

Shorter Features

MARK S. STEINITZ, *Editor*

THIS ISSUE MARKS the debut of the "Shorter Features" section. The purpose of this occasional department is to provide a forum for those topics that do not require full-length article treatment but are related to the management and use of archives. Appropriate subjects might include, but are not limited to, profiles of libraries and repositories, new or improved archival techniques and methods, or critiques of specific manuscript collections or types of records. To be selected for this section of the journal, papers must be between 500 and 1,000 words in length and without footnotes. Members of the Society and others knowledgeable in the fields of archives are encouraged to submit such papers for consideration. They should be addressed to: Mark S. Steinitz, Department Editor, *The American Archivist*, National Archives Building, Washington, DC 20408.

Legal History and the Role of Court Records

RAYMAN L. SOLOMON

OVER THE PAST two decades, increasing numbers of historians and legal scholars have begun to focus their research on the relationship between law and society. This research represents a significant shift from traditional legal historical studies which sought to trace the origins and development of legal institutions and legal doctrines. J. Willard Hurst's publication of *Growth of American Law*, in 1950, and his subsequent teaching and scholarly career have tremendously influenced and shaped the course of the new legal history. Among the many works pro-

duced thus far in the field, three deserve special mention. Lawrence Friedman's *A History of American Law* (1973) provides the first attempt at writing an overview of American legal history from the perspective of the relationship between law and society. The other two, William Nelson's *The Americanization of the Common Law* (1975) and Morton Horwitz's *The Transformation of American Law* (1977), both seek to explore the interrelationship between American law and society following the American Revolution. Both of these new works, along with many others, rely heavily on unpublished state and local court records as their primary research sources.

With the expanded interest in these records, archivists must understand the basic structure of the lower court system. They should be aware of the types of legal questions that the state and local court records can help historians to answer. Finally, archivists need to know specifically what types of non-federal court records historians would like to have retained and preserved.

State courts are in two groups: appellate and trial. The types of records each produces are distinct and so should be discussed separately. Appellate courts do not retry issues of fact; they judge whether the trial court committed either substantive or procedural errors. In most states there are two levels of appellate courts, an intermediate court of appeals and a supreme court. Both generate the same types of records, and there is little distinction between the court records of civil appeals and criminal appeals.

The records of appellate courts consist, usually, of the briefs submitted by counsel and the written opinion of the appellate court announcing its result. There may also be motions made and court orders ruling on such motions. Appellate court opinions are published and readily available; the briefs, orders, and motions are not.

The briefs might be valuable for several types of studies. In studying the law-making role of judges, it would be important to understand the scope of the arguments presented to the court. The briefs also could be important in a study of the legal profession. Information could be obtained about the skill of the lawyers, the availability and use of secondary sources, and various points such as whether at a given time significant differences developed between the work product of large law firms and solo practitioners. Affidavits accompanying motions contain impor-

tant material. For example, evidence of lawyer-client relations might be found in an attorney's motion to be permitted to withdraw from representing a party.

Civil and criminal state trial court records are an equally vital source for legal scholars. Civil trial court records include not only the law courts where parties seek money damages arising out of tort or contract claims, but also chancery courts where suits seeking injunctions are heard. In addition, a number of specialty civil trial courts exist, such as housing, probate, and divorce. Among the most valuable components of the civil trial court files are the pleadings. These are the complaints filed by the plaintiff, stating the facts underlying the dispute and the legal harm claimed. The files also include the defendant's answer, in addition to lists of witnesses, information on depositions, discovery motions, stipulations as to facts or legal issues, demands for jury trial, written motions for exclusion of testimony, offers of proof, motions for summary judgment, and a transcript of the trial itself.

In Jamil Zainaldin's study of adoption, civil trial records provided information on the social characteristics of all the litigants, including the children. (See Jamil Zainaldin, "The Legal Origins of Modern Adoption" [Ph.D. dissertation, University of Chicago, 1976], or his article, "The Emergence of a Modern American Family Law: Child Custody, Adoption, and the Courts, 1796–1851," in *Northwestern University Law Review* 73 [1979].) Similarly, in a study of housing, the claims and the defenses raised in the pleadings of landlord-tenant eviction suits can document housing conditions. Data on wealth, family size, and even literacy are in probate records.

Civil case file entries contain still more information. Cases can be categorized by type of controversy. Rates of success of plaintiffs, and rates of settlement can be measured and the time, delay, and cost of litigation can be determined.

Because of constitutionally mandated rights to due process, bail, and a fair trial, the criminal trial contains more stages than the civil and generates more records. Some of the possible contents of a criminal trial file include: complaint or arrest slip; motions made and disposition of a probable cause or bond hearing (if bond is granted and made there will be information on the person posting bond and the amount); grand jury indictment; search warrants and other motions and arguments made at a suppression hearing; information on the attorney representing the defendant; waiver of jury trial; trial transcript; judgment or guilty pleas; presentence probation report; sentence; and subsequent disposition of the case.

These records yield information on the nature of crimes and criminals, and shed light on social or political history. The bail bond records might help to explain the relationship between ethnic groups, crime, and urban political machines. The case files would facilitate a much needed study of the victims of crime. In my own work I am interested in the impact of probation on the Chicago criminal justice system between 1910 and 1930.

The criminal trial courts records provide data on the social characteristics of those who received probation and those who went to prison, the correlation between those who receive bail and those who receive probation, and the correlation between those who plead guilty and those who receive probation. Arrest slips and grand jury

indictments, both of which describe the committed offense, can be compared to guilty pleas, thus perhaps allowing some work to be done on the neglected area of plea bargaining.

Archivists should particularly note that without the docket books or indexes to the civil and criminal case files, the files become difficult to use. There may be several dockets containing documentation on a particular case; that is, there may be an index for grand jury indictments, an index for those who plead guilty, and an index listing those who receive probation. Since research projects will involve many different uses of the trial records, every attempt should be made to preserve all of the docket books.

As a legal historian, I favor the retention of all records of the judicial branch of government. There are, however, several types of non-federal court records I am particularly interested in having archivists preserve. One type is court administrative records, an example of which is the correspondence and policy statements of a state supreme court when acting in its supervisory power over lower courts. Also worthy of retention are the correspondence and files of state supreme court discipline and registration committees. Expanding the meaning of court records, I would also include in the category of records to be preserved all official letters, clerk's memorandums, opinion drafts, and inter-judge correspondence of the judges of all state courts. These materials might allow us to develop further our ideas of the process of adjudication and better understand social, political, and economic concerns which affect legal development.

I fully realize that to obtain these materials in most states would require much legislation and might be op-

posed by many judges. A further discussion of this subject is probably outside the scope of my essay, but it is a question that is, I am sure, of mutual concern to both legal historians and archivists.

RAYMAN L. SOLOMON is an attorney and legal historian. He presented a more detailed version of this paper at a 1978 meeting of the National Association of State Archivists and Records Administrators.

Architectural Cataloging

CATHY DE LORGE

DEVELOPED IN 1975 to organize a twenty-year accumulation of architectural plans, the architectural cataloging system of the Oregon Historical Society has been successfully used to arrange our complete backlog of materials—so far, nearly 1,000 individual sets of plans numbering more than 15,000 pieces.

We have purposely designed a simple system which can be expanded and which is coordinated with the card catalog system in the Manuscripts Department. Most important, the collections are accessible under any of several cross-references. What was inaccessible three years ago is now available for research.

The architectural collections are arranged by architect or generating agency with cross-references for name of building, original owner, location, and salient architectural features. This arrangement makes it simple for architects, historical preservationists, urban planners, interior designers, and students to find plans suitable for their needs.

Each architect or architectural firm is assigned a manuscript number; then each different commission is given a number. For example, if an architect is assigned Ms. 3000, each set of plans in

this collection would be numbered sequentially Ms. 3000-1, 3000-2, and so on. In this way, any supporting material belonging to that architect, such as personal or professional papers, specifications, etc., would be assigned just the manuscript number.

Catalog cards are then made, including the following: collection name (architect, name of building, or generating agency); dates of the architect, if known; building title or description; location; and date of plans. Next are listed the number of drawings, plans, elevations, or sketches, together with a page count, and then the size or range of sizes measured in centimeters. Duplicates are mentioned, as are scale, medium, and any necessary additional description. If the size or importance of the collection warrants it, an inventory is prepared, and this is noted next. A citation is made if there are related materials stored elsewhere in the library or museum; and listed last are provenance, restrictions, and tracings.

Sufficient catalog cards are duplicated for all the cross-references and the shelf list. An additional set is made for the Committee for the Preservation of Architectural Records, in New York City, which maintains a national data file of architectural collections.

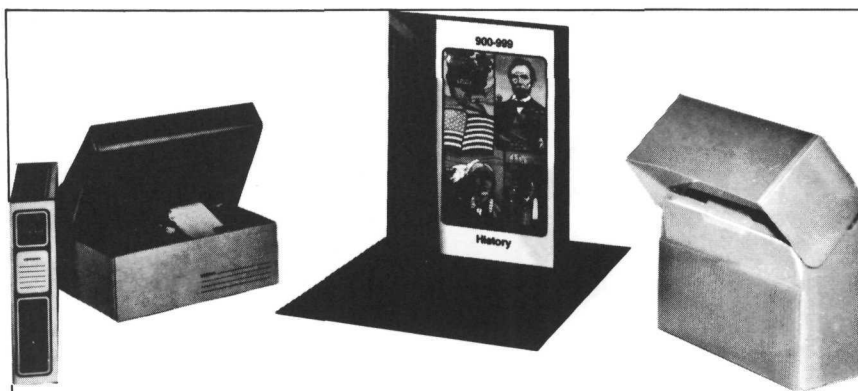
While our original collection policy for architectural materials was to seek out any and every thing available about

Pacific Northwest architecture, experience and finite storage facilities have modified our aims to providing a representative view of architectural development in the Northwest. We, therefore, are selective about the collections now accessioned, asking for an architect's award-winning, pace-setting, or representative structures as well as for those which are unusual or which flesh out our collections. By working closely with local architects and the Portland chapter of the American Institute of Architects, we are building an impres-

sive, useful, and accessible architectural archives.

Archivists responsible for architectural materials may write, for a sample architectural cataloging worksheet and inventory, to Cathy de Lorge, Manuscripts Librarian, Oregon Historical Society, 1230 SW Park Avenue, Portland, OR 97205.

CATHY DE LORGE is the manuscripts librarian at the Oregon Historical Society.



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