

Designing Projects for Maximum Impact: Saving the Early Court Records in Massachusetts

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THE MAJOR PURPOSE of a records survey is to enable both archivists and researchers to know what is available; its primary function is like that of a finding aid. But a survey can be designed and implemented to have significant policy implications in records management, storage, and access. It can also create a natural constituency of historians, archivists, and government officials concerned with preserving records in proper condition and ensuring their continued availability to scholars. The case study of the records survey of the major trial courts of Massachusetts from the seventeenth century to the very recent past illustrates these points.

The need for such a survey had long been obvious. Although there were two

relatively recent inventories of local manuscript court records in Massachusetts, both were limited in scope, one to the colonial period, the other to the late eighteenth and early nineteenth centuries.¹ Neither was complete. The impetus needed to launch a survey came from the top, from the chief justice of the state Supreme Judicial Court. In November 1976, in response to concerns expressed by scholars, court clerks, archivists, and judges about the deteriorating state of historic judicial records in the commonwealth, Chief Justice Edward Hennessey formed the Judicial Records Committee to formulate a statewide policy with regard to court records. Chaired by a superior court clerk, the committee consisted of clerks, archivists, librar-

¹ David H. Flaherty, *American Journal of Legal History*, vol. 11, 1967; William E. Nelson, *The Americanization of the Common Law* (Cambridge: Harvard University Press, 1975).

ians, legal scholars, and representatives of the bar.²

Scholarly interest in court records has increased exponentially in recent years. Social historians, particularly those interested in early American history, were attempting to reconstruct the everyday lives of ordinary people. Some legal historians were beginning to look beyond doctrine in an attempt to discover patterns of civil litigation and criminal prosecution, or to study the rise of the legal profession. Court records were not only a useful source for such inquiries; frequently they were the only extant source.

The court records of Massachusetts presented two distinct sets of problems. The first set are the familiar ones of physical conditions of storage. Buried in basement and attic vaults of fourteen different county courthouses, tightly folded and stuffed into metal cases or cardboard boxes, many of these records were literally crumbling into dust. Others were filthy or had suffered deterioration from aridity or humidity. Most of the courthouses were constructed in the nineteenth century; space was scarce and old records had low priority. No county had proper facilities for the preservation and storage of historic records. Of course, such problems are endemic to decentralized court records, but the second set of problems were unique to Massachusetts. State government there is based on a strict separation of powers. The state archives is part of the executive branch; the court records, obviously, are in the domain of the judiciary. Barely enough money is appropriated to support a state archives; there is none whatsoever for the care,

storage, and preservation of historic judicial records.

A problem in gaining access to records in order to inventory them had been anticipated, but such fears proved to be unfounded. In Massachusetts the Supreme Judicial Court, the highest appellate court in the state, has general powers of superintendence over all the courts. Armed with a strong letter of support from the state's chief justice, surveyors received access to every place in each courthouse in which records were stored.

A survey form was devised to take note of the physical condition of the records and how they were stored—in closed metal drawers, cardboard boxes, piled loose on the floor? Every room was inventoried in which court records were stored, and surveyed too in terms of ventilation, temperature and humidity control, lighting, potential plumbing disasters, and fire hazards. Because the inventory should enable and encourage interested scholars to use the records, such factors as workspace, lighting, copying machines, and the like were recorded. Notes were made also about security. While this information was too voluminous to include in detail in the report, the raw inventory sheets were put on microfiche where they are available to interested parties.³

The great detail of the information on the condition and storage of records provided the basis for overall policy recommendations, and specific information helped to identify emergency situations demanding immediate attention. The survey itself included the recommendations of the Judicial Records Committee about

² For a more complete description of the work of the committee, see Robert S. Bloom, "Judicial Records: The Formation of a Statewide Records Preservation Program," *Boston Bar Journal* 22 (September 1978): 23–33.

³ Inquire of Mr. Robert Brink, Social Law Library, 1200 Courthouse, Boston, MA 02108.

general improvement in storage conditions.⁴ In addition, the committee sent to each clerk an analysis of conditions in his courthouse, specifying severe deficiencies and recommending remedies, with a copy of the final inventory.

The Massachusetts court records survey was designed to achieve two sets of policy objectives, one practical and one symbolic. On the practical side are the problems that face historians whenever they attempt to use court records. First, the decentralization in many states of trial records into county courthouses makes systematic research more difficult than with centrally collected public records. In addition, courthouses are obviously not archives and court clerks are not archivists. Scholars attempting to use court records sometimes find that their requests are ignored. Courthouses have little or no workspace and, of course, records cannot be removed from the building. Many court clerks will retrieve cases only one at a time (which, of course, is how lawyers usually request them), and the quantitative or systematic historian who wants hundreds or thousands of cases will be turned away.

Such limitations are not simply minor inconveniences. While the biographer of Samuel Adams may be content to receive his court records piecemeal, the student of economy, law, and society in an eighteenth-century county needs all the extant cases, and cannot call for them by name or docket number.

Then too, few historians have much familiarity with the law or know what to ask for. Before this inventory, even fewer had any idea of what the courthouses contained. Clerks, whose calls

for eighteenth and nineteenth-century records are infrequent at best, may not always be aware of what is in their custody. Finally, when court is in session clerks see the bench and bar as their primary constituency. A historian seeking thousands of eighteenth-century cases will not be welcome and may be told, to relieve the clerk's staff of a potential burden, that nothing is available.

For this set of practical problems, the inventory offers something for both clerks and scholars. Clerks know what they have, and historians know what they can ask for. Both groups should now have some idea of where to find it. For the historian who may not be sure what records are his best source of information, the inventory includes a short glossary of terms used to describe the record series.

The inventory also provides some practical solutions for the problems of records out of custody. Over the course of the past three centuries, many court records have been removed from courthouses for one reason or another. Large collections have ended up in libraries and historical societies. Again, an approach to such alienated records can combine utility and policy. The survey inventoried records in every known repository, confining its interest to actual record series, not isolated or individual court documents which might have found their way into a collection. These records were generally poorly cataloged; describing them in a uniform format made them more accessible. The method of transferring public records from courthouse to historical society or library was also a concern. Although the rules of the Supreme Judicial Court in Mas-

⁴ Michael S. Hindus, *The Records of the Massachusetts Superior Court and Its Predecessors: An Inventory and Guide* (Boston: Social Law Library, 1977).

sachusetts specify a certain procedure, it was clear that most such transfers had been done informally and by persons who were not legally empowered to abandon custody of these public records. A survey is not intended to remove such records from their repositories, but to lay the groundwork for tidying up such transactions after the fact and to ensure that even while in the hands of a private historical society or library, they are still considered public records with access guaranteed to the public.

Another practical benefit of the survey was that large and complete runs of manuscript court files were found where previous inventories and bibliographies had indicated that none existed. The method of taking the inventory contributed to the completeness of the material located. The court records of Massachusetts are far more intact than had previously been imagined. Although other historians had made efforts in good faith to locate all the manuscript court records in the commonwealth, the survey's unfettered entry into all the vaults and storage rooms enabled its workers to find far more documents than were found by previous researchers who had had to rely on what they were told by the court staff.

So, on the practical side, the inventory has proved valuable to scholars and has significantly increased their access to these records. It is also possible that it increased the ability of clerks' offices to help people wishing to use these records.

There is also a symbolic side to this project. This survey was the first major effort of the Judicial Records Committee, which was created to coordinate records policy in the courts. Its establishment and the interest taken in its activities puts the court system and the

academic community on notice that the long history of neglect is coming to an end.

But symbolism frequently takes on unexpected dimensions. Several clerks were genuinely concerned about the fate of their historic records. Some requested specific advice about improving the conditions of storage and salvaging badly damaged documents. There never will be a trained archivist in every courthouse, but by keeping itself visible, the Judicial Records Committee will increase the archival awareness of clerks, who are well represented on it.

Of course, what a survey does not do is save the records surveyed. But the Massachusetts survey has accomplished several things which may lead to this end. The inventory has stimulated demand for the use of the court records, so that a natural constituency is forming and growing. As these records remain in the public eye, concern for their fate will increase.

Moreover, Massachusetts is well along in devising a sound and coordinated policy for dealing with such records. Among the recommendations of the survey staff was a call for centralized storage of all pre-1859 records, a step forward even though it is unlikely that substantive action will be taken on the proposal in the near future.

In addition, several recommendations were aimed at ensuring that no destruction or alienation of court records should occur without approval of the Judicial Records Committee. Supreme Judicial Court Rule 3:09, governing destruction and alienation of records, was revised to give the Judicial Records Committee a more active role. Henceforth, a local clerk or court official cannot make an irreversible decision concerning records, having complied with all the old notice provi-

sions, without the active approval of the chief justice or his designee, the Judicial Records Committee.

The inventory also pointed up the problem of space. A new project is underway attempting to devise a sampling scheme that might permit weeding of post-1859 records without significant decrease in the amount of information. It is designed to deal with the space crisis caused by the exponential growth of litigation in the past century while also serving as a model that could be applied to such records as prisoner and mental health files. In addition, if successful this new project would have prospective applications, so that documents could be coded at the time of their creation according to the eventual disposition.

In summary, then, this survey has alerted scholars to the availability of records long believed lost, has alerted the court clerks to the concern

throughout the commonwealth for the fate of these historic treasures, and has laid the foundation for further work to restore and make this material available. It has also marked an auspicious beginning for the activities of the Judicial Records Committee, which now has new authority to deal with records problems.

A good survey is like an effective advertisement; it stimulates and creates a demand and informs the consuming public what is available. In a state where many court records have remained relatively inaccessible for decades, this function alone would have had public policy implications. But by designing an inventory of contents to become an inventory of *conditions* and *needs*, and as an agenda for future action, the project helped to save the early court records of Massachusetts simply by surveying them.

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