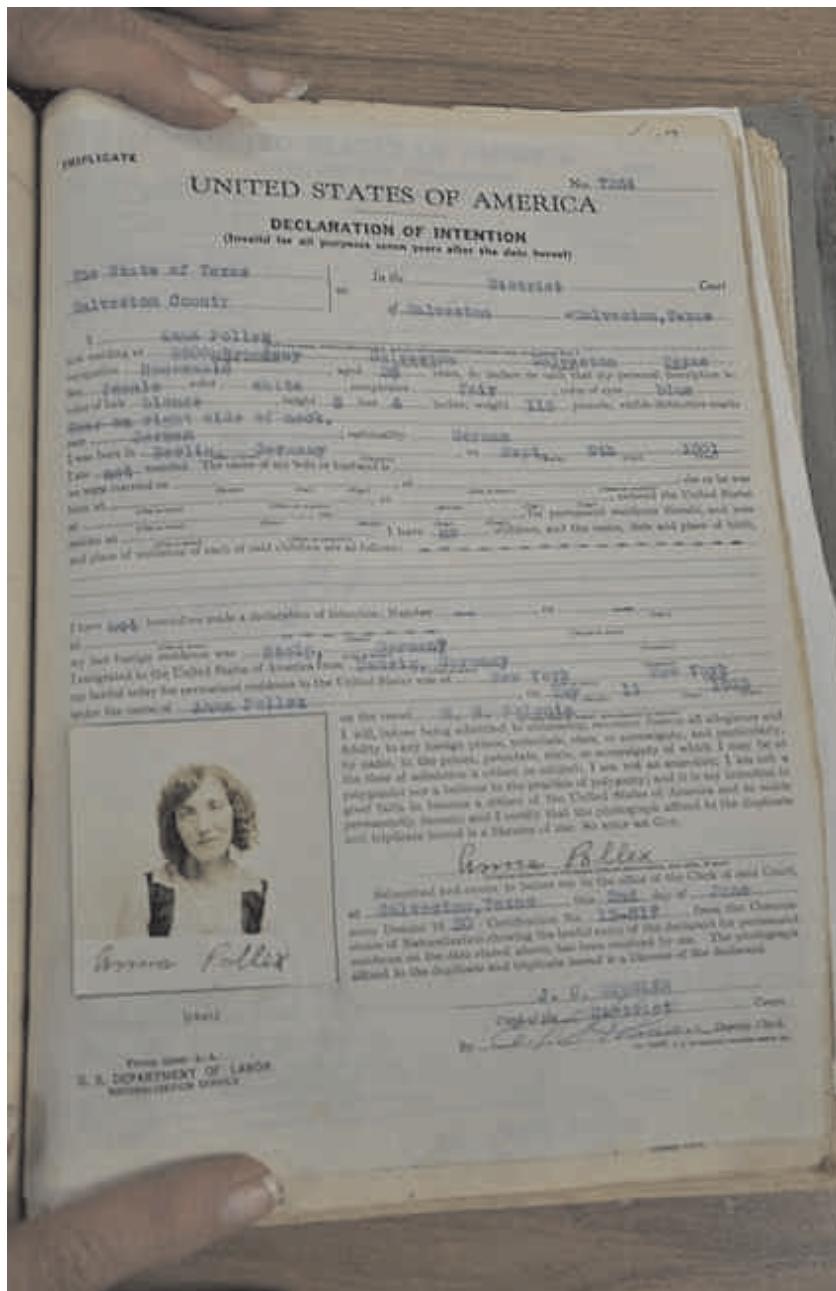


PHOTO 11: An example of a folded case file, *J. Pickney Henderson v. A. Kelso*, involving a famous Texan. Henderson was the first Governor of the State of Texas. (Gonzales County).

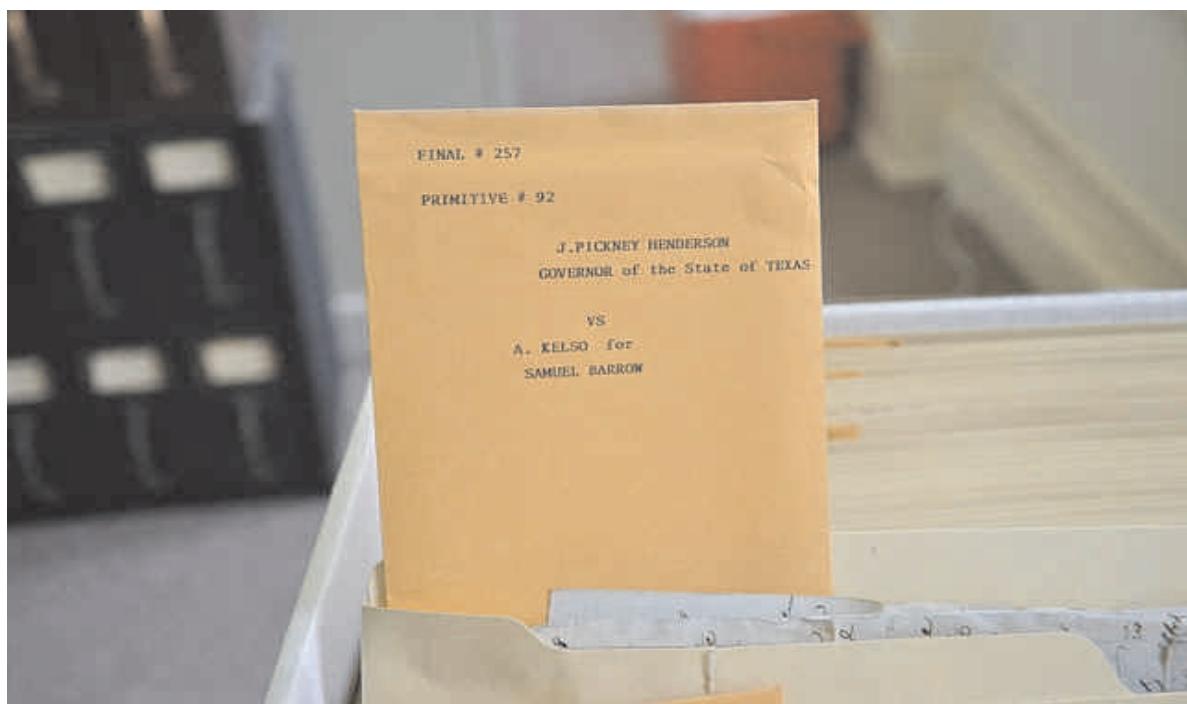
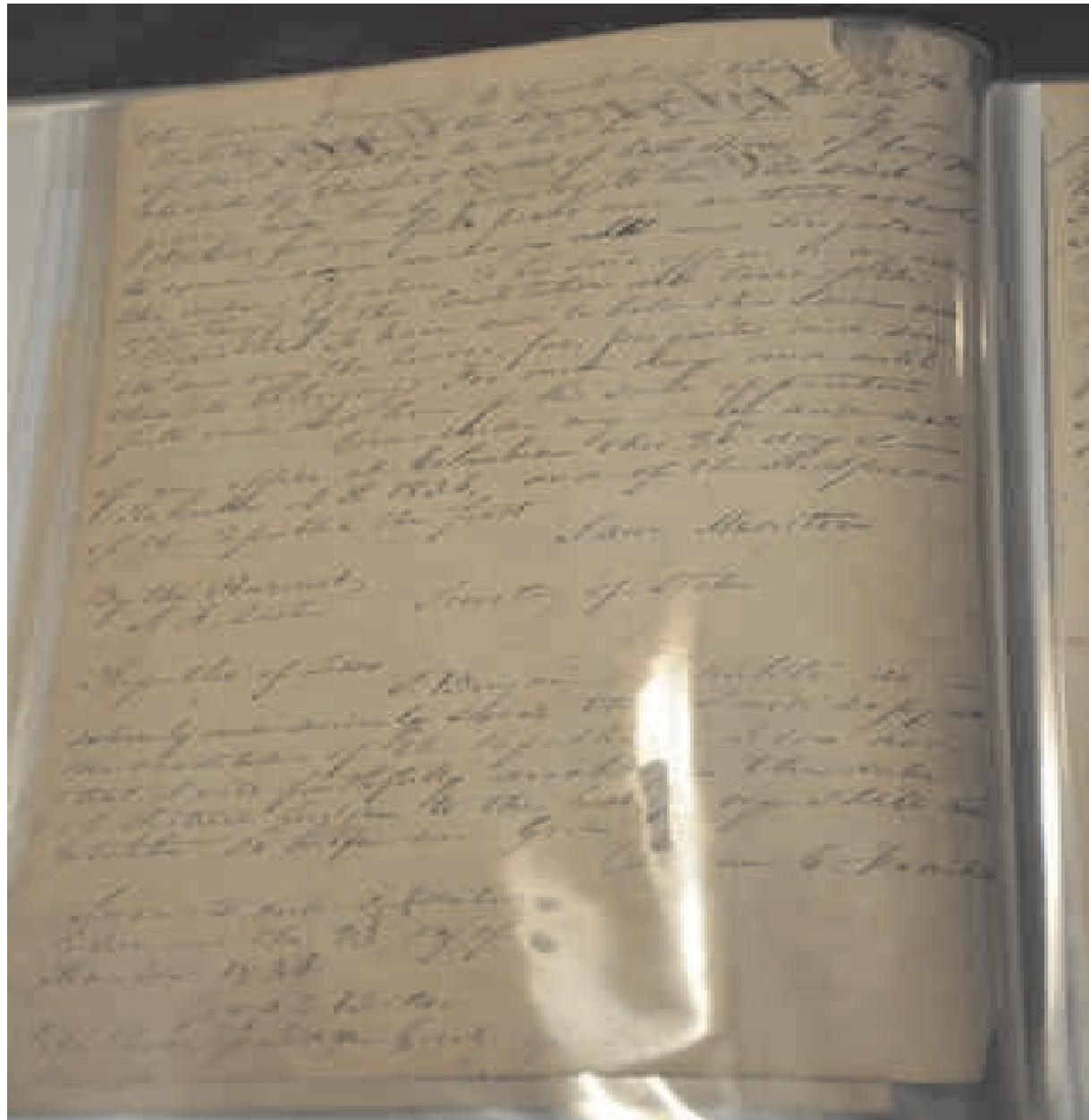


PHOTO 12: Second page from first Harris County minute book. This page shows that Sam Houston attended the ceremony. (Harris County).



III. The History of Texas, as Told Through Twenty Records

The Task Force concluded that one of the best ways to illustrate the importance of the Records and raise awareness of the need for better preservation was to identify and preserve twenty significant, unpreserved Records that, collectively, tell some of the history of the State of Texas. The State Bar of Texas and the law firm of Baker Botts L.L.P. donated the funds necessary for the preservation of these records. Louisiana Binding Service, Inc. agreed to provide the preservation services at a reduced rate. District and county clerks agreed to loan some of their prized Records for this Project, and allow them to be shown at upcoming conferences to help raise awareness.

These Records will be unveiled at the hearing before the Texas Supreme Court on September 26. Prior to their preservation, many of these records were newly discovered, thought missing, or were otherwise unknown outside of the counties where they are maintained. These Records are historically significant, and their unveiling will be a highlight of the hearing. They have been beautifully preserved by Louisiana Binding, who will be available at the hearing to discuss their preservation. Shortly before the hearing, the Task Force will also be filing with the Court a second report with information about each of these Records. The State Bar of Texas has agreed to dedicate part of an upcoming edition of the Texas Bar Journal to the stories behind each of these Records. The Task Force hopes that after the hearing, the Court and the public will take time to inspect and learn more about these Records.

IV. The Deterioration of Historical Texas State Court Records

A. Overview

The Task Force observed or received information on many positive developments concerning the preservation of Records. Many district and county clerks recognize the need for better preservation and are doing an excellent job storing and securing their records, even with limited resources. For example:

- The district clerks of Nacogdoches and Harris counties have active preservation programs in place, have built special archival storage rooms, and have preserved many of their Records from the 19th century.
- Bell and Tarrant Counties have recently built state-of-the-art document storage facilities to preserve their historical records, including their court records.
- The Midland County District Clerk reported that its records have been moved recently from a cinder-block building with “no bug, rat, mice or bat control” to a new courthouse with climate and bug control.
- The Colorado County District Clerk, on a very small budget, has secured, carefully scanned, and indexed its Republic of Texas Records, so that persons wanting information in these Records can readily find it without having to disturb the original documents.
- The Lavaca County Clerk obtained a grant from the National Endowment for the Humanities to perform a preservation site survey of its facilities and to deliver a workshop on records preservation. According to the Lavaca County Clerk, “dedicated volunteers” are “cleaning mold and years of dust from boxes of historical records that were improperly stored, and are now stored in a climate controlled facility.”

- The Bexar County District Clerk has been collecting preservation funds for over two years, and is using these funds to preserve its index and minute books dating between 1836 and 1900. The Bexar County Clerk also used funds to upgrade the HVAC and security systems for the Records storage facility.

Even in those counties without active preservation programs underway, many Records are in reasonably good shape due to a combination of luck and other factors. Some district and county court archives are located in dry climates. Some of the Record paper, particularly in bound volumes such as minute books, is thick and durable, and some Record inks are more permanent and less acidic than others. Some Records have not been handled for 100 or more years, and thus are preserved in their original state. Some of these Records have been stored in locations that are dry, secure, dark, and have reasonable, stable temperatures.

The Texas Legislature has also recently taken steps to help protect Records. District and county clerks are allowed to collect preservation fees for certain types of filings. Many district and county clerks are beginning to collect those fees and, for the first time in recent history, have some funds available for preservation. During the 82nd Session in 2011, the Texas Legislature, with leadership from Representative Sarah Davis and Senator Joan Huffman, passed House Bill 1559 into law, which requires that Texas state court records be retained up through the year 1951 until a new document retention schedule is approved by the Texas State Library and Archives Commission (the “Texas State Archives”). The Texas State Archives passed such a schedule in 2011.

Despite these positive steps, thousands of Records in every part of Texas are in serious risk of damage, destruction, or theft. The Task Force observed in almost every archive it visited numerous examples of Records that are stored improperly, left in unsecure places, or severely

damaged. These observations were confirmed by survey responses from many district and county clerks, who reported many stories and examples of how these Records continue to deteriorate state-wide. The purpose of this section of the Report is to document those findings.

B. Many Old Records Are Deteriorating

The Records that are most vulnerable, in the worst condition, and are often the most valuable date back to the Civil War, the Republic of Texas, or even earlier times. There are numerous reasons why these Records are at risk of being lost forever. Republic of Texas paper was sometimes of very poor quality. The ink from this era can be very acidic, and can burn holes in paper or fade. *See Photo 31.* These documents are also the oldest and often have been subjected to more wear and tear. Over the years, many of these Records have endured fires, floods, storms, pipe leaks, extreme changes in temperatures and humidity, and the ravages of insects, rodents, and other vermin.

Some of these Records are so fragile that, in some instances, just opening or handling them can cause damage. *See Photos 30, 31, 32, 36, 37 and 41.* The Fort Bend County District Clerk described the typical condition of many of these records:

Faded, torn, crumpling, fragile. Binding is missing or failing. Case jacket covers are separated at the fold. Records are currently unorganized.

The Galveston County District Clerk gave a similar description:

The pages within [Republic of Texas] docket books and case files are subject to crumpling upon handling. The next highest risk is the iron gall ink disappearing from the pages. Additional problems are ink bleeding through pages causing distorted content on the reverse page and the bindings and cover are disintegrating rapidly.

The Montgomery County District Clerk said the Republic of Texas and Civil War era records are “brittle, brown with age, some mold, various stages of deterioration.” The Nolan County Clerk

reported that the oldest records “have deteriorated over the years and the paper just crumbles when you touch them. In my opinion, there is no way to restore.”⁹ The Harris County District Clerk has plastic bags that contain fragments of Republic of Texas records that are too small and damaged to preserve. *See Photo 34, below.* The Task Force has included photographs at the end of this report section that show these and other types of damage and destruction observed in Texas Record archives.

This deterioration is not limited to just the oldest Records. In many Texas counties, Records from other eras are deteriorating as well. The District Clerk from Blanco County reported that the Records from 1877 to 1920 are tri-folded, and “some cannot be opened for fear of the papers crumbling; others appear to be in better condition, but [the District Clerk is] very guarded about allowing anyone to view for fear of destroying them.” The District Clerk of Bowie County said the Records from this same era are “brittle and fading; index books are hand written, hard to read, and fading.” The District Clerk of Fayette County explained that, “due to [the] poor condition,” records prior to 1948 require court approval before the public is allowed access.

C. Causes of Deterioration

Some clerks identified reasons and causes for the deterioration of their Records. The Hutchinson County Clerk “discovered that mice or rats had destroyed some case files.” The Lavaca County Clerk expressed genuine distress over not being able to fully answer the Task Force survey because “boxes of records with mold are yet to be cleaned” (which her office is actively trying to remedy). There are many examples of Records that are failing at the creases where the records are folded, because creases put stress on paper. *See Photos 28 and 27, below.*

⁹ The Nolan County Clerk has purchased fire proof file cabinets to prevent further deterioration.

Some documents have been damaged or lost due to catastrophic events. Survey responses identify numerous courthouse fires in which Records have been lost or damaged. Most of these fires took place in the 19th century. However, the Hill County District Court had a fire in 1993 that damaged many Records, according to the Hill County Clerk. The Hood County Clerk said the “case files were flooded and freeze dried,” and requested assistance on the handling of such Records. The Llano County District Clerk reported that before she took office, “some of the files were stored in a basement and got wet,” while others were destroyed in a fire “years ago.” The Nueces County District Clerk reported that its Records were “damaged due to leaking roof or high flood waters, missing records due to security issues, missing records due to storage facility moving to accommodate larger volume of stored records.”

Damage to Records often occurs because they are crammed into boxes or shelves that are overstuffed. *See* Photos 50, 63 and 67. In some instances just opening and closing drawers in which Records are stored causes damage. Pieces of paper that look like crumbs break off when overstuffed court record cabinets are opened. The Chair of this Task Force observed this condition in the Harrison County District Clerk archives, which contain an otherwise incredible collection of pre-Civil War Records.

The Task Force also observed instances in which Records have become disorganized, and devolve into stacks of miscellaneous pleadings tossed together from various cases and eras. The County Clerk from Fayette County was not able to determine how much space the historical records take up because “[y]ears of information are intermingled with other years.” The Chair of the Task Force observed this condition for pre-Civil War Records in both Travis County and Harrison County District Clerk archives.

The district court minute books and other bound volumes from these time periods are often in better condition than case files, but suffer from many of the same problems. In some instances, the binding is completely missing from minute books, and the pages are loose or can be easily removed. *See* Photos 26, 39, and 40. Some of the Bexar County District Court minute books from the Republic of Texas are held together by duct tape. *See* Photos 39, 40, and 42. The Chair of this Task Force observed instances in which minute books dating back approximately 150 years were found stacked in piles on the floor or on shelves in storage rooms, or are displayed without safeguards in waiting rooms. *See* Photos 53, 56, 60, and 61. The Task Force observed many cases instances in which minutes and other books were stored haphazardly, in no particular order. *See* Photos 53, 56, 60, 61, 65, and 66. If such books were stolen, it is possible that such thefts would be undetected.

Few of the clerks have comprehensive inventories of their Record case files or minute books. Most clerks have no precise estimate of how many cases are in their files or how many volumes of books should be on their shelves. Very few district or county courts have a working inventory, such that if a case file is stolen, they would be able to readily determine that such a theft occurred. Most clerks may know of individual examples of valuable or important records, but many do not have a comprehensive understanding of the scope or importance of Records. For example, few clerks were able to identify Records of historic importance in their collections.

This state of affairs is partly due to the current condition of these Records. Many Records are so fragile that just trying to examine them will cause additional damage.

Thus, a significant number of Records are in poor physical condition. Some are beyond repair. The concerns of the Task Force about the condition of these Records is heightened when

other factors are considered, such as the quality of storage facilities and security, as discussed in the next section of this report.

D. Photographs of Examples of Damaged Records

These photographs begin with examples of properly preserved Records. The remaining photographs are examples of damaged and unpreserved Records.

PHOTO 13: A preserved minute book page (from the Civil War) (Harris County).

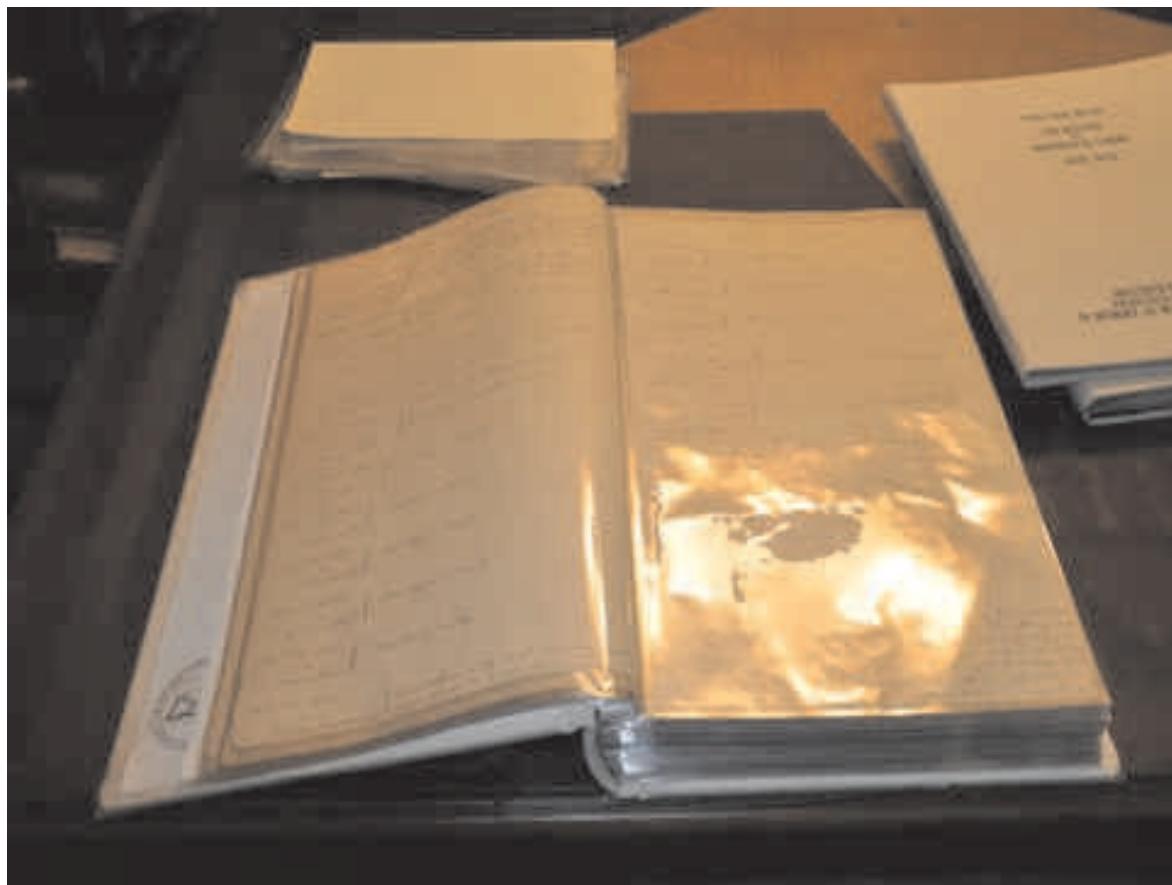


PHOTO 14: Example of how a historical case file can be preserved. This case file concerns a person who was enslaved (Harris County).



PHOTO 15: Box of preserved case files. The box was specially designed for this purpose (Harris County).



PHOTO 16: Collection of boxes of preserved case files (Harris County). Each box has its own shelf.



PHOTO 17: Deteriorating Ink. This document is a petition filed on June 8, 1868 by Richard King against George F. Brott for an unpaid debt of \$2,862 (Cameron County). Ink is beginning to damage the record.

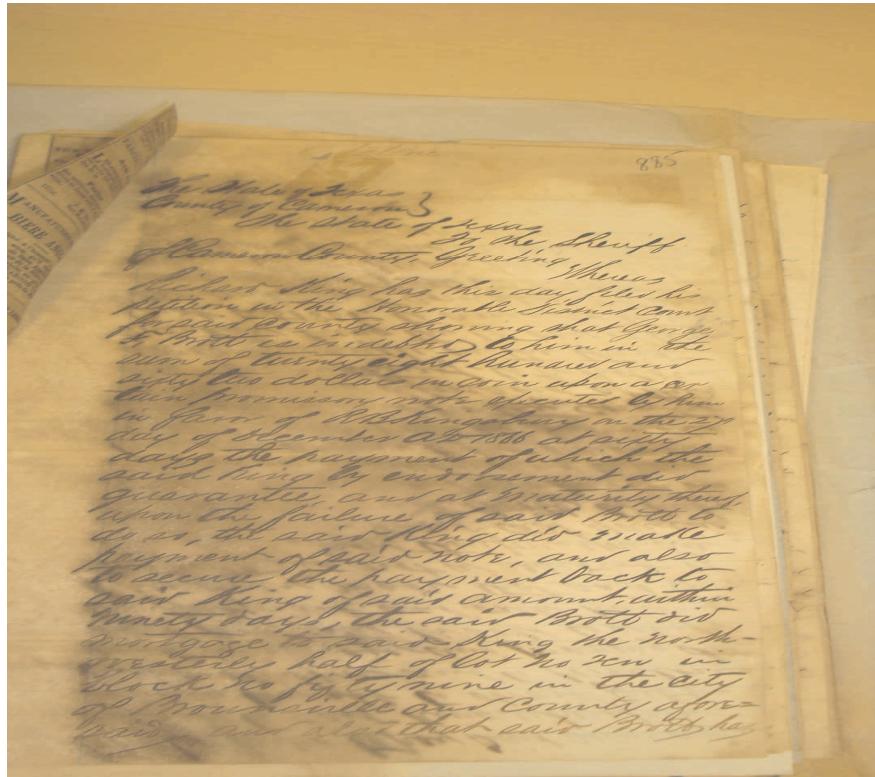


PHOTO 18: Republic of Texas case files with holes, yellowing, and crumbling pages (Colorado County).



PHOTO 19: Minute and other books stacked on top of each other on the floor (Ellis County).



PHOTO 20: Torn page of the oldest minute book in Ellis County. The binding is also deteriorating (Ellis County).

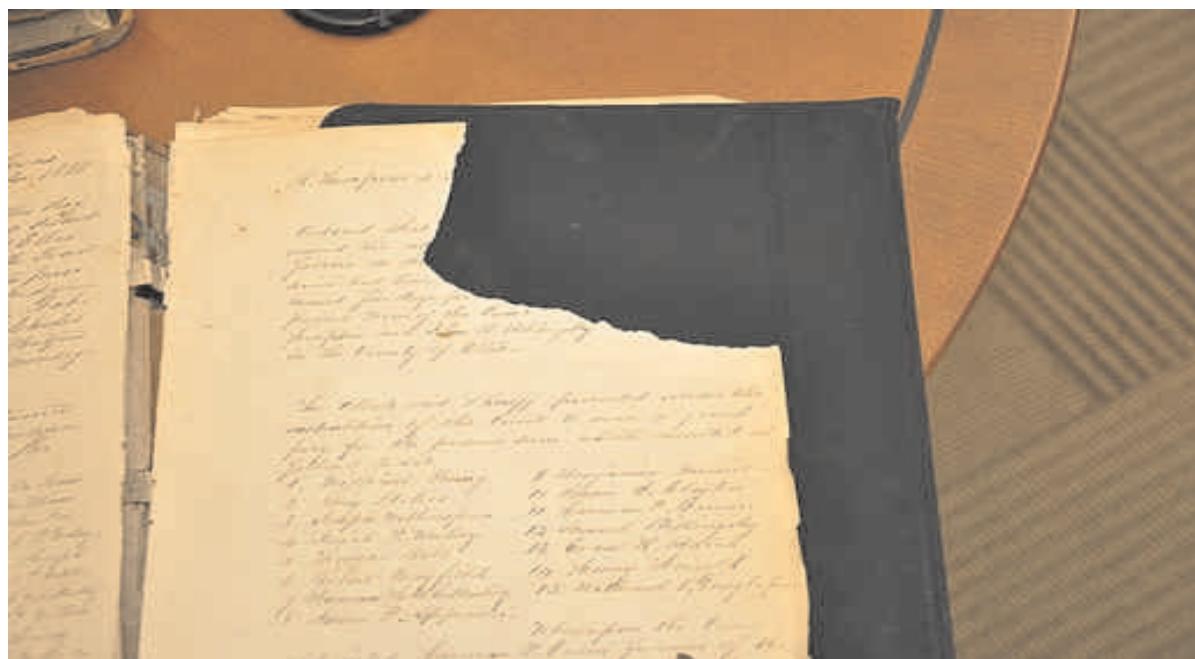


PHOTO 21: Examples of deteriorating binding on court records (Galveston County).



PHOTO 22: Torn, crumbling minute book – Republic of Texas (Galveston County).

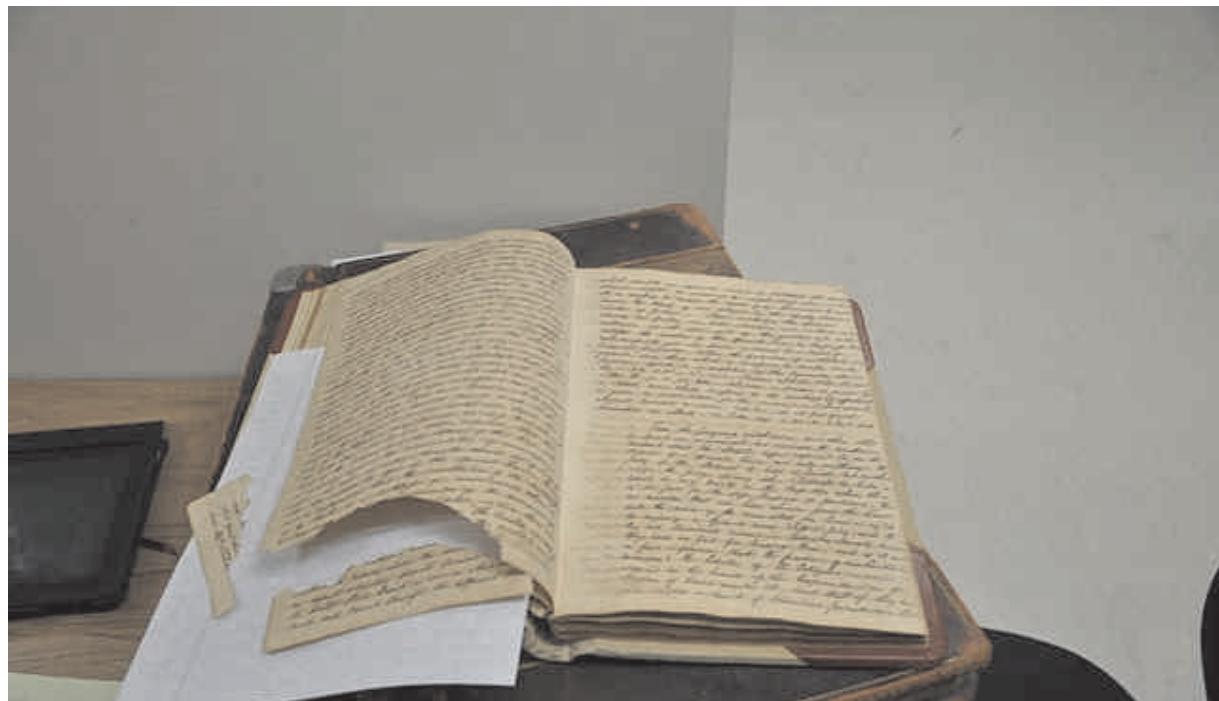


PHOTO 23: Minute book – water damage (Galveston County).

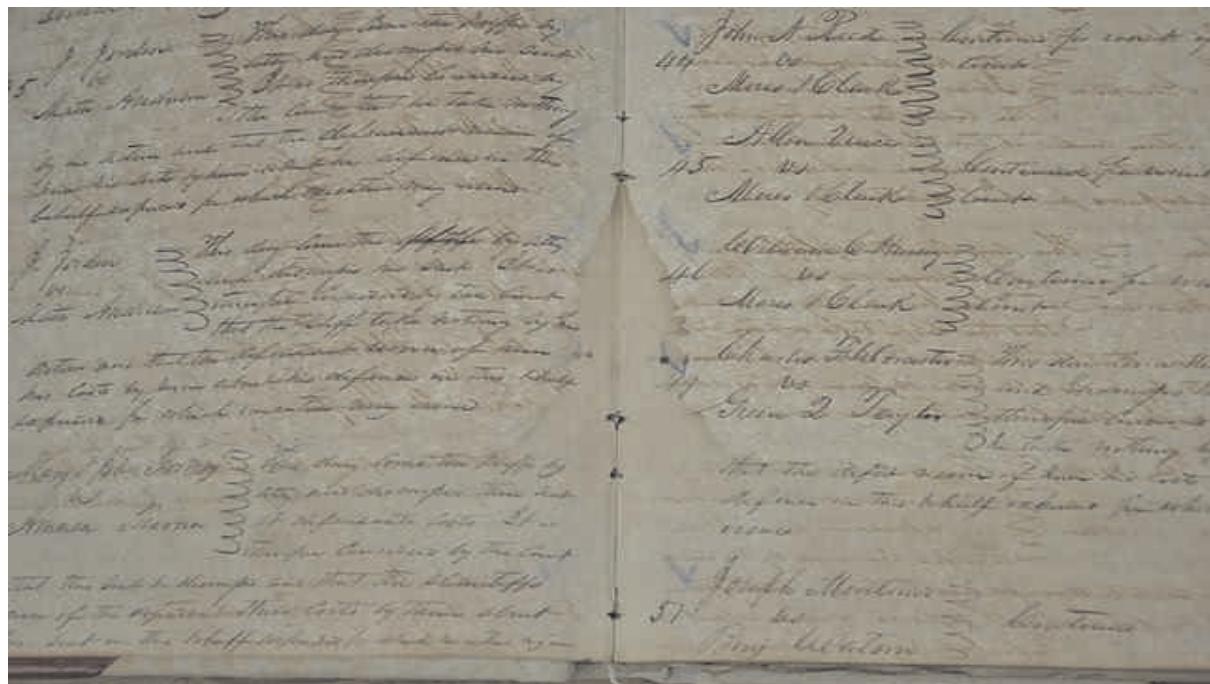


PHOTO 24: Minute book – torn and fixed with tape (Galveston County).

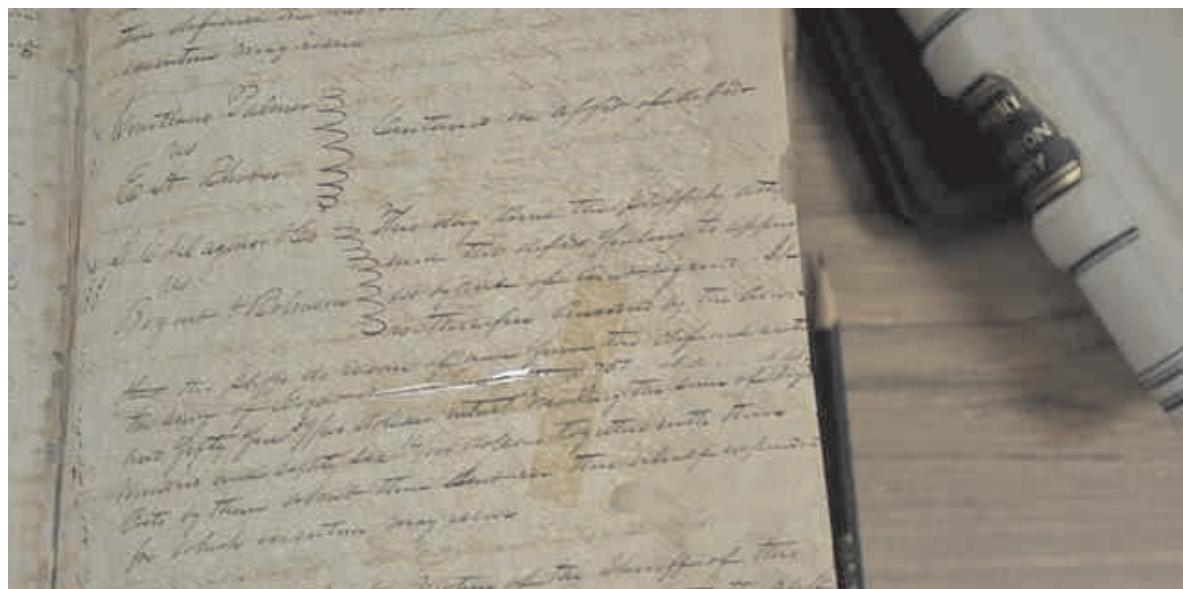


PHOTO 25: Minute book – disappearing ink (Galveston County).

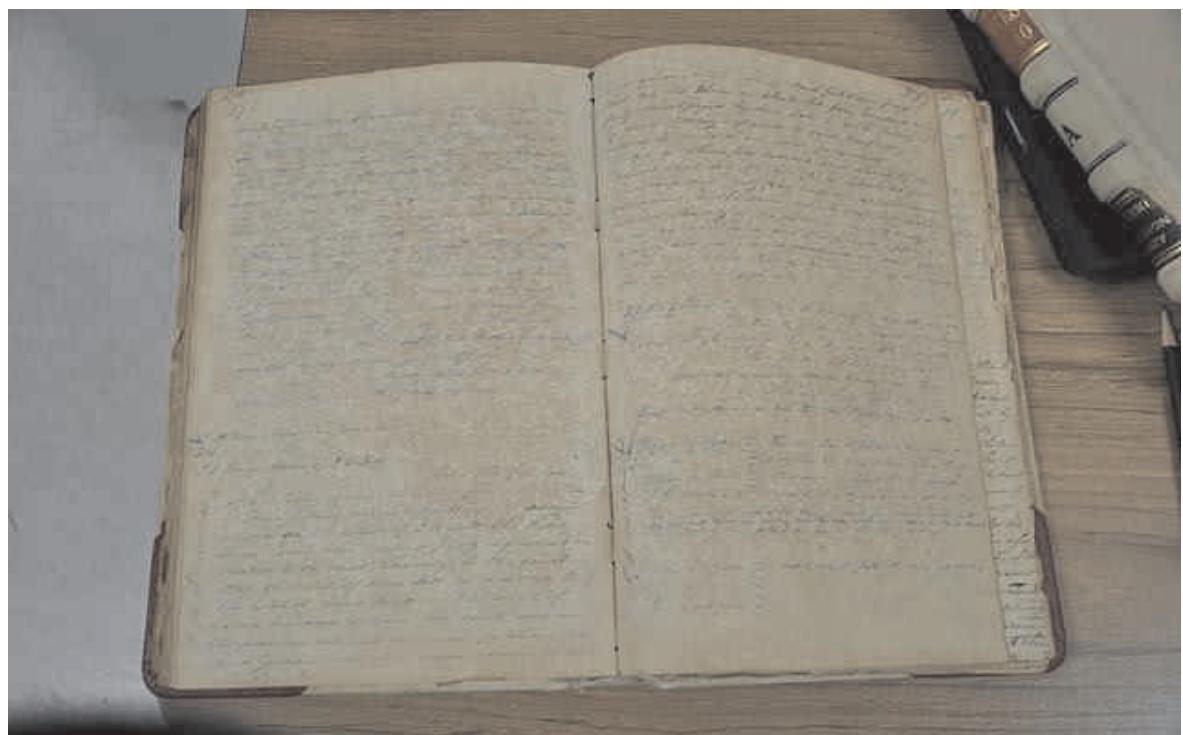


PHOTO 26: Minute book – pages coming apart (Galveston County).



PHOTO 27: Mold on court record (Galveston County).



PHOTO 28: Court paper – torn in half (Galveston County).

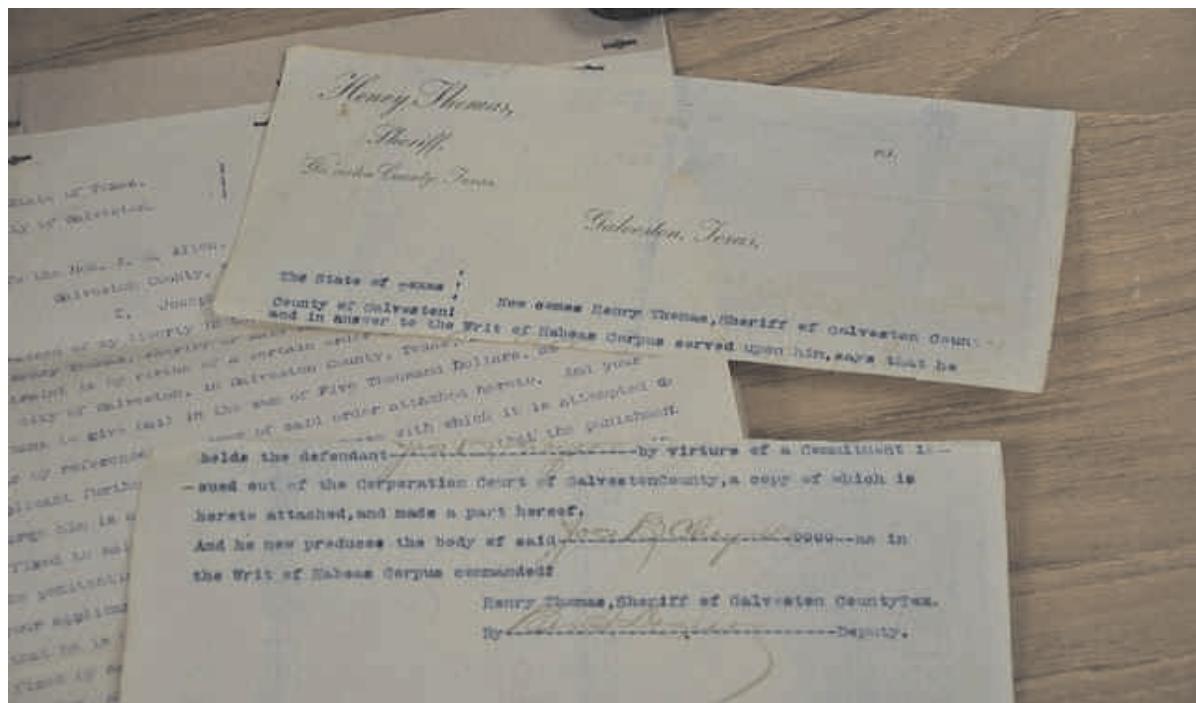


PHOTO 29: Court envelope – stamp removed. Because these stamps may be valuable, the Task Force found instances in which stamps were torn off. (Galveston County).

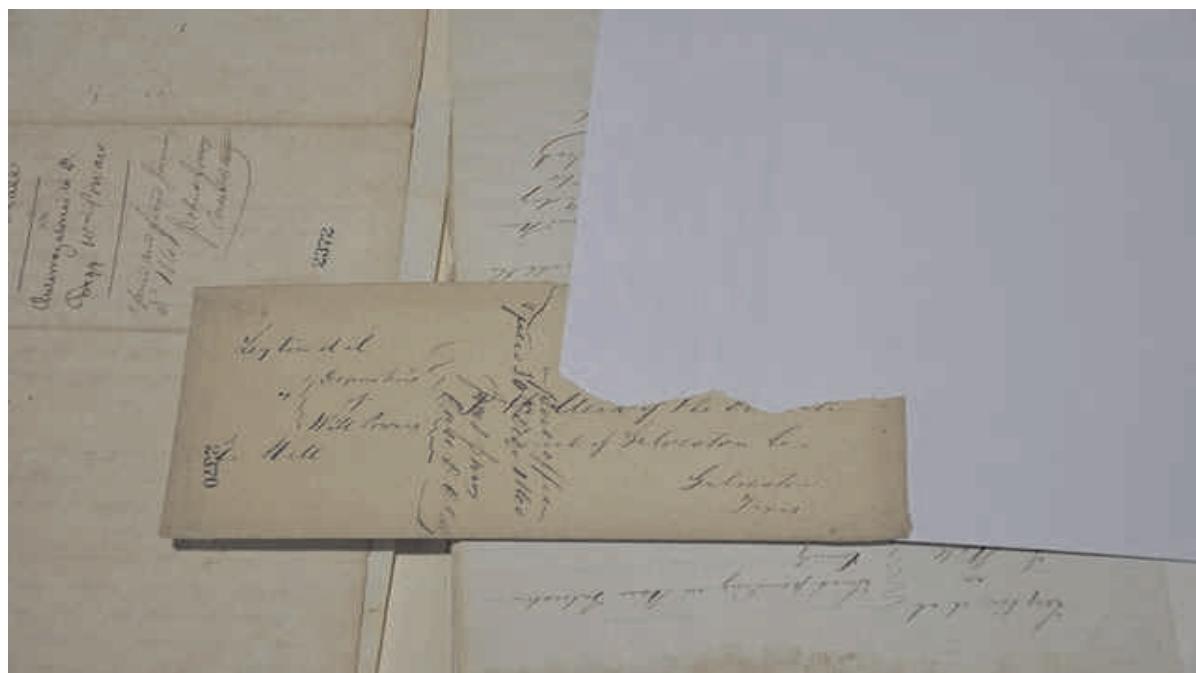


PHOTO 30: Deteriorating Republic of Texas court paper (Galveston County). Fixed with clear, adhesive tape.

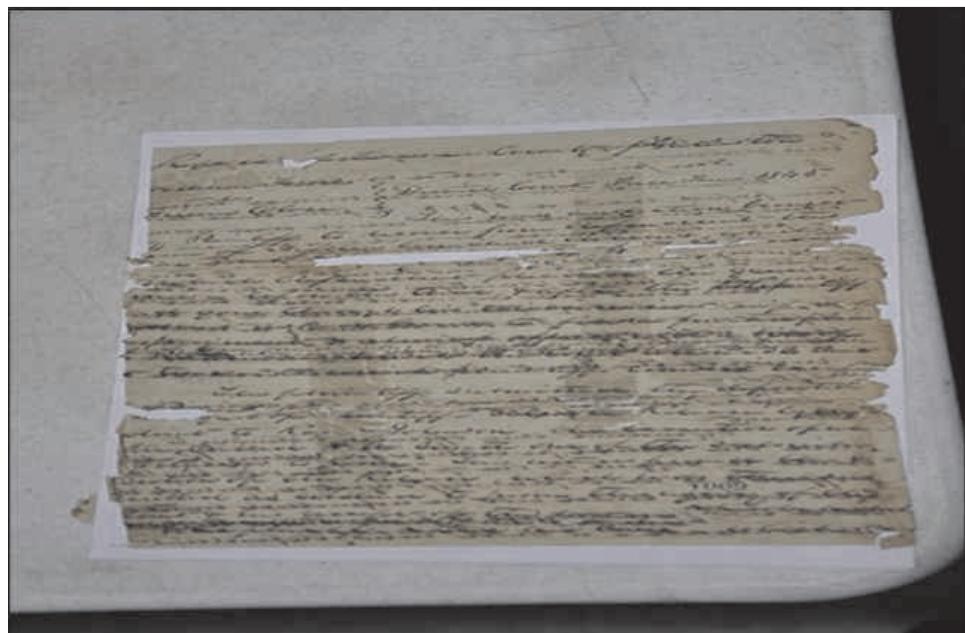


PHOTO 31: Pleading – ink is bleeding through (Galveston County).

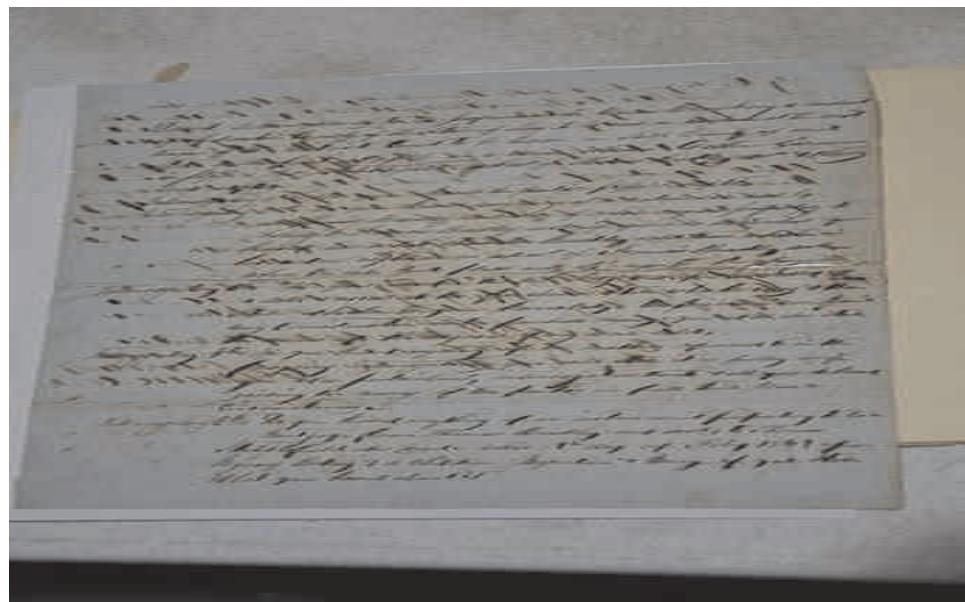


PHOTO 32: Example of fragile *Houston v. Lamar* Republic of Texas file (Harris County).

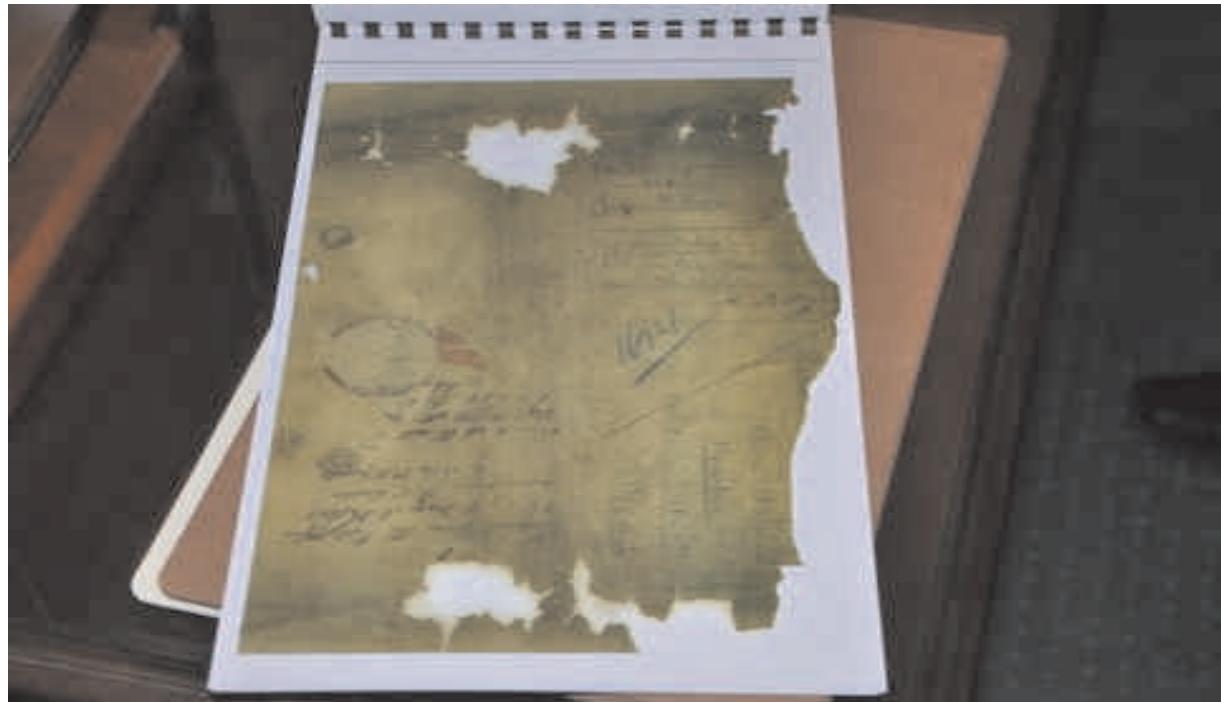


PHOTO 33: Mold on a box of historic court records (Harris County).



PHOTO 34: Republic of Texas record that cannot be preserved (Harris County). An example of how bad the destruction can get.

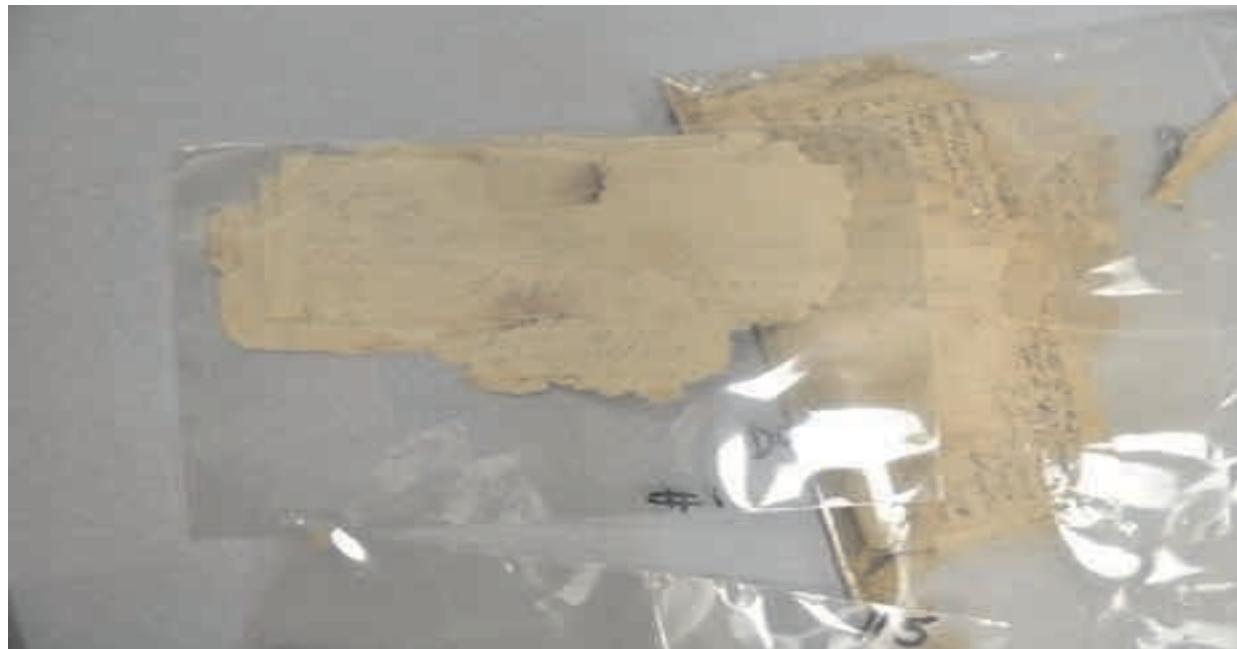


PHOTO 35: Republic of Texas document that has been preserved, but is missing part of its contents (Harris County).

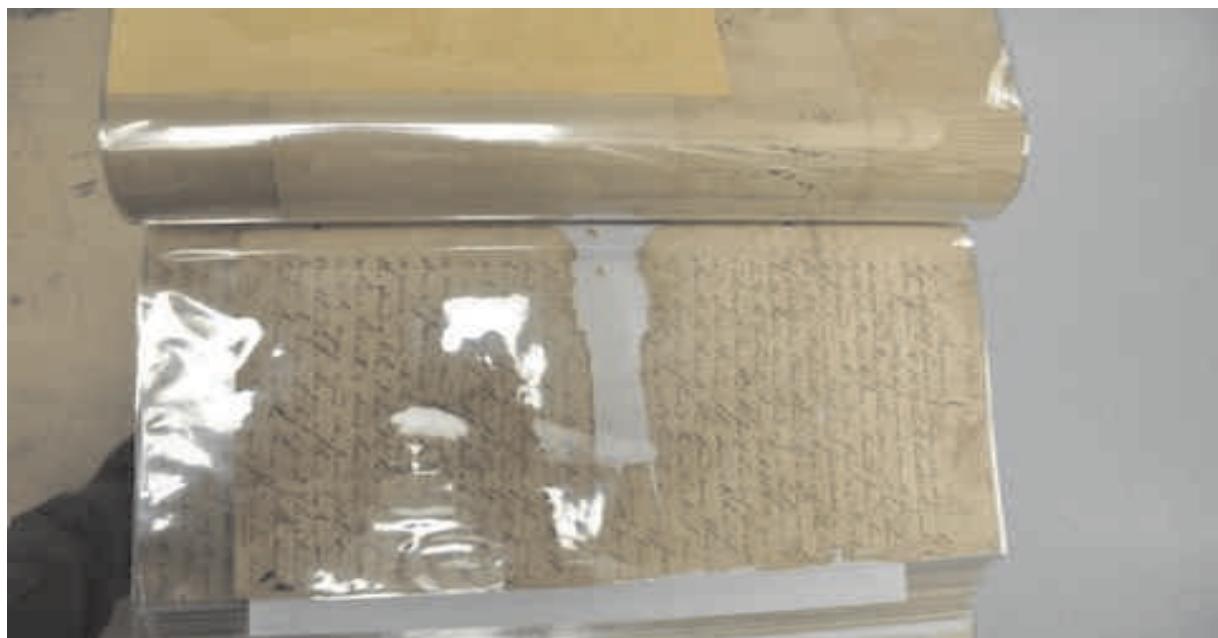


PHOTO 36: Examples of broken Records (Harrison County).

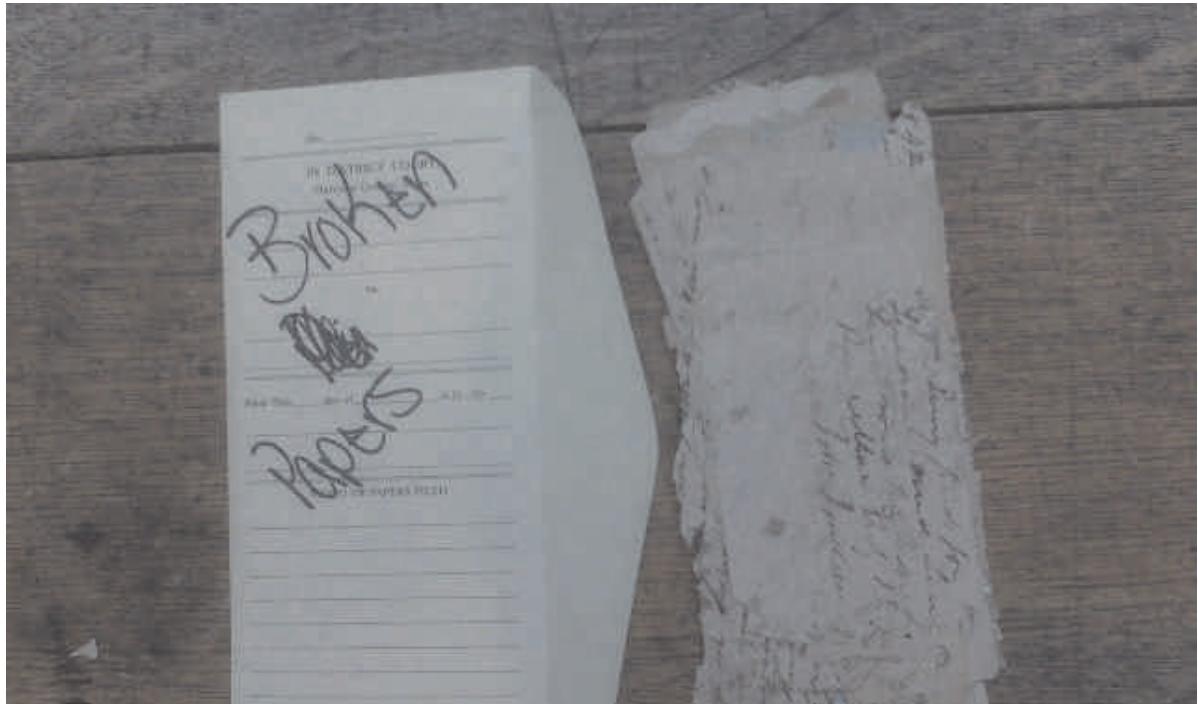


PHOTO 37: Example of broken, torn case file failing at the creases (Harrison County).

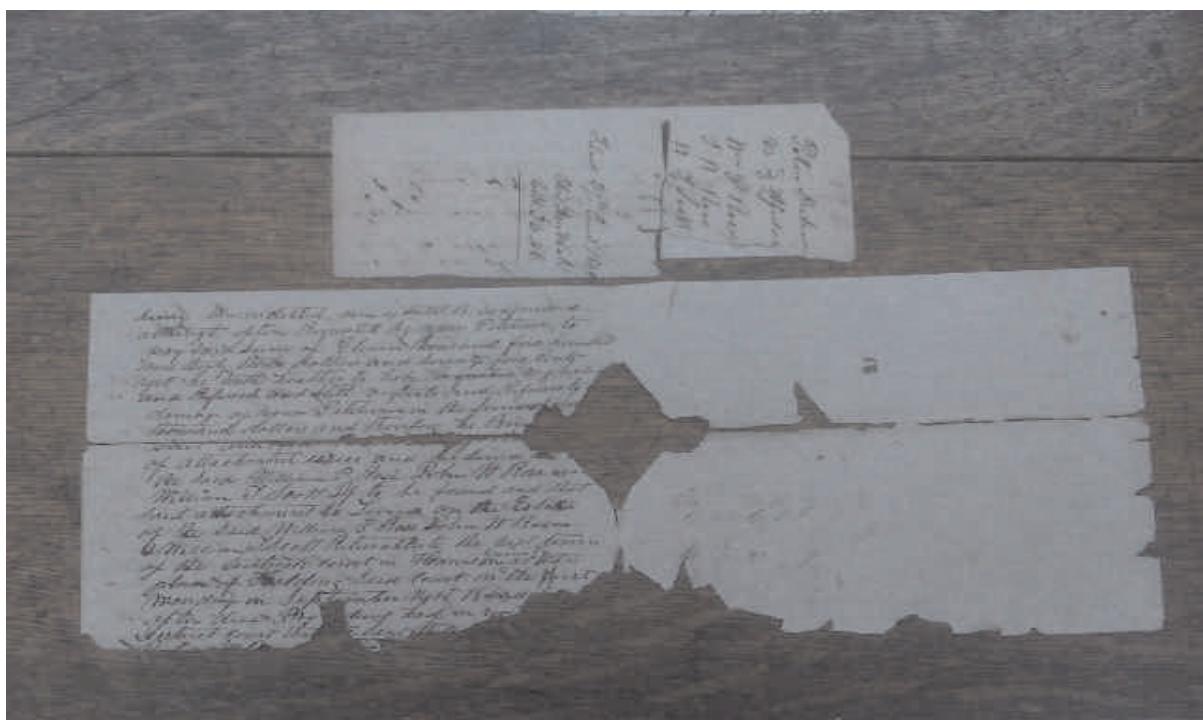


PHOTO 38: Early chattel mortgage record ledger with water damage. Ledger was stored along back wall in roller shelving in the basement. Water damage could be a result of shelving along wall with an undetected water leak behind it (Bastrop County).

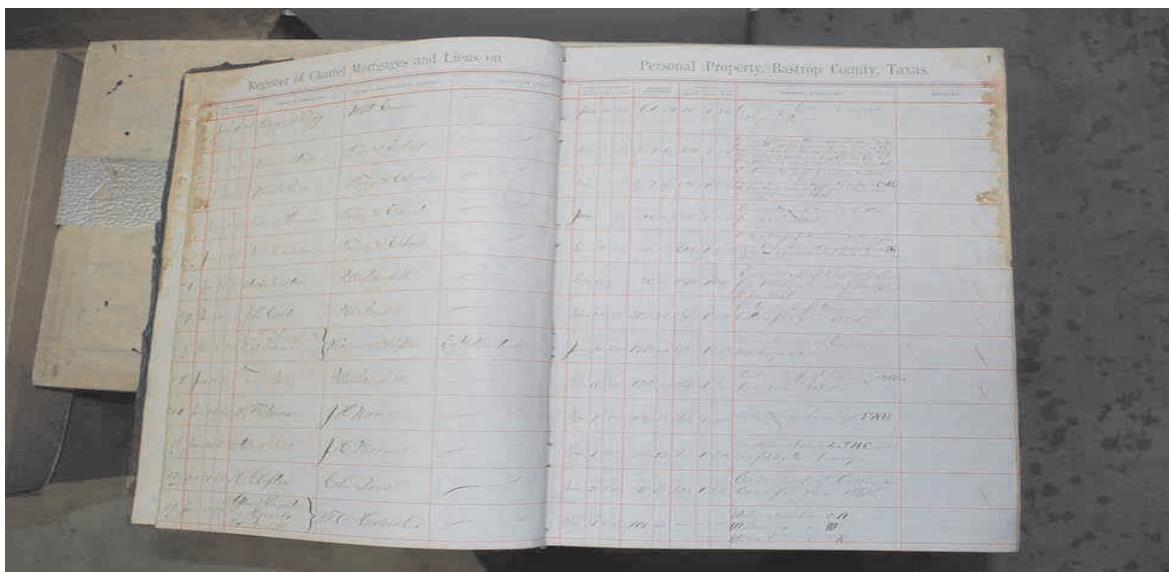


PHOTO 39: Earliest Bexar County District Clerk ledgers awaiting preservation. Some are held together with tape (Bexar County).



PHOTO 40: Earliest Bexar County District Clerk Minute Book, third volume from the left from photo above) with five strips of duct tape horizontally across the spine (Bexar County).

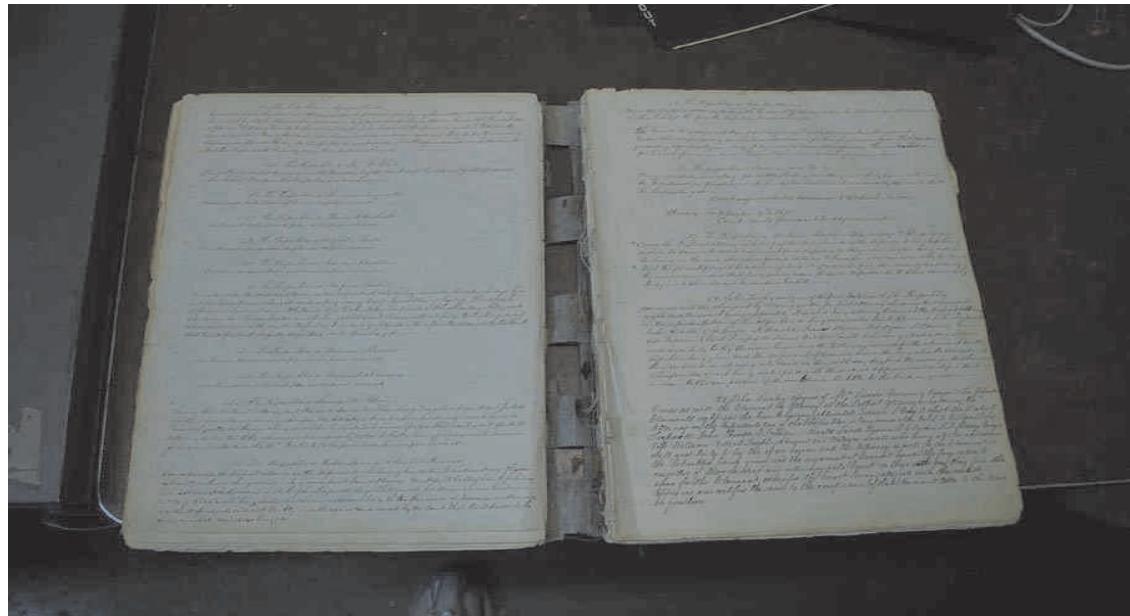


PHOTO 41: Republic of Texas document with holes and mold (Harris County).

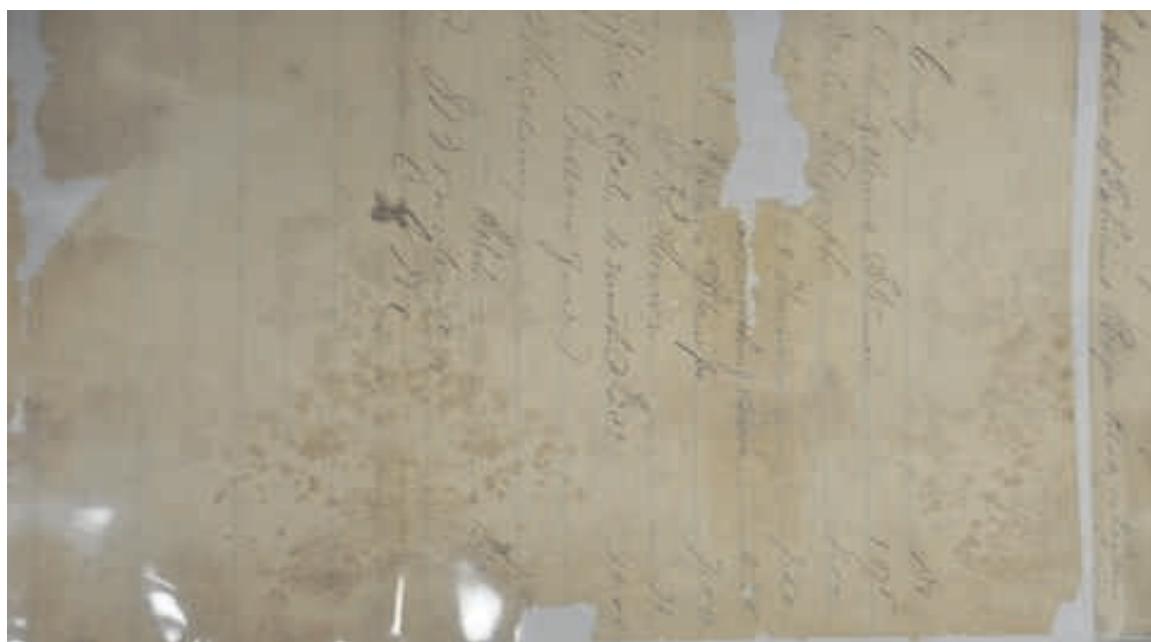
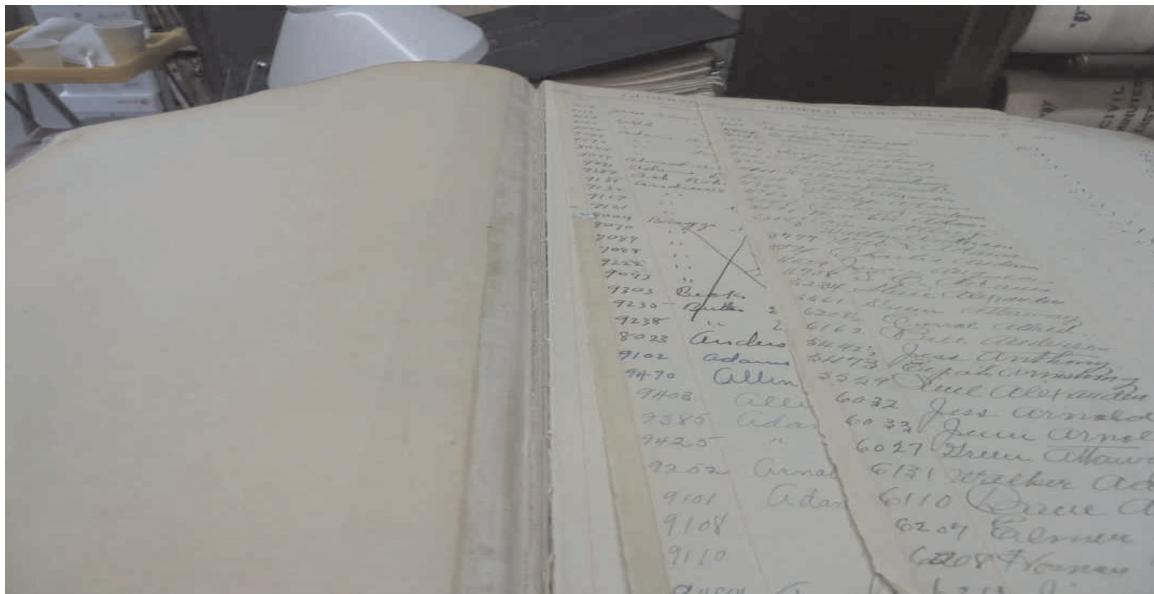


PHOTO 42: Loose binding on court minute books (Panola County).



V. Conditions that Contribute to the Destruction and Deterioration of Records

The Task Force has observed or learned about conditions and other problems that add to its concerns about the increasing vulnerability of the Records. These conditions contribute to the damage observed by the Task Force or reported by clerks, and will continue to cause damage until the conditions are addressed.

A. Poor Storage Facilities

Records are often stored in dilapidated, unsecured rooms in buildings that are not suitable for Record storage and preservation. In many instances, Records are stored in old, out-of-use or dilapidated county buildings, such as abandoned jail cells, old warehouses, or in some instances, storage crates that are locked and kept outdoors. These facilities have no humidity or temperature controls, which can contribute to mold growth and insect infestations. Sometimes, the Records are stored in basements, attics or storage rooms that can be subject to flooding or theft. These facilities may have no fire suppression system, and if there is one, it usually involves water, which can damage Records almost as much as a fire.

Many counties reported such problems to the Task Force.

- Comal County District Clerk: Records kept “in a file room and in our attic.”
- Cooke County District Clerk: “Most records in our old jail without a disaster plan in place.”
- Henderson County District Clerk: Records are “[v]ery brittle – kept at old jail where climate goes from extreme cold to extreme hot. Turning color.”
- Bandera County Clerk: Records kept “in a railroad box car located in flood plain area” that is “3 miles from courthouse.”

- Chambers County District Clerk: Records “are in a metal building stored on shelves, bad air quality and open to bugs and pests.”
- Galveston County District Court: Records stored in a warehouse located blocks from Galveston Bay. Because it almost lost its records in Hurricane Ike in 2008, Galveston now stores its Records in boxes lined with plastic bags, hoping that this small measure may keep some water out. *See Photo 62.*
- Hale County Clerk: Records kept “in a basement where there is leaking during heavy rainfall.”
- Hamilton County District Clerk: Records stored “in sea crates with no controlled heat, light, or air conditioning.”
- Nolan County Clerk: Records stored in “an old sea container: with no heating, air conditioning, or electricity.”
- LaSalle County and District Clerk: “Some of our older records are stored in storage container that is not climate controlled.”
- Oldham County and District Clerk: Records stored in “a vault downstairs in old military ammunition containers.”

The manner and location in which Records are stored are principal causes of damage to Records, especially when temperatures and relative humidity (“RH”) levels are not controlled. Ideally, Records should be kept in stable temperature ranges between 68 and 72 degrees, with RH for general collections between 40 and 55%. Higher temperatures accelerate the deterioration of Records by increasing the speed of chemical reactions that cause records to break down. Warm temperatures also encourage mold growth and insect infestations. Rapid RH fluctuations cause physical distortion (*i.e.*, paper, boards, and leather may swell), while high RH

(especially with low air circulation or “dead air”) encourages mold growth and insects. Unfortunately, few clerks monitor the temperature or humidity of their Record collections.

Many Records are stacked or located in spaces near water pipes, light fixtures or electrical wiring:

- El Paso County Clerk: “[C]urrent facility has sewage lines running above the ceiling.”
- The Sterling District and County Clerk: “[T]here are water lines above the files. Water lines need to be encased in case of leaks.”
- Guadalupe County Clerk: “We had a water leak in the basement so some [of its historical records] are hard to read.”
- Pecos County Clerk: “Some records are stored in boxes on the floor. If basement floods, we will lose records.”

Obviously, such conditions can cause catastrophic disasters to Records. Mold growth, for example, is often an issue after a flood or an air conditioning or pipe leak. *See Photo 52.* Electrical wiring can be a source of fires, especially if conduit is located near dry, fragile court papers. *See Photo 55.*

The Task Force regularly observed Records that were covered in mold. *See Photos 27, 33, and 41.* Mold can be especially damaging to records. Mold outbreaks occur in collections whenever environmental conditions are right for dormant spores to bloom (*e.g.*, dead air, high humidity). Records with active mold should be removed and segregated from collections. Mold is also a natural food for many booklice and silverfish. The mold attracts these pests to Record collections, where they then eat Record paper along with the mold.

In addition, few facilities have lighting that is appropriate for Record preservation. Ultraviolet (UV) light is most damaging to records, and is found in natural and fluorescent lights. UV light causes fading and yellowing of dyes and pigments. It also generates heat, which hastens deterioration. Damage from lights is cumulative and irreversible. There are no salvage procedures once damage from light is done. Some archives, like those in the Harris County Court Historical Records Room (*See* Photos 47 and 48), have appropriate lights, but these facilities are the exception, not the rule. Record archives can also minimize light damage with appropriate procedures (*e.g.*, turning off the lights, using shades), which is why training is so important (as discussed below in one of our recommendations).

Some clerks have donated, loaned, or otherwise sent Records to regional depositories. Fort Bend County, for example, has its records at the George Memorial Library. The District Clerk for Erath County has “some at Tarleton State University, I’ve been told.” The Lipscomb County and District Clerk has Records in three places – at the county courthouse, a county warehouse, and an “old school house.” The Schleicher County and District Clerk has Records at “Affiliated Computer Services in Dallas, Texas.” The survey responses provided to the Task Force did not contain any information as to how these regional depositories are storing or preserving the Records. More information is needed.

B. Loss of Records by Acts of Individuals, Including Theft

Record damage and destruction cannot be blamed entirely on rodents, insects, and mold spores. People have also contributed to the loss.

Some clerks in the past gave away or destroyed their Records. Bandera County, for example, reported that “[c]itizens were allowed to take documents [that] were deem[ed] of no value.” The Collin County District Clerk reported that an official from its commissioners court

“gave several files to one of the universities in the Collin County area”; the clerk tried to track down the records, but “was unable to locate them.” The Kerr County Clerk reported that about 13 years ago, an interim clerk was appointed who “destroyed a ton of records and gave away very old marriage records (some I have been able to get back). A lot are still missing.” The Parker County District Clerk recounted that “a district clerk prior to 1979 gave the oldest records and their storage cabinets to a local title co-owner. They were returned to the district clerk in 1979 but no inventory of those records exists.” As a result, for at least some counties, it can be hard to tell whether particular records offered for sale on the Internet or other places were originally stolen, or acquired by other means.

Many Records have also been stolen. The most celebrated case occurred in August 1973, when Travis County authorities arrested and charged Earl Collins with “larceny of file papers.” He was convicted in 1974 and received two years probation. His case brought to light the following: Mr. Collins was a janitor in the Supreme Court building, and was believed to be responsible for the theft of approximately 1,500 Supreme Court documents. The ongoing thefts occurred between April 11, 1972 and August 8, 1973, and included 62 “wallets” or folders containing historical Supreme Court cases from 1840 to 1892. During the time of the thefts, the documents were maintained in a fireproof vault, and it remains unclear how Mr. Collins or anyone else obtained access to these records. As of the time of his arrest, Collins had already transferred custody of most, if not all, of the stolen records to unknown persons. Collins died in September 1996 in Austin.

Theft of Records has taken place for many years from county archives. In a classic and remarkable book published in 1991, *Texfake, An Account of the Theft and Forgery of Early Texas Printed Documents*, the author Thomas Taylor documents a 1971 arrest in Austin in which

a person was arrested for the suspected theft of an 1840 Texas map. In his car, the police found detailed written instructions on how to steal Records from many counties, such as:

Fort Bend County: “Here the D[istrict]/Clerk’s office hasn’t anything but a few documents. You can still get some stuff from it (plenty from the 1850s). Easy to get stuff out of here. In the C/Clerk’s office you can get a briefcase full but it’ll take a couple of hours. I have gotten a lot of early items out. You still ought to be able to get a briefcase full. Everything is in one room.

Fayette County: “In the District Court there is a suit filed under No. 19 (The suit over Galveston). I want it and will give considerable allowance.”

Montgomery County: “Bill, you know the deal on this place. Get all the stuff you can get in District Clerk’s and County Clerk’s office. Volume is the key here. Get as much as you can and go back 2 or 3 times if it is as easy as you say. Bill, I will make allowances for the items you get after the Republic of Texas.”

Travis County: “Get what you can”

In another example, the Chair of the Task Force found individual pages from a court minute book, which is essentially a diary of activity for one of the district courts, being offered for sale on the Internet. Clerks reported many examples of other thefts of Records:

- Chambers County District Clerk: “[I]t appears that various case files are ‘missing’ which indicated they may have been taken at some point through the years.”
- Cherokee County District Clerk: “We were told that they were being sold on eBay and I contacted our local S.O. for help. I was told that there wasn’t anything they could do about these.”
- Concho County and District Clerk from Concho: “[C]ase files removed; pages removed from books prior to 1980.”

- Coryell County Clerk: “Before I became Clerk, I have been told there are some books missing. Since there was only one way in and one way out of the office at the time, that is hard to understand.”
- Fayette County Clerk: “[S]ome original case files were stolen years ago (probate).”
- Guadalupe County Clerk: “I know we had some records about slaves that were stolen and they tried to sell on eBay.”
- Kaufman County Clerk: “Records have been lost or stolen.”
- Panola County Clerk: “People walk out with records.”
- Montague County District Clerk: “[A]t one time, the 4th floor was open to the public and when a file was requested, they were allowed access to that area unsupervised. Many files have come up missing.”
- Pecos County Clerk: “Some of the archival records were stored in basement and [the] person in charge would let anyone in and there was no supervision.”
- Nacogdoches District Clerk: “[I]t appears that various case files are ‘missing’ which indicates they may have been taken at some point through the years.”
- Rusk County Clerk: “[W]e have probate records that are missing and not sure how or when they went missing.”
- Sherman County and District Clerk: “I have been told that Sherman County had a case on Billy the Kid or someone like that but it was stolen many years ago and is in a museum in California.”

While this report is being written, the Chair of the Task Force found Records from Galveston and Washington Counties being auctioned for sale on an Internet site. Some of these

records can be sold for hundreds of dollars, especially to persons who collect unusual items like slavery memorabilia and signatures of Texas patriots.

Yet, while the security threats to these Records seem real and known, many clerks do not have appropriate security policies and practices in place to protect their records. Many clerks reported to the Task Force that public access to their Records is not supervised, often because they are overworked and understaffed. One district clerk reported that Records are stored in the same place where other county employees “store tools, plywood Christmas decorations, etc. There are many times we need to retrieve a record and do not have access because of all the clutter in this area.” These types of security issues are illustrated in photographs at the end of this report section. *See Photos 52, 53, 57, 69, 70, and 74.*

C. Lack of Appropriate Policies, Procedures, and Practices

The Task Force found few instances in which clerks have written, enforced policies and procedures concerning how Records are to be stored and handled. Much damage can occur from the improper handling of Records. Clerks should adopt simple handling procedures, such as:

- Supplying patrons with pencils. No pens should be used around Records.
- Avoiding the forced opening of bound books when copying or reading Records.
- Using book cradles that support books without causing damage.
- Prohibiting use of pressure sensitive tapes, which leave residue and stains, sticky notes, which can cause tears, or metal clips that leave rust marks.

• Handling Records with clean, dry hands or using gloves to handle Records.

• Avoiding tall piles of files, ledgers, or books that can topple over.

• Scheduling public view of Records during hours when a staff member or volunteer is available to supervise.

The Harris County District Court Historical Records Room has a set of written Record handling procedures that are enforced by a trained staff person who supervises all public access to Records. The Task Force will post that document on its website as an example of an appropriate set of rules. It appears that most district and county courts do not have such written handling procedures for Records. The development and implementation of such procedures is a needed and appropriate subject for training.

The damage to Records caused by the lack of enforced, written handling procedures is compounded by the growing number of landmen, genealogists, and other persons who need access to these records to determine titles and rights to real property and minerals or family histories. The boom in shale gas exploration, for example, has caused some county clerk offices to be filled with landmen who need access to 19th-century records. The Dimmit County District Clerk explained that “[o]ur index books are in poor condition due to the large amount of landmen utilizing them to do research work and as it was these books were fragile to begin with, now they are just beginning to deteriorate with wear and tear. The spines of the books are beginning to tear from the books, the covers are torn and falling apart.” The Task Force, during its inspections, has observed this activity in archive rooms. Such access often means that handling is unsupervised and the risk that such Records will be damaged or lost is significant.

D. Lack of Preservation Training and Education

Almost every clerk told this Task Force that they want more training and guidance on records preservation. “First of all,” said the County Clerk for Duval County, “we would need training so that we would know what and how to preserve our records.” Several district and county clerks expressed concern that these records might be lost or destroyed during their term in

office. “My office is in a half basement and has no type of security,” reported one clerk. “I fear that this office could be broken into or flooded and our older records would be destroyed.”

Many district and county clerks raised the importance of educating members of the commissioners courts about the need for better preservation of Records because the commissioners courts control how at least some preservation funds are spent. One county clerk aptly expressed the views of many: “Any assistance would be appreciated. Limited funds and lack of understanding from Commissioner’s Court of the importance of preserving these valuable historical records hinders preservation efforts.”

As discussed below, the Task Force is working with the State Bar of Texas and the Texas State Archives to develop an education and training program. Some training materials have already been prepared by the Task Force, and will be posted on the Task Force website.

E. Lack of Comprehensive Preservation Plans

Most of the district and county clerks do not have a comprehensive plan for preserving their Records, or any written, enforced procedures on how such Records are to be handled. Most of them have never conducted a security audit of their facilities or Records. Most clerks also do not have an emergency response plan with regards to their Records in the event of a natural disaster. Some of the preservation that is occurring consists of an assistant flattening Records and placing them into manila folders. This type of preservation may actually do more harm than good, as it may create additional stress on the paper and cause the paper to fail over time at the creases.

F. Funding Constraints

Almost all clerks reported that they need more money. “We are in desperate need of funding for preservation,” reported the District Clerk for Ford Bend County, because “our

records are still in their original state and need emergency preservation.” The Hutchinson County Clerk said “Adequate funding is our main deterrent,” although “training and more personnel is also needed.” The County Clerk of Howard County explained that the cost of preservation is high: “The process is unbelievably expensive. [One commissioner] court record from the 1800’s is 634 pages; the cost to preserve that one volume is approx. \$1400. No county can afford that.” The Task Force agrees that the cost of preservation can be high, which is why many district and county clerks have been unable to do more to preserve their Records. However, this Report details many simple, inexpensive procedures that can help preserve Records.

Most of the district and county clerks reported they are able to raise some funds from charging preservation fees. Generally, county clerks are able to charge substantially more preservation fees than their district clerk counterparts. Thus, county clerks often stated that they were satisfied with current preservation funding, while district clerks were usually unhappy with the amounts that they are able to collect. “What we really need is funding,” said the Lavaca County District Clerk. “The records management fee hasn’t been in effect very long and being from a small county, it will take years to get the money to preserve the records.” The Sterling County Clerk sounded a bit more optimistic: “We have just started collecting preservation and archive fees. The fund will have to grow before any plans can be made and completed.”

It is unknown how much of the funding is actually used to preserve Records. As mentioned, district and county clerks often encounter resistance from other elected officials with regards to how the money is spent. Some of the counties with the largest collection of 19th century records are small; consequently, the preservation funds that are raised are too small to make any meaningful impact. Many clerks from small counties reported that they are waiting for

funds to accumulate before any preservation activities are undertaken. Money that could be spent for Records preservation sometimes may be used for other purposes. One clerk, for example, reported that “[i]n this county, on at least one occasion, the county judge ordered the county auditor to use some of the District Clerk record funds for other projects in the county without my knowledge or permission.”

At the same time, because there is no state-wide, standardized reporting on the use of preservation funds by clerks, the Task Force could not reach any conclusions on how funds are used or whether such money is spent appropriately. One question that deserves further attention is whether clerks who send Records to independent depositories collect funds for the preservation of those Records and, if so, whether any of those preservation funds are provided to the depositories that hold and maintain the Records. The Task Force suspects that the answer to this question is “no” (and no such instances were reported by clerks), but more study of the depositories and their funding is needed.

Some clerks have been able to raise funds from local or other sources, although the number of such examples seems limited. The Montgomery County District Clerk and the Lavaca County Clerk have each obtained Preservation Assistance Grants from the National Endowment for the Humanities. The Harris County District Clerk was able to raise substantial funds from local law firms and citizens interested in historical preservation.

While funding is certainly a constraint for some types of preservation activities (such as the construction of a new facility), there are many steps that clerks can take that do not require any material outlays of cash. For example, clerks can (i) pick Records off the floor and store them on appropriate shelving; (ii) keep Records in rooms that can be secured at all hours (with locks not shared with other departments); (iii) move Record storage away from pipes, wiring,

leaky windows and other structures that could cause damage; (iv) ensure that access by the public is supervised and that patrons be monitored during all phases of research; and (v) enforce simple, written policies on the handling and re-shelving of Records.

Much can be accomplished, even in economically lean times. To that end, in the next section of this report, the Task Force presents its recommendations and action items.

G. Photographs of Examples of Storage Conditions

These photographs begin with examples of modern Record storage facilities. The remaining photographs show examples of more typical facilities found in the state.

PHOTO 43: State-of-the-art record storage facility (Bell County). This is about as good as a record storage facility could be.



PHOTO 44: Modern storage of case files (Bell County). Records are organized in secure boxes. Each box is inventoried and has a bar code number.



PHOTO 45: Modern storage of minute and other court books (Bell County). Note that books are properly stored flat, on rollers in individual slots.



PHOTO 46: Some archives control humidity, which is very important. This dehumidifier is located in a historical records room (Cameron County).



PHOTO 47: Example of a well-designed Record archive (Harris County). Note the bar that separates public access desk from historical records, the special lighting, and the individual shelves for records.



PHOTO 48: Another photo of a well-designed, modern storage facility (Harris County). Minute books and other historical court volumes are stored on individual shelves, laid down, on rollers.



PHOTO 49: Hurricane window with protective shade (Harris County). This reduces damage from ultra-violet light and protects records in the event of a storm.



PHOTO 50: Box of unpreserved case files. Typical box of early 20th century Records. No organization. Hard to review.



PHOTO 51: Middle aisle of basement storage with some records stored on the floor and an unidentified bucket of something on the floor. Records are stored with decorations and other objects.



PHOTO 52: Middle aisle of basement shelving with A/C lines and water lines running through the storage area.



PHOTO 53: Basement “break room” and refrigerator with Record storage nearby. Stairs up to the first floor are to the right of the table with the green table cloth on it.



PHOTO 54: County court records in boxes stored beneath storm window (with records off of floor on small wooden pallets, with surplus pallets in view).



PHOTO 55: Electrical conduit located directly above filing cabinet containing Republic of Texas case files. The District Clerk is concerned about this condition.



PHOTO 56: Storage of minutes and other court record volumes. These records are stacked on top of one another, with no organization. Volumes can fall or be crushed.



PHOTO 57: Storage of rolled records next to chemical container.



PHOTO 58: Storage of Records. Boxes are not organized and [are] stacked on top of one another. Boxes are stored directly on concrete flooring, and there are visible signs of box crushing.



PHOTO 59: Box of Case Files. Case files are not organized within each box.



PHOTO 60: Minute and other books stacked on floor. Books are stacked on floor, on top of other books. Some books are upright. No organization or inventory.



PHOTO 61: Minute books stored on floor. Books stacked on top of each other, near window, on floor.



PHOTO 62: Case files kept in plastic bags. Galveston hopes this will protect its Records if the facility floods. Facility is located a few blocks from Galveston Bay.

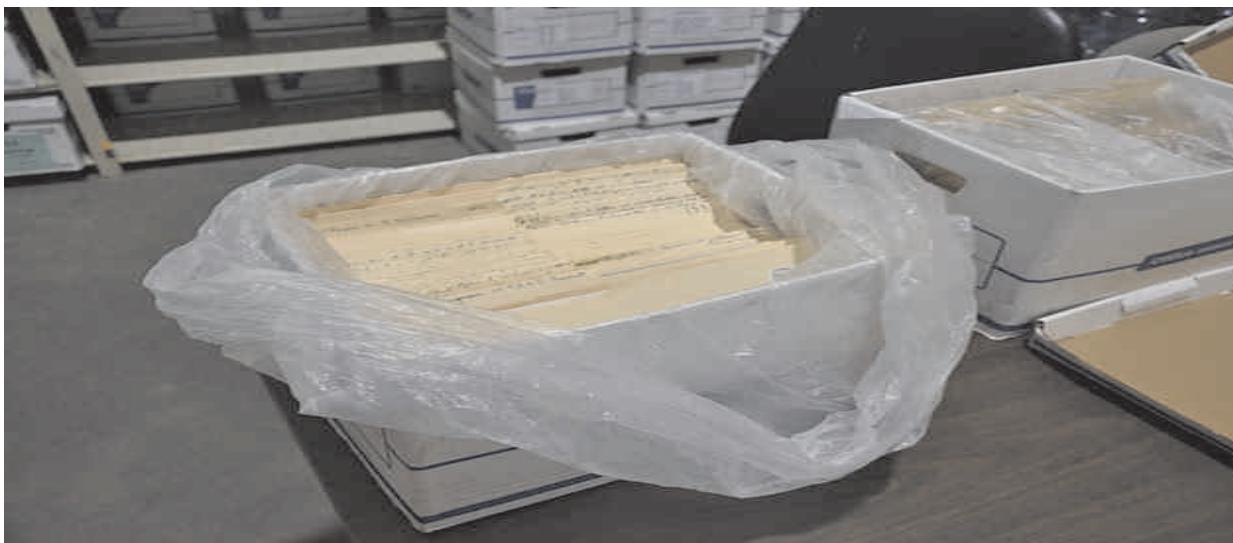


PHOTO 63: Typical storage of historical case files in original cabinets. Records are often over-stuffed in files. Files can be damaged when drawer is opened. Case files cannot be easily pulled or reviewed.



PHOTO 64: Sea crate containing historical court records. This crate contains the most important historical court records of this county.



PHOTO 65: Historical court volumes stacked on floor. This shows how the Records are stacked in the sea crate—on floor, on top of one another, no organization.



PHOTO 66: Volumes stacked on floor. Another photo inside sea crate. Boxes are stacked on top of Records.



PHOTO 67: Another example of an overstuffed case file.



PHOTO 68: Ledgers housed in offices.



PHOTO 69: Ledgers stacked in office storage area. Records are not organized or secure.



PHOTO 70: Minutes and other volumes stored with old equipment.



PHOTO 71: “Air conditioning” to the attic space that holds Records.



PHOTO 72: Corner of this Record room. See the floor in the back and the transfiles collapsing on each other.



PHOTO 73: Another Records room. Better view of the old roof serving as the floor and more collapsing boxes.



PHOTO 74: Record Volumes and boxes stored with old equipment and trash cans.



PHOTO 75: Indexes to district clerk Records shelved in hallway of former jail at courthouse.



VI. Task Force Recommendations and Action Items

Even in better economic times, the State of Texas would face significant challenges in preserving its thousands of Records located in hundreds of locations around the state. The Task Force recognizes that the availability of additional public funds for preservation projects will be limited. However, the Task Force believes that progress can still be made in these challenging economic times if attention is focused on public awareness, training on handling, preservation and security procedures, better use of currently available public funds, identification of private funds that can supplement public funds, and the use of volunteers.

The Task Force has identified the following measures to better protect our Records.

A. Preservation Training of District and County Clerks

During the next year, the Task Force will work with the Texas State Archives and the State Bar of Texas to create a training program for district and county clerks on the importance of preserving Records, the development of better preservation and security policies, and preservation techniques. Elected district and county clerks, as well as their staff who have day-to-day responsibilities for these Records, will be offered training. The training may take place during annual conferences of the district and county clerks. The Task Force Chair has also begun discussions with the State Bar of Texas about developing a webinar that could be accessed by clerks and their staff from their offices.

B. Retention Standards

The Texas State Archives is responsible for publishing document retention standards for district and county clerks for their Records which identify which records must be maintained. These retention standards are incorporated into the County Clerk and District Clerk Procedure

Manuals (the “Manuals”) published by the Office of Court Administration.¹⁰ The Task Force has worked with the Texas State Archives to update these retention standards in 2011. Effective in 2011, all court records, including pleadings and depositions, dated prior to 1951 are required to be preserved. As a result, the State of Texas now has one of the strongest court record retention standards in place. The policy effectively mandates that records from the Roaring Twenties, the Great Depression, and World War II be preserved to the same extent as Records from earlier historic periods. This protection is warranted, as the years between 1920 and 1950 are especially important ones that chronicle the history, growth and rise of modern Texas. The Task Force has observed that many individuals with responsibilities for preserving Records, as well as members of the Task Force, have been confused at times on these retention standards, especially in light of recent revisions. These standards are an important topic that will be covered in the training.

C. Better Policies, Procedures and Practices

District and county clerks would benefit from having clearly written guidance on how to better preserve, protect, and secure Records. The Task Force has prepared some materials which will be made available on the Task Force website.¹¹ These materials can also be used for the recommended training of clerks, and can be identified and referenced in the Manuals.

A guide for contracting with document preservation vendors should also be developed. There are many ways that Records can be preserved, and there are many vendors offering different types of preservation services for different prices. The Task Force has seen examples

¹⁰ The District Clerk Manual can be found here: <http://www.courts.state.tx.us/pubs/manuals/dc-manual.asp>. The County Clerk manual can be found here: <http://www.courts.state.tx.us/pubs/manuals/cc-manual.asp>.

¹¹ These materials are entitled (i) ”Preservation of Archival Materials,” (ii) ”Care and Handling of Archival Materials,” and (iii) ”Task Force Preservation Flyers.”

of preservation that range from state-of-the-art cleaning, de-acidification, and storage, to the questionable enclosure of Records in plastic or repairs of tears with clear adhesive-backed tape. The County Clerk of Williamson County explained that “[c]lerks are usually at the mercy of the vendors who claim to do good work. We dealt with a vendor who has left scotch tape on records supposedly preserved. Clerks need help finding a qualified and reputable vendor.”

The Task Force recommends that a standard Record preservation specification be developed for district and county clerks to use when negotiating with contractors or soliciting bids for Record preservation. The Task Force will work with the Texas State Archives to develop such a specification. These materials could also be used in a training program and referenced in the Manuals.

D. Public Awareness

The Task Force has observed that counties with strong Record preservation practices are often counties that have active local history awareness programs and activities. If more information is provided to county citizens about the importance of their Record collections, more attention will be paid to their preservation. The publication of this Report, the scheduled hearing before the Court, and related media attention are three ways to begin building public awareness. The Task Force also has additional recommendations for increasing public awareness.

Programs need to be developed to educate lawyers, judges, and local bar associations on the importance of these Records and the need for better preservation. The Task Force is working with the State Bar of Texas to develop such programs, including several projects based upon the 20 Historical Records that the State Bar of Texas and Baker Botts L.L.P. have preserved. The State Bar of Texas is planning to dedicate an issue of its monthly *Texas Bar Journal* on Record preservation. This edition will include short descriptions on each of the 20 Historical Records

and build support for a Record preservation grant program. A reprint of the main articles should be distributed at the State Bar Annual Meeting. Additionally, the State Bar of Texas and the Task Force are planning to feature the 20 Historical Records during the 2012 State Bar Annual Meeting in Houston, Texas, and use that event as a forum for raising Record preservation awareness and funds. The Task Force is working to develop a similar presentation on the 20 Historical Records for the Annual Texas Court Clerks Meeting in Galveston in May 2012, potentially in conjunction with clerk training.

The Task Force will also begin discussions with the Bob Bullock Texas State History Museum about developing an exhibition on Texas Records. Such an exhibition may require development of a picture or “coffee table” book that could be sold as part of the exhibition. The State Bar of Texas might be interested in publishing such a book. One idea is to work with clerks in each county to identify one record that best illustrates the history of that county in the broader context of the development of the State.

E. Better Reporting on Preservation Plans and Use of Preservation Funds

It is difficult to gather reliable state-wide information on the amount of money available each year to district and county clerks for Record preservation or on how the money is spent. Without reliable data, it is also difficult to determine which district and county clerks need help with additional funds.

The Task Force intends to work with district and county clerks to develop a program to gather better information on funding and preservation. Such a report would allow a better understanding of the preservation work that has been accomplished and the needs of district and county clerks with regards to their preservation programs. It would also help policy makers decide whether and what additional resources are needed.

F. Fundraising

The Task Force believes that much can be accomplished with better training, procedures and practices, and greater public awareness. However, the Task Force believes that many, if not most, district clerks (and some county clerks) will need funding assistance. The Task Force will work with the State Bar of Texas and the Texas State Archives to identify ways to raise funds for counties with demonstrative preservation programs.

There are examples of clerks who have had success raising private donations. The Harris County district clerk, for example, has been successful in raising funds from local law firms for its Record preservation project. However, other counties, without the resources of Harris County, may have more difficulty. One problem has been that a 501(c)(3) dedicated to Texas Record preservation does not exist, so it is more complicated than necessary for individuals who want to make a tax deductible contribution to such projects. (Harris County worked with the Houston Bar Foundation so that contributions to the Foundation would be deductible and used entirely to preserve Records).

The Task Force is working with the State Bar of Texas to create a 501(c)(3) Foundation for Record preservation. This Foundation should be ready to accept contributions by the time of the hearing before the Court.

G. Enforcement

As detailed in this Report, Record theft is a problem. However, members of the Task Force have had some success in tracking down at least some stolen Records.

- June 2008: Individuals who would become Task Force members identified Texas court records for sale through online auction platforms and reported their concerns to the Texas Attorney General's Office. As a result, a total of 71 documents traced to the Texas Supreme

Court, other Texas courts, and Texas counties were discovered pending sale through the online platform eBay. The Criminal Investigations Division of the Texas Attorney General's Office ("OAG CID") recovered these original Records and returned them to the Texas State Archives.

- October 2009: After individuals who would become Task Force members spotted original Texas court records posted for sale on the online platform "liveauctioneers.com," OAG CID recovered another four (4) Texas Supreme Court documents and returned them to the Texas State Archives.
- July 2010: Another Task Force member report resulted in OAG CID recovering another original court record, Texas Supreme Court Document M418, that had been posted for auction on eBay. OAG CID secured its return to the Texas State Archives.
- August 2010: OAG CID secured the return of two historical court records, dating from 1848 which concerned issues of slavery, after they had been posted for auction on eBay. These records are now in the custody of the Texas State Archives.
- Early 2011: OAG CID, working in conjunction with a prosecutor at the Texas Attorney General's Office, secured the return of several additional Texas Supreme Court documents and returned those to the Texas State Archives.

To date, since this enforcement and recovery program began in 2008, OAG CID has recovered 78 original documents and returned them to the Texas State Archives. OAG CID, working in conjunction with the Texas State Archives, continues to pursue additional cases that have been identified through monitoring of online auction houses.

As a consequence of the Earl Collins case, and other cases of reported court records thefts throughout the State, investigators believe that there are hundreds, if not thousands, of stolen Records still in private collections and in circulation throughout the United States and beyond.

Recovering stolen Records, especially when they are held by collectors located outside the State of Texas, involves obvious challenges. Frequently, if a collector learns from Texas law enforcement that a Record in the collector’s possession is or may be stolen, the collector will voluntarily release custody. If it is unclear whether a suspect document in the custody of a collector is an original court record, as opposed to a copy, conscientious collectors will frequently agree to release custody on a temporary basis so that the Texas State Archives may examine the document.

The Attorney General’s Office has created protocols for use with large-scale online auction platforms to place holds on postings of documents that State of Texas authorities suspect may be stolen Records. Once these postings are placed on hold, authorities at the Texas State Archives can determine whether the posting concerns a stolen Record. If the Texas State Archives determines that a Record is stolen, then officials with the Attorney General’s Office contact the vendor in an effort to negotiate the return of the document to the Texas State Archives. Unfortunately, not all collectors and owners of what appear to be stolen Texas court records are conscientious enough to voluntarily release them. If a collector or owner declines to cooperate in an investigation, law enforcement officers and other Texas authorities have the following options available to them under current Texas law:

For thefts occurring in Texas, Texas authorities can pursue remedies under criminal or civil law. Law enforcement authorities can pursue action under the Texas Penal Code, including:

- *Theft*, Tex. Penal Code § 31.03 (providing that “unlawful appropriation” includes a situation in which “the property is stolen and the actor appropriates the property knowing that it was stolen by another”).

- *Tampering with Governmental Record*, Tex. Penal Code § 37.10 (providing that a person commits an offense if he “possesses, sells, or offers to sell a governmental record . . . with knowledge that it was obtained unlawfully”).

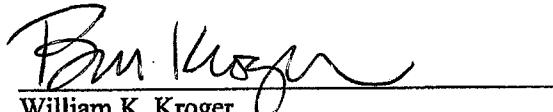
For transfers of stolen documents occurring outside the State of Texas, Texas authorities have the options of attempting to negotiate with auction houses and online auction sites, or pursuing remedies under the laws of the state in which the stolen records are located.

The Task Force recommends the establishment of a “1-800” hotline by the Texas Attorney General’s Office so that thefts of Records can be more easily reported. The Clerk Manuals should also be updated to include a section on how Clerks should report thefts of Records. Clerks should also be trained on how to periodically check Internet sites for stolen county Records.

VII. Conclusion

Texas Court Records are among the most important historical documents of the State. They document the lives of both famous and ordinary Texans during the days of the Republic, early Statehood, the Civil War, Reconstruction, and the innovations and hardships of the 20th century. Most of these records have not been studied, and or even reviewed, since the days they were created. Texans will care about these Records because they tell the story of this state and the people who settled it. If we act now, these Records can be preserved for future generations. It will take years, maybe decades, to take the necessary steps to ensure that these Records are saved. It will cost money. The Records are stored in hundreds of locations and are in various conditions; different Record collections will require different preservation measures depending on their condition, location, and other factors. If we begin taking the first necessary preservation steps, including those outlined in this Report, we will do honor to our ancestors who were instrumental in making this state great and unique. We will also bestow a great gift upon our descendants, who will learn and be guided by the stories and lessons found within these Records.

BY:



William K. Kroger
Chair, Texas Court Records Preservation Task Force,
on behalf of the Task Force



Mark Lambert
Vice Chair, Texas Court Records Preservation Task Force,
on behalf of the Task Force