

# The LEGAL HISTORIAN



*Historia Omnium Legum*

THE AMERICAN SOCIETY FOR LEGAL HISTORY, INC.  
MCMLXVII

# **The LEGAL HISTORIAN**

"Nam quis nescit, primam esse historiae  
legem, 'Ne quid falsi dicere audeat'?"  
—Cic. de Or. II, 62

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## Contents

	Page
Board of Directors and Officers of Society . . . . .	5
President's Letter . . . . .	7
Editor's Notes . . . . .	9
By-Laws of Society . . . . .	11
Alphabetical List of Members of Society . . . . .	17
Report to Members:	
1. Manuscripts . . . . .	25
2. Records . . . . .	28
3. Microform Publications . . . . .	33
4. Dissertations . . . . .	36
Article: On Indexing American Legal Records . . . . .	41

**THE AMERICAN SOCIETY  
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(INCORPORATED, 1959)

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## President's Letter

**A**FTER A LAPSE OF SEVERAL YEARS, it is my pleasure as President of the American Society for Legal History to write this introduction to the fifth issue of *The Legal Historian*. This annual publication was first published in 1958 and contained organizational material of the American Society for Legal History such as lists of officers, members, by-laws, and similar organizational material. In the four issues between 1958 and 1961, a selection of letters from the Justices of the Supreme Court and the Attorneys General of the United States, taken from the Hampton L. Carson Collection of the Free Library of Philadelphia were included which made these issues an invaluable source of legal history. *The Legal Historian* was converted to a quarterly publication, which was finally suspended.

The President approached Mr. Leonard Goodman of Washington requesting him to chair a committee on publications. From this committee came the recommendation to resume publication of *The Legal Historian*. The objective of *The Legal Historian* continues to serve as the official publication of the Society. However, the Committee on Publication continues to seek ways and means of publishing serious volumes of legal material of historical importance under the imprint of the Society. This program will continue.

It is hoped that the present *Legal Historian* will be greeted with as much enthusiasm as its predecessor, and that the members of the Society will lend their support to this publication.

ERWIN C. SURRENCY  
*President*

## Editor's Notes

THE PRESENT PUBLICATION commences anew the "house organ" that last appeared in 1961. The earlier issues, it will be remembered, compiled data regarding the Society's members and activities and added a selection of letters. The present and future issues will continue this necessary task, but will also undertake the entirely new and untried task of becoming a useful series of handbooks to the student and reader of legal history.

Those acquainted with writing American legal history well know the obstacles—the wide dispersion of the relevant records and manuscripts, the lack of ready access to records and manuscripts even when found, the great bulk of the unindexed materials. Students also well know the pitfall, that pertinent material is so often overlooked or the wrong interpretation given to that which has been found. The *Historian* hopes to reduce these obstacles and to ameliorate the dangers of oversight in the coming years.

The *Historian* will approach its new task by setting before the members of the Society reports of finds of manuscripts, legal records, and inventories and catalogs of such materials. It will seek to amass bibliographies, lists of articles, and dissertations, in legal history. Avoiding competition with the Society's *Journal*, it will publish only such articles that assist the writer of legal history. In short, it should stimulate the further production of writings in American legal history, as well as stimulate the criticism of such writings.

Suggestions from the members are invited, and should be addressed to the Editor, who admits of responsibility for this initial effort and for the content of all unsigned, original material included herein.

LEONARD S. GOODMAN

Washington, D. C.

# By-Laws of the Society

**I**N ORDER TO FURTHER THE PURPOSES of this Society and provide for its management, the following provisions are adopted as its by-laws.

## ARTICLE I

### *Members*

1. Any person interested in legal history may, upon application to the Society and payment of dues, be admitted to membership. Any institution may do likewise.

2. A member shall be entitled to attend and vote at all assemblies, meetings, and conferences; run for, be elected or appointed to, and serve in any office; be considered for appointment to any committee; make motions and work for their adoption within the Society; and receive all publications of the Society under the terms to be set for each type or unit of the said publication.

3. The Society may, upon prior recommendation of the board of directors, (1) elect persons to honorary membership in the Society, but no more than one such honorary membership may be voted each year; and (2) create such classifications of memberships as it determines upon such terms and conditions as it sets forth.

4. A member may withdraw from or transfer to any class of membership for which he is eligible at any time upon presentation of his resignation or request for transfer, to the board.

5. The dues for all Classifications of memberships shall be fixed by the Board of Directors. All annual dues are payable annually on January 1st of each year. Only those members who have paid their dues and fees are to be members in good standing entitled to all the privileges and benefits and the right to vote and hold office.

## ARTICLE II

### *Directors and Officers*

1. The chief executive agency of the Society shall be a board of directors.

2. There shall be not less than nine (9) or more than fifteen (15) members of the board. Directors shall be elected for terms of three years each. If any member of the board shall die or resign, leaving an unexpired part of his term, then, by majority vote of the board, a successor shall be elected to the unexpired part of



that term. Directors for full terms shall be elected by the Society. The number of persons who shall compose the board shall be determined by majority vote of the Society.

3. Of the first board of directors, one-third ( $\frac{1}{3}$ ) shall be elected for a term of one (1) year, one-third ( $\frac{1}{3}$ ) for a term of two (2) years, and one-third ( $\frac{1}{3}$ ) for a term of three years. Thereafter elections shall be for a term of 3 years except when any increase in the board is voted by the Society, in which event increase(s) shall be placed in one of the three aforesaid categories of directorships in order and the initial term of that office(s) shall be for a part or full period of 3 years.

4. There shall be an executive committee of the board of directors composed of the officers of the Society and no less than three (3) or more than five (5) directors chosen by the board, which executive committee may exercise the powers of the board at such times when it is impossible for them to assemble a quorum of the said board.

5. The officers of the Society shall be a president, a vice-president, a secretary, and a treasurer. The powers and duties of these officers shall be such as are usually held by officers of like organizations plus those assigned them by the board or the Society. If the office of president becomes vacant the vice-president shall perform the duties of the president for the unexpired term.

6. The terms of office of the officers shall be two (2) years and shall run from January 1 until the following December 31 of the second year.

7. The board is empowered to create a system of regional vice-presidents and secretaries, who shall be appointed by the president for terms equivalent to his.

8. No salaries shall be paid by the Society to any member, officer, or director. Compensation, to be set by the Board after full consideration of the Society's resources and subject to approval of the Society, may be made to any clerical employee retained by the Society, for the furtherance of its purposes. Travel expenses may be extended to directors and officers of the Society by vote of the Board, but only when such persons are engaged in the Society's business. The President shall have power and authority to authorize and make disbursements for all proper purposes of the Society.

9. The board may appoint a person to assist the secretary or the treasurer in the performance of his work, and each such assistant may be deputed by the secretary or treasurer to represent him at meetings of the Society whenever it is impossible for the secretary or treasurer to attend. The Society may require a written

report from either the secretary or treasurer in the event of the absence of either or both, in addition to the report submitted by the assistant of the absentee.

10. There shall be a national office and repository for all files, papers, and material to be located at the Office of the American Journal of Legal History at Temple University Law School.

#### ARTICLE III

##### *Elections*

1. No later than September 1st of each year, commencing with the year in which these by-laws are approved, if adopted before August 1st thereof, the President shall appoint a nominating committee consisting of not less than three members of the Society. The names of the Committee shall be published in the first available issue of the American Journal of Legal History then appearing, with invitation to the general membership that suggestions of nominees for the various offices be sent to the chairman of the committee. The committee shall be instructed to present to the secretary of the Society on or before October 1st of each year a nominee for the presidency and nominations for each elective office to be filled, including the board, the nominees being members in good standing at that time. Space shall be provided on the ballot for the individual voter's alternative choice.

2. Elective offices and board members shall be chosen through elections to be held during the month of November. Each member in good standing shall be given the opportunity to vote by mail, upon appropriate ballots, to be prepared by the nominating committee, and mailed to all members in good standing no later than November 1st. The secretary of the Society or his assistant shall attend to all such mailings. All ballots must be returned by mail addressed to said chairman of the nominating committee and postmarked no later than November 20th of that month. The results of the election shall be certified and announced by the said chairman of the nominating committee at the earliest opportunity but no later than December 15th, the method of announcement being either by a special or general membership report or by publication in the American Journal or both.

#### ARTICLE IV

##### *Meetings*

1. A quorum of the board of directors for the purpose of carrying on business shall consist of not less than four (4) members or one third ( $\frac{1}{3}$ ) of the total board membership, whichever is the



greater. A quorum of the executive committee shall consist of the president, or in his absence the vice president, the secretary, the treasurer, and the representatives of the board selected in accordance with the provisions of Article II, §4 of these by-laws. Any quorum may be made up by a written proxy sent by the absent person to the secretary of the Society. The secretary or treasurer in their respective absences shall be represented by their respective assistants, if any, as provided for in Article II, §9 of these by-laws.

2. The Society shall, whenever possible, hold a general meeting or assembly at a time and place specified by the board of directors. A special meeting or assembly of the Society may be called not more than once in any calendar year. Neither this limitation nor the previous one shall apply to regional or branch meetings or conferences or panels or round tables which meet in conjunction with the meetings of other associations or separate therefrom.

3. If at any meeting of the board of directors or of the executive committee a quorum is not present, then any action taken at such a meeting shall be consultative only and without effect for any other purpose unless subsequently ratified by the Society.

4. The board of directors shall meet not less than once each calendar year for the purpose of conducting the business of the Society. It can be called more often by the president or by one-third ( $\frac{1}{3}$ ) of its members, and the place of its meeting shall be selected by the president. The meetings of the executive committee shall be called at the discretion of the president for the purpose of conducting the routine business of the Society, subject to any approval needed for its actions from the board or the Society. The president shall serve as the chairman of the board and the executive committee, and in his absence the vice-president shall serve as such.

5. The place of meeting for all boards, committees, and other agencies of the Society shall be determined by the president upon consultation with the persons concerned, subject to the provisions of Article IV, §2 above.

#### ARTICLE V

##### *Regional Branches and Conferences*

1. Notwithstanding anything set forth in Article II, §7, or Article IV, §3, above, there is hereby created a group of "branches" of this Society, as follows: an Eastern Branch (including the area in the northeast portion of this country); a Central Branch (including the area in the north central portion of this country); a Pacific Coast Branch; a Southern Branch; and a South-Western Branch; and such others as the board of directors may deem it

advisable to create. The names of these branches may be amended or adopted by the branches in accordance with their own rules, provided only that all branches must affix this Society's name, e.g., The Eastern Branch of the American Society for Legal History, Inc.

2. Whenever fifteen or more members in good standing of this Society desire to activate one of the above-mentioned branches they may apply to the president of this Society who, with the approval of the board of directors, will authorize such activation.

3. Any such region shall be autonomous, shall be empowered to elect its own officers and board and committees, and shall be empowered to hold conventions, conferences, and meetings as it sees fit, all subject, however, to the following: (a) these by-laws and the charter of this Society are supreme; (b) the dues of all regional members are to be paid directly to the national offices, but of all dues as and so paid there may be remitted to the regional treasurer by the national treasurer such sum as the national board of directors, upon application of such regional branch, recommends; (c) no convention, conference, or general meeting shall be held without prior "clearing" of the date and time and place with the president of this Society (this does not apply to committee meetings); (d) no regional organization may incur any Society expenditure, or pledge the Society's funds, or otherwise use or utilize the Society's name without first obtaining the written authorization therefor from the president who must first poll the board and obtain its approval on each general item.

4. Notwithstanding anything above set forth, the national and regional members owe their first loyalty and duty to this Society. National members may affiliate with branches, and may serve upon committees of national and regional jurisdiction without limitation.

5. In case of any conflict between the national Society and a regional group the national board of directors has and is given sole and undisputed power to determine the dispute and its decision shall be final and not appealable to any internal or external forum. The national Society, on recommendation of the national board of directors, may disestablish and withdraw recognition of any regional branch, regardless of any reason therefor, and such a Society decision shall likewise be final and not appealable to any internal or external forum.

# ARTICLE VI

## *Amendments and Miscellaneous*

1. The official organ of this Society is and shall be the American Journal of Legal History, and this Society shall make available to said Journal all news, information, and business for publication therein. Of all dues received for any class of membership, there shall be a portion thereof set aside for and turned over to the said Journal as and for a subscription for said member so paying dues to said Journal. The treasurer of the Society is directed so to do. The board of directors of the Society shall determine the sum to be so allocated.

2. The Society being empowered to receive gifts and property, both real and personal, and to extend grants and to direct projects that further the study of legal history and the purpose of this Society, the agency within the Society that shall act for or shall depute others to act for it or with it is the board of directors. Grants for research, and other academic purposes, may be made by or through the Society to members, officers, directors, or any person connected in any capacity with the Society, as well as to persons having no connection with the Society.

3. The board of directors shall issue to the members of the Society an annual report of the condition of the Society, as provided by law. This report may contain such additional information as the board shall determine. It may be published in such form as the board determines is most suitable and practicable.

4. Any and all papers, documents, correspondence, and like and analogous items held or written or obtained by any officer or member pertaining directly or indirectly to the affairs of this Society belong to it, and upon the expiration of the term of said individual shall be turned over to the Society's designee.

5. Unless specified to the contrary, all votes referred to in these by-laws and all actions referred to shall be taken by a majority vote.

6. Amendments to these by-laws can be made only upon the recommendation of the board of directors to the Society, and only by a two-thirds ( $\frac{2}{3}$ ) vote of those voting. If the board fails to recommend any proposal forwarded to it for consideration by any member in good standing, then upon the affirmative vote of a majority of the said board and all committees' members, such proposal may be considered by a general vote of the Society, and if two-thirds ( $\frac{2}{3}$ ) of those members of the Society so vote therefor, the said proposed amendment shall be adopted.

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University, Miss. 38677

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UNIVERSITY OF OREGON  
LAW LIBRARY  
Eugene, Ore.

PENNSYLVANIA BAR  
ASSOCIATION  
401 N. Front Street  
Harrisburg, Pa. 17101

SAGAMON COUNTY BAR  
ASSOCIATION  
New Security Building  
510 E. Monroe Street  
Springfield, Ill. 62701

UNIVERSITY OF SANTA  
CLARA  
Law Library  
Santa Clara, Calif.

SETON HALL UNIVERSITY  
School of Law Library  
40 Clinton Street  
Newark, N. J.

STANFORD UNIVERSITY  
LAW LIBRARY  
Stanford University  
Stanford, Calif. 94305

STATE OF WASHINGTON  
LAW LIBRARY  
Olympia, Wash. 98502

UNIVERSITY OF  
WASHINGTON  
Law Library  
Seattle, Wash.

UNIVERSITY OF WISCONSIN  
LIBRARY  
Madison, Wisc. 53706

#### INSTITUTIONS

ALBANY LAW SCHOOL  
Union University  
80 New Scotland Avenue  
Albany, N. Y. 12208

BROOKLYN LAW SCHOOL  
375 Pearl Street  
Brooklyn, N. Y. 11201

CHICAGO BAR ASSOCIATION  
29 S. LaSalle Street  
Chicago, Ill.

CORNELL LAW SCHOOL  
Law Library, Myron Taylor Hall  
Ithaca, N. Y. 14850

DUKE UNIVERSITY LAW  
LIBRARY  
Durham, N. C. 27706

LEGISLATIVE LIBRARY  
PROV. OF SASKATCHEWAN  
234 Legislative Building  
Regina, Saskatchewan, Canada



# Reports to Members

## Report No. 1 — Manuscripts

### THE NATIONAL UNION CATALOG OF MANUSCRIPT COLLECTIONS

**T**HE *Journal* reported to members in an early volume (5 *Journal* 87) that the Council on Library Sources, Inc., had made a grant to the Library of Congress for the purpose of creating a National Union Catalog of Manuscript Collections. The report was made as of September, 1960, and stated that the Library had received material regarding the manuscript collections from 200 repositories and was considering the publication of its card entries in book form. Much has occurred since that date with this important project, a project that the *Journal* rightly described as "the dream of scholars, librarians, archivists, and curators of manuscripts for more than a half century."

Five large volumes of this project are now in print. Volume I of the catalog covers the index cards prepared by the Library of Congress staff under a uniform system of reporting from cooperating repositories during the period 1959-1961; this first volume was published in 1962. Volume II covers those reports from cooperating institutions received by the Library in 1962 and was published in 1964. A separate index volume was also issued in 1964 for the first two volumes of the catalog. Volume III of the catalog covers reports received in 1963-1964. Volume IV, published last year, covers reports received in 1965, and includes an elaborate cumulative index for the reports received in the period 1963-1965. Another volume of the catalog is scheduled for publication this fall.

The five volumes in print cover an imposing 16,397 manuscript collections of 492 institutions throughout the United States. The index of the most recent volume of the catalog comprises nearly half the volume. The index volume published in 1964 contained 156,415 entries on 732 triple-column pages.

Since 1959 the Library has asked all cooperating repositories to submit information to the Library's Descriptive Cataloging Division, which prepares the catalog entries. The entries are then printed on 3 x 5 cards for photoreproduction in book form, for staff use, and for distribution to the repository furnishing the informa-

tion. Each volume of entries contains an index of the repositories. What is more, each volume is indexed in one alphabetical listing by person, place, subject, and historical period.

Under the subject heading "Legal History," the most recent volume in print lists three card entries, "64-469, 64-1352, 65-679", and further lists the sub-heading, "Vermont 65-955." The entries beginning with 64 are found in the third volume of the catalog; the entries beginning with 65 are found in the forepart of the same volume (of entries received in 1965) as our index (for 1963-1965). The reference to 65-679 will be found to refer only to a law book of 1793 found in the papers of Rufus Easton, 1774-1834, a lawyer and judge of Missouri. The Vermont reference is to a legal history of Orange County, Vermont, found in the papers of Roswell Farnham, 1827-1903, educator, lawyer, public official.

There are many other entries, however, of interest to the legal historian in this most recent volume of the catalog, just as there are in the earlier volumes. The heading "Law practice" is further broken down into numerous sub-categories by period and place, and the following notation appears under the general heading: 'Here are entered business and legal records of lawyers; references to lawyers' activities; and material on the legal profession.' Other general headings of interest to the legal historian in last year's volume begin with the word LAW, LAWYER, or LEGAL.

The catalog volume to be published in the fall of 1967 will also contain numerous entries helpful to the study of legal history. The wide variety of this new material may be gathered from the four card entries reproduced below that will appear in the new volume. The *Historian* expresses its gratitude to the Library for permission to reproduce them in advance of their publication in the catalog.

CLIFFORD, NATHAN, 1803-1881.

Papers, 1831-81. 2 ft. and 200 items.

In Marine Historical Society collections (Portland)

Jurist, U.S. Representative from Portland, Me., and U.S. Attorney General. Correspondence, legal opinions (1858-80) as Justice of the U. S. Supreme Court, and commissions. Includes personal and family correspondence. Many of the letters are from Clifford's son, W. R. Clifford, some relating to the son's legal practice. Correspondents include H. J. Anderson, John Appleton, J. W. Bradbury, James Buchanan, Richard H. Dana, Jr., David Davis, John Fairfield, John Lowell, S. Nelson, William H. Seward, and R. B. Taney.

Described in A reference list of manuscripts relating to

the history of Maine, compiled by the Dept. of History and Government of the University of Maine and edited by Elizabeth Ring (1938), v. 2, p. 156.

Information on literary rights available in the repository.  
Gift of Philip G. Clifford, 1930.

NASH, WILEY NORRIS, 1846-1916.

Papers, 1872-1924. 1426 items.

In Mississippi State University Library (State College, Miss.)

Confederate soldier, attorney of the 6th Judicial District, State legislator, and attorney general of Mississippi. Correspondence from family, friends, and clients in Mississippi, Alabama, and Washington State relating chiefly to legal matters and to Nash's career as attorney general; casualty lists, roster, and other papers relating to Harvey's Scouts, a Confederate cavalry company of which Nash was a member; business papers (1872-1924) including accounts, bills, scattered tax statements and receipts (1872-1912) from Starkville, Miss., and Port Townsend, Wash.; and legal documents including insurance policies, stock certificates, deeds, records of legal cases, guardianship papers, and promissory notes.

Gift of Mrs. G. B. Ramsey, Starkville, Miss., 1959.

VROOM, PETER DUMONT, 1791-1873.

Papers, 1726-1887. ca 3000 items.

In Rutgers University Library (587, 1031, 1733, 1797, 1799, and 1810)

Lawyer, court reporter, Governor of New Jersey, and Minister to Prussia. Correspondence, bills, and other papers relating to Vroom's legal activities and governorship; together with papers of Gysbert Bogert for 1761-82, Jonathan Rhea for 1787-1807, Henry Vroom for 1726-43, John P. Vroom for ca. 1860, and Peter D. Vroom, Sr., for 1769-1803, and miscellaneous papers. The bulk of the collection dates from 1799 to 1887.

Partially indexed in the library.

In part, gift of Charles A. Philhower.

WILLIS, WILLIAM, 1794-1870.

Papers, 1639-1870. 5 ft.

In Maine Historical Society collections (Portland).

In part, microfilm of diaries made from originals in the Portland Public Library.

Lawyer, mayor of Portland, Me., and director of many local clubs and business enterprises. Correspondence, diaries (1844-70), land papers, commissions, genealogical material, and other papers. Includes justice of the peace records (1777-97) of Samuel Freeman and his post office record (1775-92); journal (1753-66) of Capt. John Waite; account books (1749-

80) of Ephraim Jones; Revolutionary documents and letters; tax book (1766) for Falmouth, Me.; material relating to streets in Portland (1864) and letters and notes concerning Willis' book, A history of the law, the courts and lawyers of Maine (1863).

Information on literary rights available in the repository.

Described in A reference list of manuscripts relating to the history of Maine, compiled by the Dept. of History and Government of the University of Maine and edited by Elizabeth Ring (1938) v. 2, p. 237-238.

Bequeathed to the society.

The Library of Congress anticipates that perhaps by 1969, when the program will be ten years old and some 25,000 collections will have been catalogued, it will issue a cumulative index replacing all earlier ones. The progress of the project will be keenly followed throughout the scholarly community. Questions concerning the project should be addressed to Mrs. Arline Custer, Head, Manuscripts Section, Descriptive Cataloging Division, Library of Congress, Washington, D.C. 20540.

## Report No. 2 — Records

**P**ERHAPS THE MOST SIGNIFICANT discussion of state records in 1966 occurred in the report of the Mayor's Task Force on Municipal Archives of December 30, 1966, to the Mayor of the City of New York. The Task Force, composed of a cross-section of nine educators, custodians, and city officials, was chaired by Richard B. Morris, Gouverneur Morris Professor of History, Columbia University. Its report, prepared over a period of six months, discusses in detail the present plight of the older city records, including the court records, and proposes far-ranging revisions in the law and practices relating to the preservation of records and public access to them.

The report notes that there were five surveys or inventories of city records in the past by private individuals or the Federal government, and that each succeeding inventory revealed the disappearance of important records listed previously. The report states, "The facts are that the greater quantity of the City's original and irreplaceable records dating from the 17th to the 19th century have all been lost or destroyed as a result of neglect, fire, pilferage, van-

dalism, and imprudent retention programs of various City departments."

The report notes that in 1961 the Institute for Early New York City History issued an inventory of city records. "The handling and storage of the Court of General Sessions, now merged with the Supreme Court, came in for most serious and deserved criticism. The custodians of these records have long been notorious for their resentment of investigators. The file papers were found loosely kept, and almost entirely missing prior to 1800; the old libers in poor condition. The minute books of general sessions, 1638-1813, and of Oyer and Terminer, 1784-1796, were found in conditions ranging from 'fair to poor,' wrapped in paper bags, bindings loose, edges worn or cracked. No microfilm copies were extant as of that date."

The Task Force described in some detail the present dispersion of many older records of the city, particularly the court records. The New York Public Library has "numerous random items relating to the administration of estates . . . , miscellaneous court papers, indictments, grand jury proceedings, and a Chancery minute book, 1790-1807." The New York Historical Society houses "the Proceedings of the General Court of Assizes held in the City of New York, 1680-1682, bound with the minutes of the Supreme Court, 1693-1701, the minutes of the latter court, 1701-1704, the proceedings of the Court of Lieutenancy for the City and County of New York, 1686-1696, General Sessions Minutes for 1811, and 1821-1822, and a register of cases heard in the Justice's Court of the 12th Ward, 1830-31." In addition, "Columbia University's Special Collections acquired by gift the most extensive collection of the Mayor's Court papers, 1681-1816, outside of the files presently stored in the Hall of Records. The Association of the Bar has a set of transcripts of minutes of the Circuit Court of Oyer and Terminer, 1721-1749 . . .". Recent acquisitions by the Institute for Early New York City History, housed in the library of Queen's College, are also described and repeated later in the survey of the court records. That section of the report, deserving particular attention by legal historians, is reproduced in full below:

The subject of the judicial records would justify a full report by itself, and this Task Force can do no more than to indicate the urgency of steps to protect the older court records and to facilitate their examination by researchers and the general public.

In the first place, the bulk of the court records of New York City, an invaluable source for the legal and historical investigator, lies outside the jurisdiction of the Mayor or the City



Council. Technically the County Clerk and the Clerk of the Supreme Court in charge of the court records do not constitute an agency of the City, but a unit of the Judicial Conference.

A vast collection of court libers housed in the Hall of Records covers varying periods from 1674 to 1917 and includes fairly complete sets of minutes of the following courts: Mayor's Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Chancery, Supreme Court of Judicature, Circuit Court, Court of Common Pleas, Supreme Court, Superior Court, General Term, and Coroner's Court. These libers are readily accessible to the public. In fact, the present custodians have properly raised a question whether some of the more historic libers might well be kept in a vault or placed in protected exhibit space, and the public required to use Xerox prints. Thus, it is possible for a visitor to inspect the original record of the court proceedings of the John Peter Zenger trial, and of many other famous trials, which for security reasons, if not for maintenance of proper physical condition of the records, should be restricted.

The chief concern of the Task Force is not with the minute books, however, but with the file papers. Over the past generation considerable progress was made in indexing some of the other courts, while at the same time vast quantities of file papers have been destroyed. Recently, pursuant to the authority vested in it by law (Judiciary Law, s39), the Appellate Division of the Supreme Court, First Judicial District, coincidentally with like action by the Appellate Division, Second Judicial District, ordered the Administrative Judge of the Civil Court on or after October 15, 1963 to destroy, sell or otherwise dispose of all books and records of the former City Court, with a few exceptions. Under this order the State Department of Education, the MARC,\* the New York Historical Society and the Institute of Early New York History were afforded an opportunity to inspect and examine such books and records with a view to removing them at their own expense and retaining such of them as they deemed desirable of preservation for historical purposes. Owing to the vast bulk of the material, none of these named agencies or societies were in a position to accept the records, which accordingly were destroyed.

Recently a like court order has authorized the destruction of court file papers in the custody of the County Clerk, more

[\* MARC refers to the Municipal Archives and Records Center which functions as a part of the New York Public Library System. The City purchased the building at 238 William Street in 1943 to house obsolete records, but space was allocated on request with the result that some agencies garaged large masses of materials without central control or adequate access. Two floors of this building were allotted to the Municipal Archives, which was named MARC in 1952.]

than twenty-five years old (but excepting the very old papers).<sup>1</sup> Meantime, clerks are busily engaged in sifting the wheat from the chaff, a highly subjective process at best, and the County Clerk has agreed temporarily to suspend action on destruction pending early clarification of the City's public records system. Again it is to be noted that MARC was unable to accept this municipal material. Finally, it should be pointed out that a twenty-five year retention policy will denude the courts of papers for the modern period, even though the fragments still extant from early times are preserved. Such a program has neither logic nor history to support it, but financial and housing restrictions compel a district reduction of the space which now can be allocated to file papers. Prompt action by the City in this matter is imperative.

One of the reasons for the backward state of early American legal history has been the failure of judicial authorities to preserve records and papers of early date. File papers, which, as has been pointed out, are now periodically destroyed in New York, put flesh and muscle on the bare bones of a dry and uninformative docket. They give clues to the investigator as to what really happened in a particular piece of litigation, and they contain social and statistical information of considerable value. One need only compare the systematic classification and arrangement of early court papers at the Suffolk County Courthouse in Boston with the situation in New York to see what a great disadvantage researchers are in working on the early legal records of this city.

The early records of the Surrogate of New York County, of enormous importance for the historical investigator, are presently in the process of distribution in several different directions. Recently, some six thousand original wills of the 17th century [to 1829], which for the most part had been silked or otherwise preserved by the Commissioner of Records' staff,

<sup>1</sup> Under section 89 of the Judiciary Law (ssl) the following categories of books, records, or papers may not be disposed of unless a permanent record by microphotography is first made thereof and permanently retained together with proper indices:

(1) judgment rolls less than twenty-five years old regardless of the nature of the action or proceedings;

(2) judgment rolls and other records, books and papers less than fifty years old which affect the marital rights or status or the custody or lineage of any person, or the mental illness or the sanity or competency of any person; and

(3) judgment rolls regardless of their age which affect the title of real property.

It should be noted that these are very limited exceptions which do not protect the greater bulk of file papers.

were transferred to the Queens College Library under authority of an order signed by Surrogate Cox. For the most part these are original wills, but the Queens College Library also has acquired a set of some 95 original will books running from the 17th century down to 1850, also transferred from the Surrogate. These books, it should be pointed out, constitute the best record extant of certain early court proceedings intermixed in the probate records, including the proceedings in vice admiralty and oyer and terminer, as well as estate inventories and coroner's inquests for the period 1666-1800. There is no question that they will be safely housed in their new quarters and the process of indexing and cataloging the loose papers which is now going forward can be done more expeditiously than in the original location. However, the transfer raises a larger issue of the necessity of removing from New York County the bulk of its early probate records and transferring them to a college located in Queens County. The transfer on its face is evidence of a lack of imagination on the part of public officials in providing for safe housing in Manhattan of documents which record transactions which took place there.

The remaining 19th century books have been retained in the Record Room of the Surrogate's Court, but blocks of material relating to estates of persons dying in New York County or having real property located therein have been transferred to MARC. They are available only through a lengthy and cumbersome requisition procedure, since MARC has no way of locating the items requested without the block number that is known only to the Record Room supervisor of the Surrogate's Court. Indubitably, studies in the social and economic history of New York City would be considerably advanced if such materials were more readily available.

As regards twentieth century records, such files are carried in "current status" for nearly fifty years, but the requirements of space have forced the transfer of files from the Surrogate's Court to MARC at a rate that increases yearly. Records of the court accumulate at the rate of 9,000 estates per year, and a ten-year block of files occupies approximately 60 sq. ft. of floor space. Although the Commissioner of Records has requested facilities for open shelf filing, the budgetary appropriation has not been forthcoming.

The creation of a central municipal records building would solve the problem of centralized administration and housekeeping, while the Surrogate's Court would retain permanently certain documents required for title searches and final orders and decrees of the Court."

The report repeats that, "Centuries of official indifference and neglect have taken their heavy toll," and warns of the potential loss

of the overwhelming bulk of the City's records prior to the twentieth century. It recommends the establishment of a Public Records Commission to pass on retention schedules of municipal departments and agencies, to undertake an inventory of city records, and to appoint a Director of Public Records to direct the inventory. It calls for adequate space in the Civic Center for a new Public Records Service Center. It finally suggests "an immediate halt in the further dispersal or destruction of public records in New York City, pending the adoption of a uniform code." All students of legal history will surely hope that the City of New York rises to the challenge of this report, and that its message will reach other cities (and states) similarly afflicted with inadequate programs for record retention and preservation.

### Report No. 3 — Microform Publications

THE GREAT ADVANCE of the last few years in miniaturizing and preserving large volumes of records and manuscripts, and of reproducing works no longer in print, has brought with it a new vocabulary. Reproduction on microfilm is still the most popular method, but "microcard" and "microprint" (opaque sheet copies) and "microfiche" (transparencies) are also being used. The term "microform" encompasses all methods of reproducing materials at approximately one-twentieth their original size.

The researcher among microforms may obtain for a minimal cost the current "Subject Guide to Microforms in Print—1966-67."<sup>1</sup> This comprehensive list of publications available in microfilm and other microforms was begun in 1962. It lists the publications of 55 microform publishers under 135 subject classifications determined from the Library of Congress classification number assigned to it.

The Subject Guide includes references to records and manuscripts when offered for sale on a regular basis. For example, the Guide lists the publications of the National Archives, including the Papers of the Continental Congress and certain records of the Federal Courts of the District of Columbia and the Eastern District of Virginia. It omits all theses and dissertations and all publications of the Library of Congress. It is, nevertheless, unique and useful, and may in time become indispensable.

<sup>1</sup> Published by Microcard Editions, Inc., 901 - 26th Street, N.W., Washington, D.C. 20037, paperbound, 110 pp., \$4.00. A companion volume entitled, "Guide to Microforms in Print—1966," which lists all these publications alphabetically, is also available from the same publisher.



The Subject Guide does not exhaust all the microform publications that are available for purchase. It expressly disclaims any role as a "union list," and emphasizes that it includes only "microform publications offered for sale on a regular basis." The Library of Congress, however, publishes such a union list.

The *National Register of Microform Masters*<sup>2</sup> is a national register of microforms (mostly microfilm) from which libraries and others may acquire copies. It is concerned solely with "master" microforms, that is those negatives which may not be used by a reader but are retained solely for the purpose of making other copies. It covers 23 libraries, including the Library of Congress, and eight other publishers, including University Microfilms, a subsidiary of the Xerox Corporation.<sup>3</sup> It also reports whether the particular microform is housed in a temperature controlled, fire-proof, space by a non-profit institution.

The Register is arranged exclusively by Library of Congress number, or alphabetically where no such number has been assigned. It extends over 250 pages of three-columned close print. It was not produced as a research tool, but rather to help libraries "avoid the expense of unnecessarily making another master" once they know the Library of Congress number of the material involved. Both its subject and its approach, shall we say, are negative. Again, there is no index whatsoever to the Register, in complete contrast to the detailed index of the *National Union Catalog of Manuscript Collections*, described earlier in this issue.

By laboriously skimming the extensive Register, the researcher is able to locate numerous items in the field of English and American legal history. The Register lists the following records and manuscripts, for example, which once were published and are now out-of-print:<sup>4</sup>

<sup>2</sup> Compiled by the Library of Congress with the cooperation of the American Library Association and the Association of Research Libraries, Washington, D.C., 1966.

<sup>3</sup> The Subject Guide also covers the publications of University Microfilms; neither list reviewed here covers the 70,000 doctoral dissertations that this company's advertising states it has reproduced on microfilm. The dissertations in legal history (1962-1966) are described in this issue at pages 36-39. Information regarding its publications may be obtained by writing to University Microfilms, Inc., 313 N. First Street, Ann Arbor, Michigan.

<sup>4</sup> "DLC" in the following entries refers to the Library of Congress, Washington, D.C.; "McP" refers to Micro Photo Division, Bell and Howell Co., 1700 Shaw Avenue, Cleveland, Ohio 44112; "UnM" refers to University Microfilms, Inc.

*Lib. Cong. No.*

- 1-6806 North Carolina, The state records . . . 1886-1907. Vol. 22. Misc. Vol. 26. Census, 1790. McP.
- 1-6807 North Carolina (Colony), The colonial records . . . Vol. 4. 1886. McP.
- 1-15810 Fernow, B., Calendar of wills . . . 1626-1836. 1896. McP.
- 1-15811 New York (Colony), Marriage licenses previous to 1784 . . . 1860. McP.
- 1-15832 The documentary history of the state of New York; by E. B. O'Callaghan. 4 v. 1849-51. McP.
- 4-14749 Sargent, W. M., Maine wills. 1640-1760 . . . 1887. McP.
- 5-59 U. S. Continental Congress, Journals, 1774-1789. 1904-37. Vols. 1-18. DLC. Vols. 2-34. UnM.
- 5-17846 New York (Colony) . . . Supp. list of marriage licenses. 1898. McP.
- 9-2009 Michigan Constitutional Convention, 1907-1908, Report of the committee on submission and address to the people. 1908. UnM.
- 10-12041 Massachusetts Constitutional Convention, 1779-1780. Journal . . . 1832. UnM.
- 26-20776 Clemens, W. M., American marriage records before 1699 . . . 1926. McP.
- 37-25324 U. S. Constitutional Convention, 1787. The records of the Federal convention of 1787; ed. M. Farrand. Rev. ed. . . . Vol. 4. 1937. UnM.
- 39-18956 Pennsylvania Board of canal commissioners, Pennsylvania canal regulations . . . 1833. Eleutherian Mills Historical Library, Greenville, Delaware 19807.
- 40-28126 Michigan Constitutional Convention, 1835-36. Debates and proceedings, ed. H. M. Dorr . . . 1940. UnM.
- 40-28596 Historical Records Survey. Florida. 1940. UnM.
- 41-52711 Historical Records Survey. Wisconsin. 1941. UnM.
- 42-36978 New York State, Commissioner to study . . . (administrative adjudication) in New York. 6 v. 1942. McP.
- 43-2507 Historical Records Survey. Iowa. 1940. UnM.
- 43-2508 Historical Records Survey. Minnesota. 1941. UnM.
- 46-27109 Michigan University William L. Clements Library. Fifty Texas rarities. 1946. UnM.
- Mic 52-293 Georgia (Colony), The colonial records of Georgia . . . 1937. DLC.



53-205 Chafee, Z., Documents on fundamental human rights.  
3 v. 1951-52. UnM.

Mic 62-7247 Carroll, B. R., ed., Historical collections of South  
Carolina . . . 2 v. 1836. UnM.

The usefulness of microformatic publications, of course, will increase, as more and more records and manuscripts and out-of-print materials are made available in this form. We can only hope that the indexing of microforms will not be permitted to fall behind the production.

## Report No. 4 — Doctoral Dissertations

by HERBERT A. JOHNSON\*

THE FOLLOWING BIBLIOGRAPHY of dissertations in American legal history is selected from *Dissertation Abstracts*, a publication of University Microfilms, Inc., Ann Arbor, Michigan, for the period January 1962 to November 1966. Copies of these dissertations may be ordered from University Microfilms either in microfilm or in xerox print (at about four times the cost of positive microfilm). Any dissertation published before 1965 should be cross-referenced to *Books in Print* for 1966, since many dissertations are republished, or revised and published, in standard book form within a few years of the date of the microfilm edition.

Legal historians wishing a broader bibliography of scholarship in the field of American history are referred to *Writings in American History*, published by the American Historical Association. This series covers the period from 1903 to 1940 and from 1948 to 1957; the 1958 volume is now in preparation. The intervening years, and the years from 1958 to 1966 may be reviewed by reference to the book reviews and lists of articles appearing quarterly in the *American Historical Review*.

The listings in the following bibliography include author, title, name of the university granting the degree, and the date the degree was awarded. The order number of University Microfilms follows in the square brackets.

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## On Indexing American Legal Records

**"B**LESSED ARE THE INDEX MAKERS, or at least they ought to be," Maitland quoted from Leslie Stephen at the turn of the century;<sup>1</sup> and can we not believe that he quite agreed with the sentiment his friend expressed. The one, legal historian, the other critic and biographer, both found the index of critical importance. Neither, of course, sympathized with "index-learning."<sup>2</sup> Each needed indexes as useful tools of his trade.

Stephen's caveat implied praise for the particular editor (Norton) to whom it was addressed. In a different context the words could suggest that the indexer often fails to merit praise. It is the thesis of these next few pages that whether the indexer of legal records has performed a meritable task can be determined with some precision.

We begin with the premise that the indexing of legal records is not the mere listing of proper nouns; the good index represents an analysis of the records. Indexing of American legal records has a further goal. Those materials require, not only an analysis of the materials in their own milieu, but also an analysis of the records in the current legal vocabulary. Much of the importance of the indexing of such materials, therefore, lies in this difficult translation of the past law into the terms in which we currently know and practice law.

In a recent issue of the *Journal*, de Montpensier suggests that history must be reconstructed from the results it produced, and by checking and correcting the assumed result against historical fact (in a process of "retroductive logic") reconstruct the past.<sup>3</sup> He adds that others argue that history is simply a retelling of past events as completely as possible. The indexer is not troubled by this

<sup>1</sup> Leslie Stephen to Charles E. Norton, April 13, 1887, in Maitland's *Life and Letters of Leslie Stephens*, p. 392 (1906).

<sup>2</sup> Pope's "The Dunciad," i. 279:

"How Index-learning turns no student pale,  
Yet holds the eel of science by the tail."

<sup>3</sup> De Montpensier, Roy S., "Maitland and the Interpretation of History," 10 *Am. J. Legal Hist.* 259 (1966).



conflict, for he knows he must fulfill the needs of both approaches.

We can become more specific if we choose as the subject for a brief analysis one of the well-known collections of legal records, such as the first volume of the *Judicial and Testamentary Business of the Provincial Court, 1637-1650*, for the province of Maryland.<sup>4</sup> This volume began the unique publication of seventeenth century legal records with which few other states have attempted to compete.

Most of the categories from this volume that depict the seventeenth century law in its own context are quite easily spotted by an indexer. We refer to such headings as, Assignment (of tobacco crop), Attorney-general, Coroner, Court—with subheadings describing its officials, practice, membership—Indians, Information, Injunction, Lawful Money, Merchant Law, Proclamation, Secretary (of the colony), Sheriff, Trespass. We might also include references to the various writs, such as prohibition (p. 377), scire facias (pp. 142, 233), and venire facias (pp. 226, 231).

Some of the categories reflecting the milieu of seventeenth century law may be totally unfamiliar. Their peculiarity requires their inclusion in the index:

Amerciament	156
Assize (See Inquest)	
Deodand	10
Hundred	53, 149, 235, 371, 541, 542, 544
Inquest (See also Jury)	9, 139, 237-39, 245, 255
Grand	174, 176-77, 260
Sworn	241
Witness' oath	237, 241
Outcry	64, 69
Papist	234, 321, 404, 441
Pillory	393, 445
Pinace and truck	148, 281, 340, 432, 459
Piracy	4, 22
Theodulite	279
Transport	
Debtor	127, 184, 193, 227, 253, 306, 385, 436-37, 443, 472, 540
Servant	268, 280
Surety against (See also Recognizance)	114, 198, 204
Tythe	428
Whipping	165, 308, 322, 393, 396

<sup>4</sup> IV *Archives of Maryland* (1887).

The foregoing limited subjects in large part suggested themselves; the bulk of the remainder will require an analysis of the material. The analysis will vary in depth with the indexer's background—his familiarity with similar materials, his knowledge of law and history, his ability to forecast the uses that will likely be made of his product. The recent experience of the Library of Congress in indexing manuscript materials suggests that an indexer cannot reasonably expect the bulk of his subject headings to come ready-made.

In the first volume of *The National Union Catalog of Manuscript Collections*, the subject index entries were taken from *Subject Headings Used in the Dictionary Catalogs of the Library of Congress* (6th ed., 1957), and "assigned according to the policies and practices governing their use with printed materials."<sup>5</sup> This method of indexing was quickly abandoned. The index volume published in 1964 explains: "The subjects, their modifying words, and the subheadings under them have been compiled without regard to any established list of subject headings and without any comprehensive precedent for indexing manuscript material. The entries have been chosen so as to describe as accurately as possible the contents of the various collections."<sup>6</sup>

A dilemma that an indexer of early legal materials soon encounters is that even if the category an indexer might wish to use continues in the current legal vocabulary, it may now have a different meaning from the seventeenth century. The difference should be shown for a major collection of materials to whatever extent the indexed materials allow for such analysis.<sup>7</sup> For example, for the volume of Maryland records we are considering the indexer might include:

<sup>5</sup> *The National Union Catalog of Manuscript Collections, 1959-1961*, p. vi. (Lib. Cong., 1962), adding, "In brief, these [policies and practices] are to assign the most specific heading characterizing the content of the work as a whole. Since many of the manuscript collections recorded in this catalog contain materials on a variety of topics or in several categories, more than one heading is assigned to a collection if required to provide access to its principal contents." (pp. vi-vii).

<sup>6</sup> *The National Union Catalog of Manuscript Collections, Index, 1959-1962*, p. iii (Lib. Cong., 1964).

<sup>7</sup> *The National Union Catalog*, *supra*, resolved a similar problem in a similar way. The 1964 volume, note 6, *supra*, states (p. iv), "far too many citations appear under some of the entries. . . . The editors decided that it would be preferable to include the many undifferentiated citations for the more patient users who would otherwise lose such information as they provide. . . . This catalog and its index are an aid to research, not a ready-reference guide."



Commission	
As a license	164
As a warrant	280
Failure to undertake expedition under	
128, 135-36, 140-41, 151-52, 155-56, 159, 160-61, 164	
For examining witnesses	129-32, cf. 463
Inquiry	133-34, 463
Judge's, cannot limit lawful power	217-18
— , can expand lawful power	249
To collect customs, confiscations, forfeitures,	
escheats	308
To take custody of Proprietor's property	309
To trade with Dutch and be commander	281
Jurisdiction	55, cf. 237; 307, 458
"Authority of judicature"	394
Lawful authority	396
"Power of judicature"	218
Royal	457
Liberty	
Freedom	333, 436
Place where freedom granted	143
Privilege	229, 361, 529, 531, 534

If the number of entries makes an analysis of the subject infeasible, such as for "Indenture," "Letters of Attorney," and "Subpoena," in the present volume, it may be necessary merely to give the complete page references without subheadings.

Along with comparing the past with the present, the indexer of early legal materials must look for the present in the past. The difficulty of this search will vary greatly within the same body of materials. The origins for current practice may be so remote as to call upon the indexer's every power of deduction. On the other hand, only the present terminology for what was then being accomplished in the law may differ.

One sample of a category that fits the present into the past is "conflict of laws." The phrase does not appear on any page of the volume under consideration; yet, the phrase is appropriate for many entries in the index:

Conflict of laws (See also Merchant law)	
Administration of estate of non-resident	65
Local administrator for English executor	40-41, 69
English deed of gift	41-42
Va. admin. for Md. resident	341

Attachment of estate of non-resident	397
Bill payable in Md. enforceable in Va.	454
Certificate to president of New Netherlands	203-04
Contract made in Va. by Va. inhabitants, no	
jurisdiction	307
Contract between Md. and Va. residents	483
Crimes (See also Extradition)	
In Va., governed by Law of England	180
Out of province of Md.	237
Prisoner remitted to Va. magistrate	201
Death on high seas	55, 56
Defenses to be made in Va.	224
Defendant and plaintiff in Va.	301, cf. 307
Defendant in England	230, 252
Defendant from Va.	29, 143, 158, 220, 270
Escaped debtor	67-68, 537
Judgment unrecognized in foreign court	390
Plaintiff from England	1, 188-89, 191
Plaintiff from Va.	205, 280-81, 415
Power of att'y executed in Holland	303
Tender of goods in Va. to Md. creditor	487

Other subject headings of this type are:

Abuse of process	495
Advisory opinion	457
Extradition	125, 201, 319, 327
Insanity (as a defense)	249
Judicial notice	270
Precedents	
Law of England	140, 180, 333, 457
Law of Province	333, 353
Sovereign immunity	217-18, cf. 292-93
Trade secret	327

The foregoing subjects and page references from this one volume, of course, are examples only, and do not exhaust the detailed coverage of a good index. The period of this volume (1637-1650) was an unsettled one in Maryland's early history. It was the period of "the Plundering Time" when a dissatisfied litigant claiming title to Kent Island sought to take it by force; a London captain and tobacco trader undertook a career of arson and robbery; and the

proprietor's brother was forced to flee to Virginia.<sup>8</sup> The subjects discussed herein have also left untouched the many proper names scattered throughout the volume. The subjects, for example, have omitted the remarkable Margaret Brent, the foremost woman lawyer of the early colonial period, who became the proprietor's administratrix and executrix.<sup>9</sup>

What we have hoped to show is that the most useful index requires that same careful analysis of the text that the editor brings to his work. The indexer attains his goal when he has both given the researcher immediate access to every characteristic of the past law and the period, and at the same time made the past law relevant to the present practice of law.

<sup>8</sup> In the two-year Rebellion, the litigant took Kent Island, the captain captured St. Mary's, and the colony had no settled government until Leonard Calvert recovered the province with the help of Governor Berkeley of Virginia. For references to the Rebellion, see pages 331, 375, 380-81, 394, 396, 399, 416-17, 421-22, 436, 441, cf. 453, 455, 460, 513. See generally, 2 Andrews, *The Colonial Period of American History* 308-309 (1954).

<sup>9</sup> Page 543. See Drinker, Sophie, "Women Attorneys of Colonial Times," 56 Md. Hist. Mag., No. 4, p. 335 at 349-50 (Dec., 1961).

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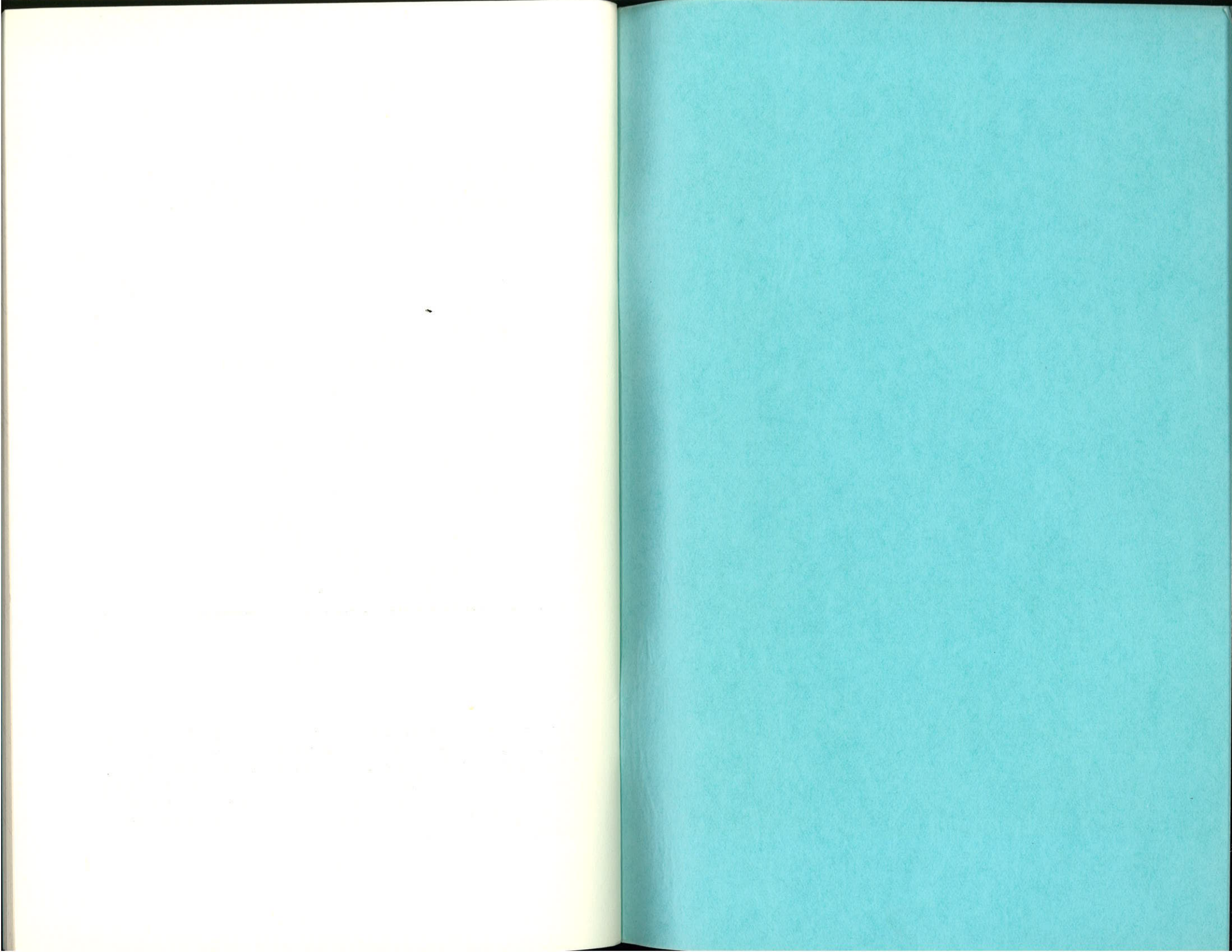
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