

# A Map of the History of Texas

## Supreme Court Task Force Works to Preserve Historical Court Records

BY JUDY L. MARCHMAN

*S*am Houston versus Mirabeau Lamar. Early statehood and Mexican land grant disputes. Pre-Civil War slavery records. Outlaws John Wesley Hardin and Bonnie and Clyde. Bob Wills and Lead Belly. This is just a sampling of the famous persons and events chronicled in the records and case files of Texas courts. But dig a little deeper and you will find a treasure trove in the stories of everyday Texans.

“The history of our courts is the history of Texas,” said **Mark Davidson**, judge of the Multi-District Litigation Asbestos Court in Harris County and a passionate advocate for historical records preservation. “Our court records constitute a vast and unexplored archive of what life was like for 19th-century Texans.”

Davidson is joined in his zeal for history by **Bill Kroger**, a partner in Baker Botts, L.L.P. in Houston, and Texas Supreme Court Chief Justice **Wallace B. Jefferson**. In 2008, Kroger and Jefferson took a trip to the McLennan County archives to search for a case involving 19th-century judge Nicholas Battle. Kroger was researching an article, but for Jefferson, the trip was more personal. Battle had once owned an ancestor of Jefferson’s (see p. 198). While they didn’t find the case file they were looking for, the men came away with a sense that the old records that they had seen needed protection and that they were in danger of being lost. There was no doubt to Kroger and Jefferson that plenty of records were in similar danger across the state.

To address this issue, in November 2009, the Texas Supreme Court created the Texas Court Records Preservation Task Force and charged it with collecting and analyzing data on the current status of Texas’ historical court records, identifying important needs and areas of concern regarding the preservation of records, and developing a plan to address the need to preserve and protect the state’s court records.

Kroger chairs the 29-member Task Force, which is filled with like-minded judges, lawyers, professors, and district clerks who share a passion for history, as well as archivists from the Texas State Library and Archives Commission, the Texas Historical Commission, Texas Supreme Court, and State Bar of Texas. Justice **David Medina** is the Court’s liaison to the Task Force.

After initially collecting some anecdotal materials about the way records were kept in certain counties, the Task Force worked with the Office of Court Administration to conduct a survey of district and county clerks in Texas.

The survey was sent to 443 county and district clerks, with 278 surveys received from 197 responding counties. The survey helped to identify the condition of records and storage facilities and where the greatest needs were. Of those responding, 17

percent indicated they had records dating to the Republic of Texas era (1836-1845), 23 percent had early statehood records (1846-1859), and 36 percent had records beginning in the period between 1877 and 1920.

The greatest needs for records preservation indicated by the survey were, not surprisingly, additional funding (80 percent), improved storage facilities (64 percent), and training of staff (50 percent). The survey is available on the Task Force’s webpage at [www.supreme.courts.state.tx.us/crptf/about.asp](http://www.supreme.courts.state.tx.us/crptf/about.asp).

Armed with the survey information, Task Force members visited district and county clerk archives to get a first-hand account. Kroger visited 15 counties.

“The more we looked, the more we realized how important these records are,” Kroger said. “Many clerks have a general knowledge of their records but they are not historians. Many of these files haven’t been touched since they were closed, so often the clerks don’t know what they have.”

In addition to the survey, the Task Force has worked closely with the district and county clerks to better understand the challenges the clerks face.

“A key issue for clerks is having to look at the condition of their records to determine where they are and what needs to be done,” said Amalia Rodriguez-Mendoza, the Travis County District Clerk and a Task Force member.

The cost of preserving and storing a large collection of court records can be difficult for many counties. District and county clerks are allowed to charge fees for the preservation of their records, however, that may only cover a portion of the work that needs to be done. For counties with a far-reaching history, such as Bexar County, the financial challenge of preserving large minute books can be daunting.

“It costs between \$1,500 and \$1,800 for each of those books to be preserved,” said Donna Kay McKinney, the Bexar County District Clerk and a Task Force member. “We have 1,500 such books, most before 1900, that take up 100 square feet of space. I’ve pledged to myself that I would like to preserve all records before 1900.”

McKinney is in the process of preserving 70 original paper lawsuits dating from the Republic of Texas. Next on the priority list are 49 of the oldest minute books dating from the 1830s to 1852. Records from 1900 to the 1960s were microfilmed by an earlier predecessor and the paper records subsequently destroyed.

Proper storage or just having enough storage is another major challenge many counties face, a fact that quickly became clear on Task Force site visits.

“We found books lying on the floor, or under hot lights or water pipes. We found them in basements or in attics. We also found records housed in big shipping crates with no air conditioning and often with no organization,” Kroger said.

“The clerks we’ve visited with have all been very supportive and concerned about preserving their records. Once they looked at what they had, they instantly recognized the inherent value and want to do more. But I don’t know if it’s realistic to expect clerks to run a museum. They don’t have the training or resources to do that.”

During the site visits, Task Force members selected 21 historical court records to be professionally preserved, thanks to financial assistance from the State Bar of Texas and Baker Botts, L.L.P.

“The State Bar of Texas is excited to partner with the Task Force in this important endeavor,” said State Bar President **Bob Black**, an enthusiastic history buff who has made the preservation of the legal profession’s history a primary initiative of his term. But for Black, as well as the Task Force, these records represent a great educational opportunity.

The goal in preserving these 21 records is to showcase the spectrum of Texas history that can be found in old court records to help educate not only those in the legal profession but also the public. (See essays on these 21 preserved court records, p. 190.)

To ensure the proper retention of the state’s historical court records, House Bill 1559 was passed during the 82nd legislative session, providing a moratorium on the destruction of court documents dating prior to 1951. The bill, which became effective in May 2011, also provides for the Texas State Library and Archives Commission to adopt rules for the retention, storage, and destruction of court documents prior to 1951.

Last September, Kroger, Davidson, and other Task Force members presented a status report on its investigation and findings at a hearing before the Texas Supreme Court. (To read the full report, visit the Task Force webpage.) At a reception afterwards at the Texas Law Center, the 21 records that were selected for preservation were displayed for the first time to the delight of all involved.

Louisiana Binding Service, Inc. preserved and bound the records in reinforced hard cases meant to be as disaster-resistant as possible and to stabilize the documents from any possible damage that could occur from mishandling. To the clerks who are the recipients of these newly refurbished books, they are things of wonder.

“It’s the most beautiful thing,” said McKinney of Bexar County Minute Book B. “I couldn’t believe they could take that old, moldy book and transform it into such a beautiful book.”

The 21 preserved records are instrumental to the Task Force’s goal of building awareness among clerks, lawyers, and judges alike about historical records preservation by providing tangible examples of the result. The records will be part of two exhibits



Task Force Chair Bill Kroger examines newly preserved historical court records.

this summer — one at the State Bar Annual Meeting in Houston June 14-15 and the other at the County and District Clerks Association of Texas Annual Conference in Galveston June 24-28. *Texas Monthly* magazine featured Chief Justice Jefferson, Kroger, and the Task Force’s work in its February issue.

Kroger is also in discussion with the Bob Bullock Texas History Museum in Austin to set up an exhibit of historical court records about three years down the road. That would give the Task Force time to seek necessary funding for a matching grant program for district and county clerks for preservation projects. In addition, the State Bar’s Texas Bar Historical Foundation is also providing an avenue for donations earmarked for court records preservation.

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is publications manager of the *Texas Bar Journal*.

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