

# ASLH NEWSLETTER

AMERICAN SOCIETY FOR LEGAL HISTORY

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APR 27 1977

Vol. 7, no. 2  
April, 1977

UNIVERSITY OF  
WASHINGTON

## NEWS OF THE SOCIETY

### Annual Meeting Dates Set

The 1977 annual meeting of the Society will take place at the Sheraton-Boston Hotel, Boston, Mass., on November 4 and 5. The 1978 meeting will be held at the University of Chicago's Center for Continuing Education on October 20 and 21.

### New Directors Chosen

The following individuals were elected to serve as directors of the ASLH for a term of three years: Charles Donahue (University of Michigan Law School); James W. Ely (Vanderbilt Law School); Henry N. Ess, III (Sullivan & Cromwell, Wall Street); George L. Haskins (University of Pennsylvania Law School); Erwin Surrency (Temple Law School). The other directors are Elizabeth A. R. Brown, Edward Dumbauld, Gerald T. Dunne, David H. Flaherty, Morton J. Horwitz, Stanley N. Katz, William E. Nelson, Kathryn Preyer, John P. Reid, and A. Arthur Schiller.

The executive committee of the board consists of the Society's officers, and directors Nelson, Preyer, and Brown.

### Committees Appointed

The following Committees have been appointed by the Society's president, Professor Joseph H. Smith.

#### 1977 Program Committee

- Charles Donahue, Jr., University of Michigan Law School,  
Chairman
- Thomas A. Green, University of Michigan Law School
- Richard H. Helmholtz, Washington University School of Law
- Sidney V. James, University of Iowa
- Charles R. McKirdy, Esq., Chicago
- Jack B. Owens, Idaho State University
- John Reid, New York University School of Law
- G. Edward White, University of Virginia Law School

1977 Local Arrangements Committee

Thomas P. Campbell, Jr., Northeastern Law School, Chairman, Morton Horwitz, John O'Byrne, Kathryn Preyer, Robert J. Taylor, and Hiller B. Zobel.

1977 Nominating Committee

David H. Flaherty, University of Western Ontario, Chairman, H. Bartholomew Cox, Arthur R. Hogue, Wythe Holt, and Herbert A. Johnson.

Committee on Honors

Joseph W. McKnight, S. M. U. School of Law, Chairman, Thomas G. Barnes, Charles Donahue, Jr., and Richard H. Helmholtz.

ASLH Delegate to ACLS

Herbert A. Johnson

1978 Program Committee

Jonathan Lurie, Rutgers University Law School, Newark, Chairman, Maxwell Bloomfield, W. Hamilton Bryson, Linda G. DePauw, William H. Harbaugh, Philip Paludan, and Frederick Russell.

All other committee memberships remain the same as printed in the program of the 1976 annual meeting, although Thomas A. Green has replaced Arthur Hogue as chairman of the Publications Committee.

1977 Annual Meeting

The program committee for the November meeting in Boston plans to continue the practice of devoting time to brief communications. Brief communications are designed to inform the Society of new ideas, sources, techniques, work in progress or just completed, and to stimulate the interchange of ideas. They are designed to take no more than ten minutes delivery time. Proposals for brief communications (no more than one single-spaced page) should be sent to Professor G. Edward White, University of Virginia School of Law, Charlottesville, Va. 22901, not later than August 15, 1977. The areas that will be covered are medieval, nineteenth-century American, and the law of women and/or the family.

### 1978 Annual Meeting Program

The 1978 program committee would appreciate receiving proposals for papers and/or sessions for the annual meeting to be held in Chicago, October 20 and 21. Please send suggestions to Professor Jonathan Lurie, Rutgers University Law School at Newark, Newark, N.J.

### Summary of 1976 Program

Paul Murphy, chairman of the 1976 Annual Meeting Program Committee, has submitted the following summary for the benefit of those who were unable to attend:

The Sixth Annual Meeting of the American Society for Legal History met in Philadelphia, October 22-23, 1976, at the Barclay Hotel. The conference was preceded on October 21 by a one-day joint conference on the Legal History of the American Revolutionary Era, 1773-1790, sponsored by the Society and the Institute of Early American History and Culture.

The sessions during the three days were well attended and registration ran well over 200. The largest attendance occurred Saturday morning, October 23, when nearly 150 people attended the three simultaneous panels on The Impact of the Revolution on Law; Aspects of Medieval Law, and Developing Legal Careers in the Nineteenth Century United States. The conference this year reflected the new interest and new directions which are occurring in legal history. The Needs and Opportunities Conference, with papers on The Revolutionary Conception of History--Its Utility for Legal Historians Today, by William E. Nelson, and Legal History of the American Revolution: A Historiographical and Bibliographical Survey by Hugh F. Bell drew lively and at times heated discussion, with lawyer members and colonial historians joining academic legalists in speculation on proper directions for the field. The closing session, featuring a joint paper on An Agenda for the Social History of Law by Michael Hindus and Douglas Jones addressed an area of research which is now beginning to be explored more seriously and with very hopeful preliminary results. The remainder of the sessions ranged from ancient to modern, and from family law to a provocative session on Assessing the American Constitutional Experience featuring a well-received paper by Herman Belz, with comment by Kent Newmyer and Don Roper. Other sessions dealt with Roman Law and Its Impact; English Constitutional and Legal History; Legal Problems in Revolutionary America; Continental Legal History; and Race Relations and the Law in the Post-Bellum United States.



President's Remarks

Although not a verbatim account, the following is the substance of remarks made by the Society's president, Joseph H. Smith, during the luncheon of the annual meeting in Philadelphia on October 23:

As those of you interested in East Africa and its game parks know, a well known book of a few years back was entitled "Serengeti Shall Not Die." I suppose I could give a talk entitled "Legal History Shall Not Die" but I think it is obvious from the attendance at this luncheon and at our other sessions that legal history is not dead or about to die. Admittedly tightened budgets in some institutions have resulted in some elimination of legal history offerings and in decreased availability of funds for research and travel. Student research assistance has been curtailed to some extent. Secretarial help is scarcer. Despite these various discouragements, much first rate work in legal history is still appearing or is in the pipeline. Some university presses have cut back their publication plans but, by and large, publication of books and articles in the field of legal history has not been seriously curtailed. I think it is incumbent upon all of us not to get discouraged, but to press on with our research and writing.

In the last year or so the tightening of the job market for law school graduates has resulted in a greater concentration by students on bread-and-butter or clinical courses. Many students seem to feel, I think wrongly, that a concentration upon such courses makes them more employable. This tendency has resulted in the reinstatement at Columbia Law School of a requirement that a certain number of credits be earned in so-called "perspective" courses, including, of course, legal history. I think this will happen at other law schools as well. I am not sure in my own mind as to the significance for legal history and legal historians of combined programs--law school and graduate school--now being offered at some institutions.

Those who attended one of last night's sessions were made fully aware of the divergency of problems in teaching legal history to law students, to graduate students, and to undergraduates. Even among law school teachers there is considerable difference of opinion as to how legal history should be taught or what should be included in a legal history offering. I think we have to be flexible in our approaches and to have more nitty-gritty exchanges on pedagogical methods and the available materials. I know Jonathan Lurie has been attempting to collect some of the more fugitive unpublished materials used in teaching legal history in graduate schools and in law schools. Hank Bourguignon of the University of Toledo Law School has been engaged in an ambitious project for the Legal History Section of the AALS updating and supplementing the report I made a few years back on the teaching of legal history in American law schools. His report

will be quite valuable in indicating, among other things, the nature of the unpublished materials used in various legal history courses offered at different law schools. This report will be out by the end of the year. It is not clear at this point whether copies will be available "for free" to those not members of the Legal History Section of the AALS, but Hank is exploring the matter with the Executive Secretary of the AALS. [See related story in News Notes - ed.]

At the meeting of the Board of Directors Thursday evening we had an extended discussion as to the role, if any, that the Society should play in preparing and/or publishing bibliographies dealing with legal history. The most I can say is that no two people had the same ideas and the matter was referred to the Committee on Publications for further study and report to the Board. Any member who has any thoughts on the matter should send them to the Committee or to me for transmission. At this point I would like to thank Arthur Hogue of the University of Indiana, Chairman of the Committee on Publications for the last few years, for his splendid work in that capacity. Arthur's term of office, extended once, will run out at the end of the year and Tom Green of the University of Michigan has agreed to serve as Chairman in 1977.

While talking about publications I would like to express the thanks of the Society to Charles Cullen for the top notch job he has been doing with the Newsletter. For those members who do not attend the annual meetings or do not serve on committees, the Newsletter is invaluable for news of the Society and its members and for information on legal history in general.

I now come to the official publication of the Society--the American Journal of Legal History. First, I want to express the deep gratitude of the Society to Dean Liacouras, to Erwin Surrency and to Temple University for their financial support of the Journal. Without that support, there would be no Journal and without a Journal there might be no Society. It is no secret that there has been discontent among members of the Society with the late appearance of recent issues of the Journal. Arthur Hogue and I have taken this up with Erwin Surrency; much of the discussion at yesterday's Journal luncheon was devoted to the subject. The April issue was bulk-mailed about two weeks ago; the July issue is in page proof; and the October issue, I am told, should be in galley proof very shortly and should appear in February.

In the case of new members joining later in the year, they usually want their memberships to start with January 1, of the next year. This means they will be members for some months before receiving a copy of the Journal. Erwin Surrency has agreed that he will send the last issue of, say, 1976 to those members joining late in that year. In other words, such members get five issues of the Journal instead of four.

As some of you may know, the Editorial Board of the Journal was reorganized earlier in the year. There have also been some reorganizational changes at the printer of the Journal. There has also been, according to Bill Nelson, an improvement in the general level of articles submitted, thus facilitating closer adherence to the projected publishing schedule.

There has been some complaint of the time lag in getting Journal book reviews into print. An attempt will be made to cut down this time lag. One bit of bad news came out of yesterday's Journal luncheon. Fred Konefsky who has served valiantly as Book Review Editor is resigning effective next September and a search will be started for a worthy successor.

Turning now to the statistics of membership, Janet Loengard, the Chairman of the Committee on Membership, reported to the Board at the Thursday meeting that total membership is at 636 now, down from 656 in October, 1975 and from 695 in October 1974. The main decline from 1975 has been in the student, institutional and sustaining categories. We actually gained five regular members during the year. In terms of gains and losses, the Society lost 111 members and garnered 72 in 1975 and lost 88 and gained 68 in 1976. The problem of turnover in membership is one that concerns the Board and we would like to hear any bright ideas as to how to keep members once they have joined. We thought that regional meetings might lend an additional interest, but I must confess that some such meetings in the last few years at the University of Pennsylvania, at New York University of Law, and at the Litchfield Law School and Historical Society have not been well attended. The Pacific Coast seems to have done better in this respect. As I stated earlier, we are exploring the subject of bibliographical endeavors aimed at assisting the membership and keeping it interested in the Society.

As to financial conditions, the Society is in a much better position than it was a few years ago when substantial sums--substantial for this Society--were paid to the Harvard University Press to get the Studies in Legal History series off the ground. The expense resulting from our entangling alliance with the Irish University Press, which went bankrupt, are now behind us. Most of the expenditures of the Society are for subscriptions to the Journal or incurred in connection with the annual meetings. In large degree the expenses of officers, directors and committee chairmen are absorbed by their respective institutions. The editor of the Studies in Legal History series receives a modest stipend; some dues are paid to the American Council of Learned Societies and to one European learned society.

As many of you know, only one volume remains to be published by the Harvard University Press in the Studies in Legal History series--a book by Mort Horwitz on certain aspects of 19th century American legal developments. This volume is scheduled for publication



next January. Further volumes in the series will be published by the University of North Carolina Press in association with the Society. Buzz Arnold, as editor of the series, has read a number of manuscripts, but none has been deemed suitable for publication as the initial volume. However, there are two volumes in the offing which seem promising, I understand.

As you know, the Society has three representatives on the Committee of the Littleton-Griswold Fund of the American Historical Association. At present, grants have been made to three projects and others are under consideration. Neal Allen of Union should be completing shortly his volume on individual rights during certain years of the American colonial period. Charles Cullen is editing some notebooks of St. George Tucker. Herb Johnson, Leo Hershkowitz and I are editing the Chancery Order Books of the New York Court of Chancery for the period 1701-1735.

The Society has approached the National Endowment for the Humanities for funds to make a survey of colonial court records. The application was turned down. However, NEH has commenced a program for law school teachers which may result in the innovation or strengthening of legal history offerings at the law school level. Some of us have been consulted in connection with the formulation and staffing of the program, but it is too early to forecast the results.

As noted in the Newsletter, next year our annual meeting will be held on November 4-5 at the Hotel Sheraton in Boston. Charles Donahue is the Program Chairman. The Board has under consideration two sites for the 1978 annual meeting--Chicago and Ann Arbor, Michigan. Charles Gray as Chairman of the Standing Committee on Conferences and the Annual Meeting has been asked to investigate and make a recommendation to the Board. The decision as to time and place will appear in the next Newsletter. Jonathan Lurie will be Chairman of the 1978 Program Committee. Those interested in presenting a paper should get in touch with him in the next few months.

The Society has been active in the past in encouraging preservation of court records. Last July I attended the annual meeting of NASARA (National Association of State Archives and Records Administrators) held in St. Louis and in a sense, represented the "consumer" interest in a panel discussion entitled "What Should We Do About Our Courthouse Records." The answers were complex. One thing was clear--unless more money is made available, nothing much will be done.

You will shortly receive in the mails a ballot for the annual election of directors. Five positions will become vacant at the end of the year and all seven nominees brought in by Sue Walker's

Committee are strong candidates. Please return your ballots as soon as possible since the slowness of the mails may delay the counting of the ballots. The results will appear in the next Newsletter. We may have a combined mailing including the 1977 dues notice, the results of the elections, and an order blank for the Horwitz volume in the Studies in Legal History series.

Some of you missed the Thursday conference co-sponsored with the Institute of Early American History and Culture on "The Legal History of the American Revolutionary Era." I thought the conference was very successful and wish to thank Thad Tate, Director of the Institute, for his valuable cooperation in making the conference possible. I know we will all find extremely useful Hugh Bell's Historiographical and Bibliographical Survey distributed at the afternoon session. I hope there will be further joint conferences with the Institute and other learned organizations.

This is a long time in coming but I want to thank Paul Murphy and his Program Committee for the excellent program of papers they arranged for us. I also want to thank Steve Presser and his Local Arrangements Committee for all their logistical efforts. And of course, I want to thank all of you loyal members for your attendance at this luncheon and at the several sessions.

#### Northeast Branch ASLH

George L. Haskins, of the University of Pennsylvania Law School, and Charles Gray of Yale University, delivered papers to the Northeast Branch of the American Society of Legal Historians meeting on Thursday, Dec. 9 at New York University Law School.

Prof. Haskins spoke about the problems he encountered in dealing with the impeachment of Justice Samuel Chase. He supports the view that the Jeffersonian party, seeking to impeach Chase, intended a precedent for the removal of Justice Marshall and other Federalist judges.

Prof. Gray discussed jury and venue problems in the yearbooks, and how courts overcame the problem of the function of the jury as witnesses.

Dean Redlich addressed the group, saying that he was receptive to having the law school use its facilities for the promotion of legal history. He also mentioned that currently under study is an L.L.M. degree in Legal Education, thus requiring students enrolled in the program to know more about legal history.



Activities of Members

A multi-page resume of a paper prepared by Professor George L. Haskins, and delivered in absentia in Warsaw in May 1976 before a joint session of the Societe Jean Bodin Pour l'Histoire Comparative des Institutions and the Polska Adademia Nauk, has appeared in a volume entitled "Communautes Rurales." The full text of the paper will be published in Belgium in a volume representing the work of this international Congress.

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Mary F. Berry has been named Assistant Secretary for Education in the Department of Health, Education, and Welfare of the Carter Administration. She was a member of the Program Committee of the Society's 1976 annual meeting in Philadelphia.

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Milton M. Klein has been elected to the Council of the American Association of University Professors for a three-year term, representing District IV (Arkansas, Missouri, Tennessee, Illinois).

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Frederick H. Russell of Rutgers University has received the AHA's Herbert Baxter Adams Prize for The Just War in the Middle Ages.

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Daniel J. Meador has been nominated by President Carter to be assistant attorney general for the Office of Improvement of the Administration of Justice. Meador is currently at the University of Virginia Law School.

\* \* \*

Stanley N. Katz was appointed by President Gerald Ford as a Member of the Permanent Committee for the Oliver Wendell Holmes Devise for a term of eight years. He has also been elected to the Research Division Committee of the American Historical Association.

\* \* \*

Paul L. Murphy is presently serving as the Robert Lee Bailey Visiting Professor of History at the University of North Carolina, Charlotte.

\* \* \*

Professor Michael S. Hindus of the University of Minnesota, has been awarded an A.C.L.S. Travel Grant to present a paper at the

Inaugural Meeting of the Dutch Group for the Study of the History of Crime and Criminal Law to be held in Amsterdam in June, 1977. Hindus, who is presently a Liberal Arts Fellow at Harvard Law School, will read a paper entitled, "Crime, Justice, and Authority in Free and Slave Societies: Massachusetts and South Carolina, 1767-1878." The Dutch Group for the Study of the History of Crime and the Criminal Law has been corresponding with 55 scholars from 8 countries (United States, Canada, and six European countries) in organizing this conference on the history of crime and criminal law. Preliminary responses were received from 27 scholars from 7 nations, thereby guaranteeing a meeting truly international in scope and participation. In addition, the conference will plan and organize the history of crime section at the International Economic History Conference in Edinburgh in August, 1978. [See item on the Dutch group under News Notes. - ed.]

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Adda B. Bozeman served in 1975 and 1976 as seminar director of the National Endowment for the Humanities' summer seminar for college and university teachers on the subject "Diplomacy in International History."

#### Publications of Members

Loren P. Beth, "The Judicial Committee: its Development, Organization and Procedures," Public Law (London), (Autumn, 1975).

\_\_\_\_\_, "The Judicial Committee of the Privy Council and the Development of Judicial Review," American Journal of Comparative Law, XXIV (Winter, 1976).

\_\_\_\_\_, "The Influence of the Judicial Committee on Legal Development in the British Empire and Commonwealth, 1833-1971," Georgia Journal of Comparative and International Law (Winter, 1977).

Adda B. Bozeman, Conflict in Africa: Concepts and Realities, (Princeton University Press, 1976).

\_\_\_\_\_, "War and the Clash of Ideas" in Orbis, Bicentennial Issue, (Spring 1976), pp. 61-102.

Wayne D. Bray, The Common Law Zone in Panama: A Case Study in Reception (San Juan, Puerto Rico: Inter American University Press, 1977)

Edward Dumbauld, "Independence under International Law," American Journal of International Law, LXX (July, 1976), 425-431.

\_\_\_\_\_, "The Sound Principles of the Revolution," Pennsylvania Bar Association Quarterly, XLVII (October, 1976), 554-566.

\_\_\_\_\_, "Jefferson and Adams' English Garden Tour," in William Howard Adams (ed.), Jefferson and the Arts: an Extended View (Washington: National Gallery of Art, 1976), 133-157.

\_\_\_\_\_, "The Case of the Mutinous Mariner," in Supreme Court Historical Society, Yearbook 1977, 52-58, 69.

James W. Ely, Jr., The Crisis of Conservative Virginia: The Bryd Organization and the Politics of Massive Resistance (Knoxville: University of Tennessee Press, 1976).

\_\_\_\_\_, "Charleston's Court of Wardens, 1783-1800: A Post-Revolutionary Experiment in Municipal Justice," 27 South Carolina Law Review, (Feb. 1976), 645-660.

John V. Orth, "The British Trade Union Acts of 1824 and 1825: Dicey and the Relations Between Law and Opinion," 5 Anglo-American Law Review, 131-152.

Milton M. Klein, ed., New York: The Centennial Years, 1676-1976 (Kennikat Press, 1976).

John P. Reid, A Better Kind of Hatchet: Law, Trade, and Diplomacy in the Cherokee Nation During the Early Years of European Contact (Pennsylvania State University Press, 1976).

\_\_\_\_\_, "In the First Line of Defense: The Colonial Charters, the Stamp Act Debate, and the Coming of the American Revolution," 51 New York University Law Review (May, 1976), 177-215.

\_\_\_\_\_, "In an Inherited Way: English Constitutional Rights, the Stamp Act Debates, and the Coming of the American Revolution," 49 Southern California Law Review (July, 1976).

\_\_\_\_\_, "Dividing the Elephant: The Separation of Mess and Joint Stock Property on the Overland Trail," 28 Hastings Law Journal (Sept. 1976), 73-92.

\_\_\_\_\_, "In Accordance with Usage: The Authority of Custom, the Stamp Act Debate, and the Coming of the American Revolution," 45 Fordham Law Review (1976), 335-368.

Kenneth R. Stevens, "United States v. 31 Photographs: Dr. Alfred C. Kinsey and Obscenity Law," Indiana Magazine of History, LXXXI (Dec. 1975), 299-318.

Frank R. Strong, "Bicentennial Benchmark: Two Centuries of Evolution of Constitutional Processes," 55 North Carolina Law Review (Sept. 1976), 1-121.

William F. Swindler, "Rights of Man: A Bicentennial Perspective," in Benjamin J. Taylor and Thurman J. White, eds., Issues and Ideas in America (Norman: University of Oklahoma Press, 1976).

### Necrology

Robert B. Williamson, Augusta, Maine, A.B. Harvard 1920, J.D. 1923, Chief Justice, Supreme Judicial Court of Maine, 1956-1970, died recently.

### NEWS NOTES

#### AALS Legal History Section News

At a meeting of the Association of American Law Schools in December in Houston, the Legal History Section chose the following officers: W. Hamilton Bryson (University of Richmond Law School), Chairman; Richard H. Helmholz (Washington University Law School), Vice-Chairman; and Henry J. Bourguignon (University of Toledo School of Law), Secretary-Treasurer. The section also passed a vote of thanks to Professor Bourguignon for his excellent work in preparing the survey of legal history courses and research. (See following note.)

#### Report on Teaching of Legal History Available

Henry Bourguignon of the University of Toledo School of Law has prepared a "Report on the Teaching of Legal History in American Law Schools," (November 20, 1976) for the Legal History Section of the AALS. It contains reading lists used in various law courses, courses of study, and the recent research and writing of those who teach legal history courses in law schools. This supplements a similar report prepared by Joseph H. Smith several years ago but does not duplicate it. Professor Bourguignon advises the editor that he has a limited number of copies that he will gladly send to legal historians who request them. Write him at the University of



Toledo School of Law, 2801 W. Bancroft Street, Toledo, Ohio 43606.

#### AALS Law and Religion Section

The AALS Section on Law and Religion also met in Houston during the AALS annual meeting and heard several distinguished scholars deliver papers. At a business meeting prior to the session, proposed by-laws were discussed. For action taken, as well as information regarding this section, contact Professor Leslie Steven Rothenberg, Loyola University of Los Angeles, School of Law, 1440 West Ninth Street, Los Angeles, Calif. 90015.

#### Third British Legal History Conference

The Conference Continuation Committee has scheduled the next conference to meet at the Pollack Halls of Residence, University of Edinburgh, from tea-time on July 11 to lunch on July 14, 1977. (This meeting follows immediately the Anglo-American conference of Historians in London). Among the scheduled speakers are Robert C. Palmer (English County Courts of the 14th Century); James A. Brundage (English-trained Canon Lawyers in the Middle Ages); R. H. Holmholz (Debts, Uses and the Probate Jurisdiction of the Church Courts, 1350-1600); Brian Levack (English Law, Scots Law, and the Union, 1603-1707); John V. Orth (Legal Status of Trade Unions in 19th Century Britain); and George E. Goldberg (James Kent, 'the American Blackstone').

The cost for resident members of the conference will be £30, which will include registration, accomodation, and meals. Non-residents pay £3 and meals may be purchased separately with residents. Send payment for registration to Mr. Alan Harding, Department of History, University of Edinburgh, William Robertson Building, George Square, Edinburgh, EH8 9JY, Scotland. Cancellation permitted to July 4, with complete refund less £3. Those wishing more information may want to contact John Beckerman of Yale University, the American member of the Conference Continuation Committee. (Editor's note: original deadline for registration was January 15, but Mr. Harding will accept additional registrations if sent immediately.)

#### Dutch Legal Group

Dutch historians, lawyers, and sociologists have had in existance for several years the Dutch group for the study of the history of crime and criminal law. Much of their work concerns the history of crime in the eighteenth and nineteenth centuries. They are very interested in making contact with North American scholars working on the history of crime and criminal law. The secretary of the Dutch group is Mr. Sjoerd Faber, Faculty of Law, Free University, Amsterdam 1011, The Netherlands, De Boelelaan 1105. They have available in

English recent papers on the following subjects: "Crime Patterns in The Netherlands During the Eighteenth Century;" and "Judicial Violence in Amsterdam in the Seventeenth and Eighteenth Centuries."

#### Proposed 17th Century Conference

A conference on seventeenth-century American legal history is now being planned. Proposed sessions include needs and opportunities in socio-legal history; needs and opportunities in institutional history, methodology, and sources. The conference leaders are particularly interested in identifying people using British local archives in connection with American legal studies. Interested persons should write to Professor Susan Rosenfeld Falb, Department of History, Howard University, Washington. D.C. 20016.

#### Supreme Court Historical Society

Many ASLH members know of the recent organization of a Supreme Court Historical Society. The society is seeking new members and has prepared a brochure describing the organization's purpose and functions. For copies write to The Supreme Court Historical Society, Suite 333, 1511 K Street, N.W., Washington, D.C. 20005. An annual meeting is held at the Supreme Court in May. The society's quarterly newsletter recently announced a publication series of books to be known as "Collections of the Supreme Court Historical Society." The first number in the series will be Magna Carta Documents, a facsimile reproduction with annotation and commentary. Oceana Publications, Inc., of Dobbs Ferry, New York, is the publisher. As mentioned in an earlier ASLH Newsletter, the society is also sponsoring an editorial project, "Documentary History of the Supreme Court of the United States, 1789-1800." The society became an affiliate member of the American Historical Association in August 1976.

#### New Legal Studies Series Launched

Paul L. Murphy, chairman of the 1976 ASLH Program Committee, is the editor of a new series of Legal Studies, being developed by Greenwood Press. The series will be open to all phases of legal research, American, and non-American, ancient and modern, and will be particularly receptive to studies in legal history. Members with manuscripts in process are invited to contact the editor for further information. Professor Paul L. Murphy, Department of History, University of Minnesota, Minneapolis, Minn. 55455.

#### South Carolina Archives Guide

The South Carolina Department of Archives and History has

published a revised second edition of The South Carolina Archives: A Temporary Summary Guide by Marion C. Chandler and Earl W. Wade. In the listings are included the colonial and state records of South Carolina, as well as summaries of the local records of eight South Carolina counties now at the Archives Building in Columbia. Legal historians will find the description of court records extremely helpful. For further information contact the South Carolina Department of Archives and History, P. O. Box 11,669, Columbia, South Carolina, 29211.

#### Women's History Research Center

The WOMEN & LAW collection of the former Women's History Library has been published on microfilm by the Women's History Research Center of Berkeley, Calif. The microfilm is 40 reels (\$32/reel) of materials on Law/General, Politics, Employment, Education, Rape/Prison/Prostitution, Black & other Third World women. Urge your library to order this valuable resource! Write to the Center's distributor for further information: Barbara Baisley, Northeast Micrographics, 27 Palmerwoods Circle, Branford, Conn. 06405.

#### Virginia State Bar Publication

The Virginia State Bar Bicentennial Committee has published a facsimile of the first collection of laws in Virginia, "The Laws of Virginia 1733," and at \$15 for 622 pages folio it is fast becoming a collector's item. It may be ordered from the Virginia State Bar, 700 East Main Street, Richmond, Virginia 23219.

#### Study Commission on Records of Federal Officials

The National Study Commission on Records and Documents of Federal Officials held hearings in Washington recently. William H. Harbaugh, professor at the University of Virginia and an ASLH member, presented a statement to the commission on January 12, 1977, in which he addressed the issue of judicial records and the disposition of working papers of Supreme Court Justices and lower court judges. Working papers include bench and conference notes, correspondence with colleagues, drafts of opinions et cetera. They are not presently classified as official records by the Federal Records Disposal Act, which does not in any event apply to the Supreme Court.

Harbaugh argued that recent federal and state freedom of information laws as well as other rulings opening various board meetings, minutes, and other records to the public reveal a conviction on the part of the American people that, although some governmental business must of necessity be kept confidential for varying periods,

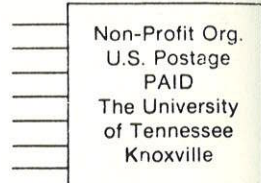
none of it is ultimately private. "Unquestionably, by this construction," Harbaugh continued, "to draft a preliminary opinion, to write a memorandum on a case, to take notes of a judicial conference is to conduct public, not private, business. This means that the real issue is one of policy, not constitutional interpretation. It is in society's interest to maintain records of such activities, and, if so, when should they be opened?"

Harbaugh discussed several examples of judicial biography to indicate the differing results obtained by access to private as well as official documents, citing Alpheus T. Mason's experience with sources for his Brandeis and his Harlan Fiske Stone as instructive. The recent controversy over which justice was the last holdout in the 1954 Brown decision also reveals the pitfalls incomplete sources create for historians like Harbaugh himself. He rejected the argument that the written opinion rather than the ingredients of its formulation constitute the binding force or precedent and that judicial decisions must "quiet" controversy and thus withhold from the public eye anything that might engender controversy, no matter what the time lapse. "None of these statements stands the test of logic or historical experience," he said.

At the end of this statement, Harbaugh recommended that the Commission "request the Justices of the Supreme Court to reconsider the Court's informal, and far from universally observed, tradition of enjoining its members, in effect, to secrecy beyond the grave. . . . The same request . . . should be made to judges of the lower courts," to give their working papers to their courts or to a library to be closed for a period no longer than twenty years.

Prof. Carl Pierce  
Acting Secretary, ASLH  
School of Law  
University of Tennessee  
Knoxville, Tennessee 37916

ADDRESS CORRECTION REQUESTED



University of Washington  
Law Library  
Seattle, Washington 98195