

Review of

Amtrak Law Department Performance
Especially as to Management of Litigation by Outside Counsel

Prepared for National Railroad Passenger Corporation (“Amtrak”) Office
of Inspector General

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Summary of Observations & Conclusions

The Office of Inspector General (“OIG”) for National Railroad Passenger Corporation (“Amtrak”) retained my firm as consultants on legal fee management. We have been assisting OIG at Amtrak and the US Department of Transportation to conduct an investigation and review of Amtrak’s use of outside legal counsel and the operation of Amtrak’s in-house Law Department, particularly as it relates to selection, management, and compensation of outside counsel. Amtrak is responding to two Congressional inquiries about expenditures on outside legal fees and related issues.

The GAO conducted an overlapping examination, GAO 06-145, which touches upon some of the same issues: We have been working behind GAO and our analysis has been designed to consider all the legal department-related issues raised by GAO, but go deeper into those questions than GAO was able to go.

To respond to a Congressional inquiry, my firm assisted Amtrak and DOT OIG staff to review and analyze the performance of Amtrak’s Law Department. The primary focus of the inquiry was the time period from 2002 to 2005, for which the most relevant data was available. Our review included examination of Law Department activities in managing outside law firms as well as examination of bills and information from the outside law firms billing the largest amounts, by which we measured the practical impact of the Law Department’s management.

Amtrak’s Billing Guidelines for Outside Counsel, created in 1998, are excellent – not perfect – but providing a strong basis for Amtrak to manage its lawyers. Unfortunately, the management of Amtrak’s Law Department does not enforce its own guidelines, resulting in excessive and wasteful legal bills. Amtrak’s Guidelines require budgets from its lawyers, but almost no budgets were observed and none were reconciled with actual bills. Few of the bills exhibited signs of review by Amtrak – though they were duly signed off on by Amtrak staff attorneys. Amtrak concentrates its fee management efforts on securing what it thinks are discounts on hourly rates, but Amtrak does nothing to confirm that these are real discounts from real rates. Amtrak Guidelines give it the power to control staff assigned to its matters, but the firms are overstaffing. Compounding its problems, Amtrak assumes almost all its litigation (besides claims work) is complex and unique, leading it to select only the most expensive firms in the country to do its work.

I observed almost none of the give and take between in-house counsel and outside counsel that alert management should have produced. Amtrak’s Law Department is virtually invisible.

Amtrak's Law Department has short-circuited its Guidelines in favor of a few law firms, with whom it has what I refer to as "side agreements." These agreements consist of lopsided terms imposed by the firms for their own benefit. There is nothing in these agreements for Amtrak, begging the question why competent in-house lawyers would agree to them in the first place.

Amtrak needs to select firms with the right expertise that are anxious to do its work, not take it for granted. Amtrak needs to enforce its Guidelines (without carving out special agreements with a few firms), obtain budgets, and reconcile them with bills. The bills need to be reviewed carefully, along with hourly rates and staffing.

Amtrak's Law Department resisted this review, both by dragging its feet and by providing a litany of excuses not just for itself, but to protect the law firms it is supposed to be managing. Its records are a haphazard mess. It claims to have a new magic bullet coming on line with a software system to manage legal fees – there are no panaceas, just opportunities for good lawyers to work hard for their client.

This report does not address Amtrak's claims litigation or transactional legal work – we concentrated on litigation for now.

Background

Purpose & Course of Review

We have been working on aspects of this project since June 2005 (shortly after Amtrak received the two Congressional inquiries). My firm has been providing two basic types of assistance: (1) general consultation on standards and practices for law firms and legal departments, particularly as they relate to hourly fees and expenses billed by the firms, and (2) training and feedback to assist Amtrak OIG and DOT OIG personnel to undertake their own limited reviews of legal bills. Although there are still some items that may drift in from the Amtrak Law Department or perhaps one of the law firms, we have completed the work originally planned. This is still a preliminary report, however, in the sense that it is submitted for review by Amtrak's OIG for their comments and we may update the report if we obtain any new, pertinent materials.

We conducted a limited, mixed review of a sample of bills from the law firms billing the largest amounts to Amtrak. This is *not* a traditional accounting-style financial audit. Some of our analysis is also subjective and judgmental, based upon our professional training and experience. The objective has been to help Amtrak to answer the Congressional inquiries, assess the performance of the Amtrak Law Department, and make constructive suggestions for improvement. Assessing the performance of the Law Department involved, in turn, reviewing a small sample of bills from some of the law firms that were supposed to be managed by the Law Department. Amtrak and DOT OIG personnel reviewed larger samples of bills from the law firms' whose bills met the criteria of the Congressional inquiries (to the extent that such bills had been kept by the Law Department).

Reviewing outside counsel and the operation of a legal department involves a combination of reviewing the financial side of the relationship – fees and expenses – and the professional side of the relationship – performance and cost-effectiveness. We began by receiving background from Amtrak OIG staff about the Congressional inquiries and some general information about the breadth and cost of legal services used by Amtrak, particularly in the last five to ten years. Early on we obtained a copy of Amtrak's 1998 Guidelines for Outside Counsel and a sample of thirty or so legal bills provided by the Law Department. Determining whether these Guidelines were being followed and enforced became a primary focus of our examination.

Amtrak identified the law firms which are within the scope of the Congressional inquiry. To fully answer the pending Congressional inquiries, documents such as correspondence between outside and in-house counsel, retention agreements, budgets, samples of attorney work product, legal bills, and underlying documentation to support the bills were requested from the Law Department and some outside counsel. (According to the Law Department, much of the documentation called for by the

inquiries may no longer exist or was never received in the first place, which is itself an indication of poor management, especially for ongoing matters.)

After receiving some of this background information, our next step was to review a sample of the law firms' bills. Reviewing the bills helps us to analyze the performance both of the law firms and of the Law Department, which is responsible for managing the law firms. I provided training in techniques for analysis of legal bills and related issues to the members of the review team from Amtrak and DOT. [REDACTED] of my firm also reviewed a sample invoice from each of the top six billing firms, which were used as a point of comparison for the OIG team.

OIG personnel interviewed personnel from the Law Department, sometimes more than once. We consulted with OIG on interview topics that would be useful for our analysis. We have considered these interviews in our analysis as well.

OIG made follow-up requests to Amtrak Legal Department, which has been submitting additional information even as this report is being finalized.

OIG also inventoried bills and reconciled them with payments made by Amtrak, where possible. Unfortunately, the Law Department has not maintained files or billing data for more than the last several years, at most. Amtrak's Finance Department does keep some record of amounts paid, but without the bills we cannot determine whether the amounts expended were necessary or reasonable. This has made it impossible for Amtrak to definitively answer the Congressional inquiries for older data.

The Law Department has repeatedly emphasized that it has switched to a software-based system for legal fee management in 2005. Prior to that, whatever fee management there was appeared to be ad hoc through the line attorneys (called "Managing Attorneys" in the Guidelines) supervising each outside firm and, to some extent, requirements for higher level approvals for larger bills. The Law Department has also indicated that the billing guidelines first issued in 1998 are being revised at this time – they have explicitly stated that they are withholding publication of this edition until OIG issues its report. Given the time that has passed since these issues were first raised, my conclusion is that both issues have been designed to create moving targets to distract attention from the OIG findings and the Law Department's shortcomings.¹

¹ Based on the interviews, it appears that the automated bill review system is not performing as advertised and the Law Department is still suffering from the problems noted below, plus problems that arise from implementing a software panacea – software cannot excuse in-house counsel from their managerial duties.

Tasks Undertaken by Amtrak & DOT Personnel

Some tasks that my firm normally handles alone were shared with or assigned to DOT and Amtrak OIG audit staff. This was done, in part, to expedite review of a larger universe of firms and bills and to be more financially efficient. This should also serve to train some DOT and Amtrak personnel to better examine legal fee issues in the future. OIG Staff inventoried bills and compared them with Amtrak Financial records, attempting to reconcile the two. OIG Staff also drew a sample of bills from the top 10 billing firms, 2002 - 2005, for closer examination, which they conducted and documented. This review included review of portions of relevant Law Department files, when available. (I reviewed their reports and notes, sometimes resulting in further work or followup.) OIG Staff also conducted the interviews of Law Department personnel, on which I consulted, with follow-ups on many interviews. Personnel from DOT and Amtrak drafted a joint slide presentation to summarize many of the results.²

² Because the objective of this project was to examine performance of the Amtrak Law Department, not law firms per se, we did not focus on the substantive work product of the law firms or the results achieved. By consensus of the joint review team, non-random samples were used so that we could focus on larger bills, for example, and results should not, therefore, be blindly extrapolated.

Observations, Analysis & Conclusions

My observations, analysis, and conclusions have been formed since we were engaged in June 2005, based on applying my experience to all the relevant information. In addition to relying upon my firm's direct observations, I am relying on information conveyed to me through Amtrak and DOT OIG, including information conveyed in numerous undocumented meetings and phone calls. Some of my observations, analysis, or conclusions are qualified.

Whenever reasonable, I give the benefit of any doubt to the Law Department and the law firms. But this is a management review, not an investigation undertaken for purposes of recovering funds or testifying in court.³ For this reason, I also express my best opinion of the circumstances and solutions. For example, while I found no direct evidence of billing fraud, I found ample evidence that Amtrak is vulnerable to fraud, is not taking basic steps to avoid fraud, and exhibits a passive attitude toward its relationships with law firms that would not deter billing fraud.

There are two subsections to my observations, analysis, and conclusions. First, I address the performance of the Amtrak Law Department itself. Second, I address the investigation we conducted of a sample of the outside law firms billing the most to Amtrak between 2002 and 2005. By examining the firms, we gained further pragmatic insight into the performance of Amtrak's Law Department.

Amtrak Law Department Performance

The primary objective of this review was to analyze the performance of the Amtrak Law Department. This analysis was based on reviewing documentation from the Law Department and staff responses to OIG interview questions. (Although the Law Department has not been provided a copy of this report or of the joint DOT/Amtrak OIG report, it was provided the opportunity to state its position on all significant subjects during the course of the interviews and follow-up interviews.) The final basis for my analysis of the Law Department's performance consists of our review of sample bills

³ My "standard of review" for a management review is to consider whether the interests of the client are being served cost-effectively. I look for evidence not only of acceptable results, but the presence of appropriate procedures and management activity that should detect problems and protect the client's interests when the going gets tough, not just in the routine situations. I am not particularly concerned about whether counsel's fees could be challenged successfully in court or whether ethical requirements are being violated.

and other materials from some of the outside law firms – the details of that part of the analysis are contained in a separate section, which follows this section.

Law Firm Guidelines

The most important step in managing outside counsel is to establish, in writing, Amtrak's expectations. Many sophisticated clients fail to do this, but Amtrak actually has. Unfortunately, Amtrak's Law Department is not paying much attention to its own Guidelines and is not enforcing those Guidelines. In a few instances, Amtrak has cut unfavorable side deals with a few firms.

Amtrak Law Department Billing Guidelines: At least since 1998 Amtrak has published written NPRC Guidelines for Outside Counsel ("Guidelines"), which we understand from interviews are made known by the Law Department to all law firms performing services for Amtrak. An annotated copy of these Guidelines is attached. (The annotations highlight significant provisions.) The Guidelines were obviously prepared by someone who had collected samples from other sources and selected provisions that seemed to her to fit Amtrak best. The Guidelines predate the current top management of the Law Department, although some Law Department staff have been with Amtrak longer.

Creating and enforcing reasonable guidelines is an important function of in-house counsel. The Guidelines could use some refinement, but overall they should have given Amtrak a strong position from which to manage its outside counsel. My primary observation from this entire project has been that Amtrak's Law Department could have performed its duties quite well simply by enforcing the simple, common, and clear terms of these Guidelines. It failed utterly to do that, however.

The Guidelines are very good – almost state of the art. Unlike most clients, Amtrak has given itself ample discretion to manage its lawyers and their fees. They clearly inform outside counsel that Amtrak expects high quality legal services at lower-than-typical prices. The balance between managing and micro-managing outside counsel has been well-struck to avoid creating too much busy work for outside counsel and the in-house lawyers who are supposed to manage them. The Guidelines give Amtrak ample latitude to supervise the substance of outside counsel's work – to protect Amtrak's interests – and to manage their fees. They put Amtrak in the position of being a benevolent dictator to its lawyer/agents, which is where the client should be.

The Guidelines' approach to managing outside lawyers revolves around assigning a Managing Attorney from the Law Department with expertise in the type of matter to supervise each matter. There is a fairly comprehensive list of billing do's and don'ts, some minor, some crucial, some easy to enforce, others vague or requiring deep analysis of the bills to enforce. Two elements of the bill formatting rules in the Guidelines are crucial to fee management: The prohibition of "block billing," *i.e.*, lumping different tasks under one time entry, and the requirement that time entries be detailed, which the Guidelines

define as “complete and precise.” Unfortunately these requirements are not consistently or well enforced by the Law Department.

Another key element of the Guidelines is the requirement that the lawyers prepare and update a budget for most matters. (Among the improvements that could be included are a requirement that the lawyers reconcile their budgets with their bills, and that the budgets be broken down into the same task or categories of tasks as the bills, which would facilitate reconciliation.) As discussed below, budgets are critical to managing the work and fees of outside counsel, but we saw almost none of them, let alone evidence that they were actually used.

The Guidelines also have admonitions regarding staffing controls. Controlling staffing is key to controlling fees and quality of work. These admonitions are too vague, but they are a start. The Guidelines also address issues like travel expenses, research, non-litigation and litigation philosophies, consultation with in-house counsel, and special rules for handling claims litigation, which typically involves many smaller cases. There are standard forms for status and pre-trial reports to be made in claims cases.

Amtrak’s Law Department should be doing a more thorough job of documenting the outside firms’ agreement to abide by the Billing Guidelines. The guidelines could also be improved in some small ways, discussed below.⁴

⁴ The Law Department apparently expects this review to blame the Guidelines, or expects to be able to use the Guidelines as another excuse. For this reason, the Law Department has been saying for months that it is currently revising the Guidelines, but it is unclear what is being changed or why (other than to distract attention from the Law Department’s poor performance).

In 2006, Mr. [REDACTED] produced a draft dated July 2005 for amended Guidelines of Outside Counsel. The draft is an invitation to disaster. For example, it calls for outside counsel to dictate terms of the engagement in a separate “engagement agreement” that in turn references the Guidelines and says that the Guidelines will control in the event of a conflict – why Amtrak is inviting such conflicts is unclear. Uniformity of its agreements is critical to consistent management. Amtrak should insist on one agreement, *i.e.*, its Guidelines. Any necessary, reasonable requests of the firms can be included as addenda to the Guidelines.

This appears to be an attempt to present the OIG investigators with a moving target, not a good faith attempt to improve the operation of the Law Department. As noted before, the problem is not with the Guidelines, it is with the implementation by Law Department management and their actions and inaction.

The biggest problem with the Guidelines, as discussed below, isn't their content, but that they are not being enforced by Amtrak's Law Department. Law Department management is not ensuring that its staff and outside law firms are taking the Guidelines seriously. The Guidelines give Amtrak the right to "audit" its legal bills – this has apparently never been done. There was little concrete evidence that Law Department personnel were enforcing the Guidelines on their own. Interviews indicated that Law Department personnel interpret and enforce them unevenly, with no internal discussion or training to present the law firms with a uniform front. Another big problem, however, is that Amtrak has been making exceptions to the Guidelines for a few firms, for no apparent reason and contrary to the interests of Amtrak. These exceptions are discussed after discussing Amtrak's failures to enforce the standard Guideline terms.

Failure to Enforce Important Guideline Terms: There are a number of good, state of the art, terms in the 1998 Amtrak Guidelines for Outside Counsel. Unfortunately, my investigation found that some of the most important terms were not being enforced by Amtrak's Law Department. Based on the interviews conducted by OIG with Law Department staff, it appears that there are two explanations for this: (1) The Law Department does not seem to be aware of or choose to enforce some of the provisions or (2) The Law Department claims it is enforcing the provisions, but I found substantial evidence from the investigation that those efforts have been ineffective.

This chart summarizes the key provisions of the 1998 Guidelines and notes my observations about whether they are being enforced:

Amtrak Outside Counsel Guidelines (1998)				
Primary provisions (excluding claims litigation)				
Topic	Guideline Features	Location	Enforcement Observations	Notes
Relationship	Amtrak seeks a close working relationship, like co-counsel or joint representation. Amtrak is hiring particular lawyers, not entire firms. The engagement attorney is to work with a specific Amtrak "Managing Attorney." All "important documents" are to be copied to the Managing Attorney, who must also be consulted and approve all "significant decisions."	Intro, LDMA @ 1	For the larger firms, Amtrak may have a primary contact, but the relationship has spread to a larger group. For more complex cases, it appears the relationship is close, perhaps too close. Based on Amtrak's files, it appears its handling of case documents is haphazard.	This type of provision is good. Amtrak is slipping in the execution. I observed apparent communication between Amtrak and law firms, but not firm Amtrak control.
Hourly Rates	Amtrak "expects to receive a substantial discount" from "normal fee structure." Amtrak expects to "receive at least the same discount offered" to other gov't or corporate clients. Rate increases must be "discussed" and "approved" by Amtrak in advance. Amtrak is open to non-hourly arrangements.	FE&D @ 2	Amtrak does, in most instances, believe it is getting discounted hourly rates, but there has been no apparent attempt to confirm any of this. The paper record indicates that firms are routinely increasing hourly rates by large amounts without approval, but Amtrak staff claim to have been consulted orally. I saw no indication that Amtrak is using any alternative fee types.	Amtrak is fixated on hourly rates, not the whole fee equation. This is a vague version of a "most favored nations" clause, which may be appropriate, but is impossible to enforce without more research by Amtrak. Rather than talking about its hopes and expectations, Amtrak should be getting a specific written agreement. Amtrak chooses some of the most expensive firms in the country, so the discounts are only relative. Amtrak should be checking its rates with other clients of the same firm and with other firms.
Unacceptable Charges	Amtrak has a list of discouraged charges, like basic research, junior attorney training time, transition time. Amtrak also declines to pay for administrative activity, like conflicts checks and billing discussions. Amtrak declines to pay for overhead items, giving examples for clerical work, routine copying, file review, local calls, supplies, and part of fax charges. Amtrak has a basic rule that it will pay only actual cost, i.e., no profit on expenses.	FE&D @ 2, 3	We found many examples of forbidden charges in the sample bills. Amtrak does not seem to be taking advantage of these provisions to cut bills. Amtrak is not rejecting these charges when they appear on the bills, either because it's not catching them or not enforcing them.	These are standard provisions, including most of the do's and don'ts. They are fine as far as they go -- some are trivial. Other things might be added.
Billing	Amtrak has a list of billing formalities, including a preference for monthly bills and tenth hour actual time increments (no minimum charges). Block billing is expressly prohibited, with examples of good and bad entries given. "Complete and precise" billing descriptions are required. Expenses must be itemized. Each invoice should have a running or cumulative total of fees billed on that matter to date. Firms are warned that Amtrak may audit their bills or be audited itself.	Billing @ 3, 4	Most of the firms comply with the basic formalities, but the block billing prohibition and detail requirement are ignored by many firms in a high percentage of the bills. Amtrak did little, if anything, to enforce this requirement, which could have resulted in denying large amounts. We found no evidence that Amtrak ever audited a legal bill, which was confirmed in the interviews.	The billing formalities are standard, while the block billing and detail requirements are exceptionally good.
Budgets	Amtrak requires an initial budget within 30 days of retention, then updates at least once every six months, more often if something significant comes up. Budgets for larger matters must be broken down. Budgets go through the entire matter. There is a small matter exception. The initial budget is supposed to identify all staff and give their rates, which dovetails with the staffing requirements.	Budgets @ 4	We found virtually no budget activity. Amtrak interviews claimed there were budgets in all or nearly all cases -- I cannot reconcile these facts.	The budget requirement could be spelled out better, with a provision for reconciling budgets with bills, but this is another exceptional aspect of these Guidelines. One thing to add would be a discussion of the consequences of missing the budget and controls on budget changes. Budgets need to be solicited earlier, as part of making the selection, when the competitive urge is present.
Staffing	Amtrak emphasizes that it selects particular attorneys for their expertise. Staffing changes must be discussed and approved by Amtrak in advance. Amtrak expresses a preference for no more than one partner, one associate, and one paralegal for support. Amtrak suggests that, if the firm wishes to have more than one attorney attend an event, that should not be billed to Amtrak.	Staffing @ 4, 5	The larger firms are routinely using larger staff and changing staff apparently at will. According to Law Department interviews, these changes were approved orally. In my opinion, many of the sampled matters are overstaffed, which increases fees substantially. There were few, if any, writeoffs in these bills, for whatever reason.	This section is strong, but suggesting that two attorneys plus a paralegal are necessary is sending the wrong message for more routine matters. The firm is required to identify staff and give rates in the budget section.

The “Side Agreements”: In the course of conducting the investigation, Amtrak OIG requested documents from the Law Department, including agreements with outside counsel. Amtrak and DOT OIG obtained several such agreements, particularly several with [REDACTED] and one with [REDACTED]. These have been labeled by me as “side agreements” because they appear to co-exist with the Amtrak Billing Guidelines, not supersede them. These agreements are compared with the Guidelines in a table attached to this report.

The side agreements appear to be stock law firm client billing agreements that they would attempt to have many clients execute – sophisticated clients with in-house counsel would never do so unless the agreements were entirely consistent with the client’s interest. This phenomenon arises because bar organizations recommend (and sometimes require) written disclosure of key billing and other issues to hourly clients, which has evolved in some quarters into these one-sided “agreements” by which the client waives, often unknowingly, many protections otherwise provided by fiduciary law and legal ethics rules. These are contracts of adhesion that law firms use to overcome various legal and ethical restrictions, particularly as to justifying and collecting fees and avoiding complications caused by potential conflicts of interest. The agreements Amtrak signed were not specially prepared for Amtrak and, unfortunately, there are no indications that Amtrak staff caused any of the stock terms to be modified in Amtrak’s favor. They generally address billing, conflicts of interest, and other issues of interest primarily to the law firms, so they do not necessarily negate many of the Guideline terms

Unfortunately, despite having in-house attorneys involved in each situation, the relationship between the Guideline terms and these side agreements is never made clear. It is unclear which terms would control in the event of a dispute, although the law firms would undoubtedly argue that their side agreements control, *e.g.*, because Amtrak Law Department did not require the firms to sign the Guidelines but the law firms had Amtrak sign their side agreements. Some, but not all, of the side agreements do mention the Guidelines, but without making it clear how the two would interact. Regardless of what one thinks of the terms of these agreements, the failure of the Law Department to clarify the interaction of the competing agreements is bad lawyering.

It is clear that Amtrak Law Department purposely entered into these side agreements, but it is unclear to me why – the additional terms undermine the more equitable attorney-client relationship created by the Guidelines, are contrary to the interests of Amtrak, and contain no quid pro quo for Amtrak. In addressing such agreements with law firms, I like to challenge them to state whether, if they had been representing Amtrak’s interests, they would have recommended that the client sign such one-sided agreements. Unfortunately, many lawyers view the inception of their fiduciary relationship as the perfect time to take advantage of the client’s trust. These agreements contain some terms that law firms commonly attempt to impose upon unsophisticated clients – still not a good reason for Amtrak to agree – but some of the terms are uniquely contrary to the interests of Amtrak, there is no apparent need for

them, and no sophisticated client (let alone one with a competent in-house legal staff) would agree to them. It is bad enough when an unsophisticated client signs these one-sided agreements, but one of the primary functions of in-house counsel is to provide more sophisticated protection of his or her client's interests – this was not done here.

Also noteworthy is that several of these side agreements were entered into in 2005 and 2006, after the GAO audit and this investigation were well under way. Either the Law Department is remarkably insensitive to its circumstances or entering into side agreements is an attempt to circumvent the Guidelines and the consequences of review, for the benefit of selected firms. All attorney-client relationships are terminable at-will, however, so Amtrak is not under any legal duty to continue any of these relationships.⁵

The matrix comparing these side agreements is attached as Exhibit C. The agreements are Exhibit D.

Recommendations -- Amtrak Billing Guidelines: As noted above, while the Guidelines are quite good, in my estimation, they could be improved.

There is not one single, ideal set of billing guidelines that will work for every client, in every situation. The terms of the guidelines must fit the client's objectives: Some clients have thousands of small, routine cases, others have a few major, complex cases that may make or break the company. (Amtrak is actually closer to the small, routine case model, but most of its in-house lawyers act as though Amtrak is in the "major case" category.) Some clients have no in-house lawyers to manage their outside lawyers, others, like Amtrak, have dozens. Amtrak also has some unique regulatory concerns and it must be accountable to taxpayers.

Amtrak's current Guidelines call for fairly tight management, with in-house counsel considering themselves to be intimately involved every step of the way. This assumes a fairly large in-house staff in proportion to the number of cases. At this management level, an in-house attorney is unlikely to be able to handle more than ten or so moderately complex, fast-paced cases at a time. This management burden could be reduced somewhat, particularly for more routine cases, by relying more heavily on establishing a preliminary case plan (with strategy and tactics made clear), requiring Amtrak input on certain key issues (like settlement), and using budgeting and bill review to monitor firm compliance.

⁵ There is a practical cost of changing law firms abruptly, including the lost value of time invested by one firm and the start-up time of the replacement firm, but these are frequently overstated.

Regarding the side agreements, Amtrak should notify the firms that the side agreements are no longer acceptable and that the Guidelines will control.⁶ The firms may be invited to make individual requests to modify the Guidelines, but these requests must have some rational, necessary basis and not undermine the interests of Amtrak – making substantial changes to standardized Guidelines will increase the administrative burden on Amtrak. Amtrak’s in-house counsel should negotiate any changes with Amtrak’s best interests in mind. For example, all firms should be treated equally – no term should be provided to one firm that Amtrak is not prepared to grant to any other similarly-situated firm. Any law firms that are unwilling to work on Amtrak’s reasonable terms should be replaced, either by stopping the flow of new work to phase them out or terminating them now.

Creating and enforcing reasonable Guidelines does not solve all of Amtrak’s problems, but it will provide a much stronger management foundation and solve many problems.

⁶ Although it can be argued that having the firms sign the Guidelines is not necessary – they are instructions by the client to its fiduciary agents – it would be a good practice to have them signed.

Legal Fee Budgets

Usually implemented as part of the Guidelines, obtaining budgets from outside law firms is critical to managing their fees and performance. Budgets encourage the law firms to plan ahead and then fulfill the client expectations their budgets create. Firms complain about budgeting, but a failure to issue a reasonable budget is a strong indication that the law firm does not have the right expertise to handle the matter cost-effectively.

Absence of Budgets: Requiring law firms to issue budgets is an important management tool. Many law firms are conditioned to subvert the process by ignoring budget requests, building in numerous unrealistic “assumptions” or caveats, and either making the initial budget unrealistically low (to win an RFP contest, revising the budget up as soon as the competition is excused) or grossly high (to cover all possibilities and relieve the firm of budget pressure). It is an important function of competent in-house counsel to conduct a meaningful budget process. Budgeting is not necessarily about saving money at the expense of the law firms so much as it is about making sure that the firm is pursuing the client’s objectives, not taking the client for granted, and expending fees cost-effectively.

The Amtrak Billing Guidelines require budgets in most matters. *See* Guidelines page 4. (The Guidelines could be improved somewhat in this regard, as noted above.) At least one firm [REDACTED] has circumvented the budget process, with Law Department approval [REDACTED] side agreements dated [REDACTED] and [REDACTED] countersigned by in-house counsel). The exceptions are for small matters, under \$5,000 in likely fees and expenses. For larger matters, over \$50,000 in expected fees, the budget must be broken down into phases. (The budget also contains a requirement that the law firm specify the initial staffing – any changes to staffing after that should require advance approval under the staffing rules.)

An initial budget is due in 30 days from retention, or less if Amtrak asks – it should always as a part of the selection process. Budgets reveal the level of experience and intentions of counsel, making management much easier. Updated budgets are due as events occur or no less frequently than every six months. There should be reconciliation of budgets with bills – this is not explicit, nor was it ever done from what I have seen. Amtrak has avoided a common mistake made by many clients, who only ask for budgets extending out a year or quarter – Amtrak wants budgets to conclusion.

Despite verbal assurances in numerous interviews that budgeting is commonplace at Amtrak, Amtrak’s in-house lawyers have failed utterly in this regard. We found almost no evidence of budgeting – perhaps a half dozen attempts by law firms, with no interaction visible from the Law Department.

Regardless of the law firms' inclination to undermine the budget process, in-house lawyers should insist upon budgets, then manage a dynamic budget reconciliation and updating process. I advise clients that any firm professing an inability to budget is implicitly admitting that it lacks sufficient relevant experience, or else an intention to over-bill. Too often, clients do what Amtrak has done here: Mandate budgets, but not follow through.

Even if the firm exceeds all or part of the budget, which is common with a reasonably detailed budget, the budget process has value because (1) budgeting makes the firm think ahead and communicate what it plans to do, giving in-house counsel the ability to adjust those plans before they are executed,⁷ (2) firms that budget are creating client expectations and should be more sensitive to the client's concerns about cost, (3) if the firm exceeds the budget, its explanations (or excuses) may reveal much about the firm's competence,⁸ and (4) if the firm exceed the budget, it may spontaneously write-off fees or at least accept a write-off more readily. An important function of in-house counsel is to understand how to manage the law firms using budgets intelligently, even though it is not a perfect process.

What I refer to as the budget process is really a dynamic relationship between lawyer and client that starts with the initial budget. The budget actually consists of two important elements: (1) a plan of action for handling the matter and (2) an estimate of the fees and expenses that each step in the plan is expected by experienced counsel to cost. Experienced, competent lawyers can budget fairly accurately, including just a few reasonable assumptions or alternatives also based on experience. Experienced, competent lawyers can also give rational explanations when the budget is exceeded – including blaming themselves from time to time. Unfortunately, most lawyers are not as experienced as they would have one believe, which is made plain when they are asked to budget.⁹ We therefore

⁷ Too often lawyers being paid by the hour simply follow their noses wherever they lead, without consideration for cost-effectiveness or a larger objective – knee-jerk reaction is the standard tactic.

⁸ Firms typically blame their opponents and the courts and, behind their backs, the clients. Any firm that blames an opponent, for example, for taking discovery comparable to that taken by the firm is obviously naive, but that is a common excuse. These excuses may also make it plain, however, that the firm is not paying attention to the client's objectives, is hopelessly mismatched, or is simply wasting money.

⁹ The lack of material experience in litigation and especially trial experience, a more common problem in large law firms, is because a single "complex" paper war can last for years and is typically settled short of trial. The opportunities for experience at large firms are also limited because the teams

(continued...)

recommend including a budget requirement in the selection process, more to gauge the firms' reactions than to hold them to the numbers. Competent in-house counsel should be able to read the budgets, not just to make sure that the plan and estimated amounts seem reasonable, but especially for the footnotes, caveats, assumptions, and the like that may reveal whether the law firm knows what it is doing or just planning to learn at Amtrak's expense.

Obtaining the initial budget is just the start, but Amtrak ended it there in the few instances where it obtained a budget. Budgets must be reconciled with invoices,¹⁰ which means that budgets and bills must be organized around the same task definitions to allow comparison.¹¹ (This is discussed in more detail in the section on bill formats, below.) The give and take stimulated by reconciling bills and budgets will have a direct impact on the amount of fees, but should also give in-house counsel deeper insight into what outside counsel are doing, whether all the staff assigned are necessary, their opinions of opposing counsel and the tribunal (in litigation), and the value of the case for settlement purposes.

Recommendation: Budgets Creating and monitoring budgets should be a primary task for the Law Department. The Law Department must enforce the Guidelines regarding budgets, review the budgets, reconcile budgets with bills, and address firms that go over-budget, change the budgets without a reasonable basis, or subvert the budget process. Budgets should be used to select counsel, monitor their performance, and evaluate whether counsel should be terminated.

⁹(...continued)

are so large, thereby diluting the individual experience and increasing the need for a security blanket of expensive overstaffing as inexperienced litigators become partners. Clients should never assume that a "litigator" has significant trial experience unless he or she worked outside large firms – former government trial lawyers have far more experience.

¹⁰ Some Law Department staff claimed in their interviews that more budgets are now being generated, and reconciled with invoices, using the new electronic billing system, which has supposedly been implemented in 2005-06. Despite numerous requests for this information, we saw no evidence it actually exists.

¹¹ A common problem with many law firm budgets is that they are presented as a single lump sum, without itemization of tasks or stages of the matter. This makes reconciliation impossible, so the client cannot tell whether the firm is "on budget" until the budget is exhausted or the matter completed. This leads, in turn, to situations where clients feel trapped into keeping the firm, even as budgets are shattered, because the matter is too far along to switch firms. Any client with in-house counsel to monitor matters must work with itemized budgets.

Amtrak may establish policies in the Guidelines on the consequences of exceeding budgets, but it is really up to in-house counsel to decide whether the firm is at fault for overruns and how to deal with them. Firms that do not cooperate in the budgeting process, as well as firms chronically over-budget, should be phased out or terminated. Amtrak might also consider rewarding firms who accomplish their work below budget (assuming the budget was not inflated), although the reward should be kept nominal.

Bill Format & Review

In this section, I have grouped several issues relating to the handling of legal bills by the Law Department. The point is generally that the Law Department has not been alert and has not enforced Amtrak's rights as it should. Some of these issues are technical, but they ensure that the Law Department staff is able to look deeply enough into the bills to protect Amtrak's interests and, where appropriate, adjust the bills in Amtrak's favor.

Inadequate legal bill formats: Left to their own devices, many firms produce legal bills that are too obscure to be analyzed efficiently by in-house counsel. Either the time descriptions lack important details, multiple tasks are lumped together, or the bills are in unusual formats that impair review. Another problem arises if a firm is doing several matters – perhaps hundreds in the claims arena – at once, making it hard for in-house counsel to track time spent by the same timekeepers across many matters. Some firms even leave out important details, like the hourly rates of timekeepers. While sloppy or un-managed lawyers may bill this way out of habit, these practices are also used by lawyers trying to hide billing fraud. All these problems are exhibited somewhere in the Amtrak legal bills.

According to the Amtrak Billing Guidelines, law firms are expected to implement several requirements, including two bill format directives, that are crucial to fee management: (1) A prohibition against "block billing," *i.e.*, lumping or mixing different tasks under one time entry (Guideline page 3), and (2) a requirement that time entries be detailed, which the Guidelines define as "complete and precise," with examples of good and bad entries provided (Guideline page 4). Block billing and cryptic time entries were extremely common in the bills we reviewed. (Samples of these issues are presented below, in the analysis of the bill samples.) These are easy problems for in-house counsel to spot, they claimed in interviews to be enforcing them, but in practice they were not doing so.

Lumped or mixed entries tend to obscure the cost of each task. This also undermines reconciliation of time entries with the corresponding budget items. The preferable alternative is known as task-based billing, where each item for each time entry has its own time amount included, either in the body of a time entry or as a number of separate time entries for the same timekeeper in the same day.¹²

¹² The prohibition of block billing in the Guidelines is an example of how Amtrak gave itself an advantage in potential fee disputes. Without the prohibition, block billing might be discouraged because
(continued...)

Vague or cryptic time entries obscure the nature of the work being done. Common examples include leaving out the subject of a task, such as research or conferences, or failing to identify other participants in conferences or meetings. These may seem like trivial details, but they obscure things like duplicated or wasted effort, billing mistakes, and attempts to circumvent billing restrictions. That an entry is cryptic is universally a ground to deny payment for that entry under the common law, although the Guidelines reinforce that authority.

Some of the firms also had unusual bill formats, *e.g.*, with details like hourly rates missing or in an unusual location, which tends to impede review of the bills by in-house counsel. The formats of some bills also impede review, *e.g.*, with unusual page layouts. This impairs the Law Department's ability to conduct a meaningful review of incoming legal bills. To facilitate bill reviews, the Law Department should receive the bills in a usable, standardized electronic format.

The sample of bills we reviewed contained substantial quantities of both block-billed and cryptic entries, indicating that the Law Department was not enforcing these basic provisions. The near, but not complete, absence of objections by the Law Department is the problem here. Amtrak lawyers should have brought these deficiencies to the attention of outside counsel and used them to reduce unreasonable fees, especially for firms that continued to submit inadequate bills. Of course, the Law Department also needs to begin conducting meaningful reviews of all incoming bills to catch these problems, as discussed next.

Absence of Bill Reviews & Independent Bill Audits: Having in-house lawyers or trained staff promptly review incoming legal bills is an important aspect of the Law Department's responsibility at Amtrak (or any organization). Hourly legal fees are an unusual, variable expenditure that normal accounts payable systems cannot verify – one justification for having in-house counsel in the first place is to decipher the bills.

Not only are outside legal fees a substantial percentage of Amtrak's expenditures, but legal judgments and settlements are also considerable. Reviewing the bills is not primarily about saving money, but also about monitoring the staffing, tactics, and activities (and omissions) of counsel. Properly formatted bills provide an insight into what outside counsel are actually doing, not just what they claim they are doing.

The formatting rules, billing do's and don'ts, and other aspects of the Guidelines clearly contemplate prompt and thorough review of each legal bill by in-house counsel before approving them

¹²(...continued)

it is not the better practice, but it is not normally a basis for denying payment of a fee unless some rule or agreement provides otherwise, as Amtrak did.

for payment. Every Amtrak bill I can recall bore some indication that it had been approved for payment by in-house counsel, but I saw virtually no indications that any of these bills had been reviewed, even cursorily. The few exceptions were little more than stray handwritten marks on an occasional time entry or expense item – almost none of these were pursued by in-house counsel. Yet these bills exhibited many obvious problems, from block billing and cryptic entries, described above, to violation of many other Amtrak Guideline provisions and other billing standards, as discussed in more detail in the section describing our review of sample bills, below.

Reviewing bills manually, in the fashion Amtrak did from 2002 to 2005, is not a very efficient task – electronic review is more systematic and precise – but experienced in-house counsel can read the bills like a medical chart of each matter to understand the matter’s prognosis.¹³ Totaling up problems manually is difficult and time consuming, which is undoubtedly one reason Amtrak did not bother noting all the bad entries. At least, in-house counsel could have sent a letter or email reminding outside counsel of their obligations, citing a few examples, and thereby slow the bleeding – Amtrak did not do that, either.

Reviewing bills puts some in-house counsel in an awkward position because they are uncomfortable challenging fees and expenses of the firms they work with on a regular basis. A certain amount of this is human nature, and law firms are good at coopting their handlers. But Amtrak’s Law Department acts as though its job is to defend outside counsel, not manage them. The attitude exhibited by Amtrak’s Law Department when their handling of outside lawyers was questioned was to defend the lawyers and provide excuses for not reviewing them more aggressively. This is a bad sign, indicating that the Law Department has lost sight of its primary job: To protect the interests of Amtrak. In these situations it helps to have the firm prepare budgets, thereby taking some of the heat off in-house counsel and putting it onto counsel if they exceed their own budgets. Another solution many clients use is to retain an independent legal bill review or “auditing” firm, which also takes most of the heat off of in-house counsel.

¹³ We heard about the “new” electronic system during interviews and ██████████ of Amtrak OIG confirmed that it exists. It has already taken roughly 1.5 years to implement this system, which is about half the normal life span of most software. The claim by the Law Department that this system has been used to budget, reconcile budgets, and review bills could not be confirmed. I offer no opinion on this new system, which seems to be a smokescreen to avoid the impact of the GAO and joint OIG reviews. I do offer the observation that many clients have attempted to use such systems, but have failed in the implementation because they either did not know how to use the system, they could not get in-house and outside counsel to use it consistently and properly, or they were unable or unwilling to police the outside law firms.

In-house counsel should have primary responsibility for routinely reviewing all incoming legal bills. But the Guidelines also provide that Amtrak may obtain independent legal bill audits (page 4) from firms like mine. As far as we could tell, Amtrak has never made any such effort in at least seven years.

During OIG interviews, the General Counsel apparently excused this lack of bill audits by suggesting that the Law Department was expecting OIG to enforce this provision, through examinations like this joint review, because the Guidelines (at pages 1 & 4) warn outside counsel to expect OIG and GAO audits as well. OIG investigations are not legal bill audits – the legal bill audits referenced are those which would routinely be instigated by in-house counsel and are a common tool employed by competent corporate and government counsel.¹⁴ The Guideline provision makes it quite clear that there are two types of audits, with the OIG/GAO variety being just one:

Amtrak may, from time to time, in its sole discretion, audit outside counsel bills. Amtrak is itself audited from time to time by the General Accounting Office, the company's own Inspector General and other external auditors, usually at the request of Congress or a Congressional Committee. By undertaking to provide legal services to Amtrak, outside counsel agrees to cooperate fully with all such audits.

That the Law Department has never commissioned even one such audit (or requested OIG to do so) is another example of its failure to implement its own Guidelines. The message to the law firms is that, at least under the current management, Amtrak's Law Department is not being vigilant.

Periodic outside, independent bill reviews are useful for several reasons. First, of course, Amtrak benefits from the review of the particular bills in question to reduce bills and gauge the performance of the law firm(s). Second, Amtrak can compare its handling of the same bills to improve its regular bill review process. Third, Amtrak can discourage the law firms from taking Amtrak for granted. Properly conducted bill reviews from law firms heeding the Guidelines should not impair the attorney-client relationship.¹⁵

Minimal Review of Out of Pocket Expenses: Managing legal fees – hourly rates times hours – takes care of the largest piece of the outside legal expense. But costs, *i.e.*, expenses passed through to the client, are another issue, which is typically 10% or so of the total paid to law firms.

¹⁴ Without active review, in-house review plus occasional independent audits, Amtrak is exposed to bill padding or other forms of billing fraud.

¹⁵ My firm has reviewed several of Amtrak's firms before and most of them tend to drag their feet.

There are Guidelines for various expenses, especially a requirement that they be charged at actual cost, which are apparently enforced only sporadically. The Guidelines should be improved in this regard, too. At least one firm has attempted to except itself from the prohibition against profit on internal expenses by causing Amtrak to agree to pay the firm's self-defined "standard rates," rather than actual cost, for internal expenses.

There are two classes of such expenses: Out of pocket expenses, which are passed through at actual cost (they cannot be marked up),¹⁶ and internal expenses of the firm, which are also supposed to be charged at cost, but the firms can manipulate how they define that "cost" (examples include copying). Typically firms are required to obtain prior approval for large or unusual expenses and document significant expenses with receipts or the like. Aware of the ethical limits on expenses, many firms have constructed elaborate systems for passing off overhead items as costs.

Although we saw very limited evidence that the Law Department was monitoring outside legal bills, what little review we saw concentrated on the expenses – we saw one or two that were challenged successfully. (We found many more in our sample reviews.) Experienced in-house counsel should be able to spot more questionable expenses.

The Law Department should institute standard measures to manage and review expenses passed through by the law firms as part of the legal bill review process.

Recommendations – Legal Bill Review & Formatting: The Law Department must thoroughly and promptly review all incoming legal bills for compliance with Billing Guidelines, including format and content requirements, budgets, and overall reasonableness. This will also allow it to monitor the performance of counsel. As part of this process, the Law Department should also reconcile the bills with budgets and compile cumulative records of the amounts billed and paid, challenged, and the like. The Law Department should also establish a plan to conduct independent bill reviews or "audits" to verify its in-house process and make sure that the firms are not taking Amtrak for granted.

¹⁶ As noted above, however, [REDACTED] has obtained Amtrak's permission, through a side agreement, to recover more than its actual costs on expenses.

Other Outside Counsel Management Issues

Billing Guidelines, budgets, and bill reviews are the primary tools for managing outside counsel's fees and expenses. In this section, I include several additional issues that Amtrak's Law Department should be managing, but is not doing well, if at all, at this time. All of these have a direct impact on fees and expenses paid by Amtrak. At this time, Amtrak is wasting substantial amounts because it is not managing these issues properly.

Hourly Rates: One function of in-house counsel is to select law firms with reasonable hourly rates and monitor hourly rates as actually charged by outside counsel, including changes in rates. Hourly rates are only part of the fees equation, with reviews being necessary to monitor hours.¹⁷ A client providing substantial business to law firms should expect, *inter alia*, substantial discounts from "standard" rates quoted by firms. Clients must be alert for high rates, rates charged for non-billable services (such as clerical services), rates charged for temporary or contract timekeepers (who should be passed through at actual cost), and attempts by the firms to increase hourly rates.

Amtrak does pay some attention to hourly rates – it is one of the easiest items to view – and the Guidelines call for some concessions. Amtrak's Law Department believes it is receiving discounts on hourly rates. According to more than one staff interview, negotiation of rates and changes to rates are oral and undocumented. Having selected some of the most expensive law firms in the country, the "discounts" given by the firm do not, however, make the resulting fees reasonable.

Unfortunately, many firms will claim they are giving discounts when they are not. Amtrak does not, however, do anything I could discern to verify these rates. The "standard" rates are retail rates that no serious client would pay. There are even instances in which firms, who are selected without competition, feel free to enhance their existing rates before quoting them to the new client. Amtrak should be communicating with other law firms to obtain competing hourly rates. Amtrak should also be communicating with other clients of each law firm to verify that they are paying similar or higher rates.

While it does pay attention to initial hourly rates, Amtrak has acquiesced to annual hourly rate increases, often without having them cleared in advance as the Guidelines require. Those increases have been unusually large and unilaterally imposed by the firms annually, thereby wiping out any

¹⁷ Monitoring fees is still critical because firms also erase nominal discounts with over-staffing, frequent and substantial rate increases, and the like.

apparent discount. (Many clients instead require rates to be frozen on each matter, at least for the first two years or so.)

If anything, Amtrak's Law Department should not assume that negotiating a "discount" on hourly rates will have any effect. Any combination of rate increases, inflated rates, hours worked, staffing, or wasteful tasks worked can erase the phantom hourly rate discount.

Absence of Indicia of Management Activity: There are telltale signs one would expect to see if a legal department is engaged in effective, aggressive management of outside counsel. These include write-offs or write-downs of fees and expenses, communications from lawyers seeking permission to change hourly rates or staff, consultation on tactics and strategy, communications from in-house counsel regarding problems Amtrak finds in legal bills, termination of firms for unsatisfactory performance, and the like.

Although Amtrak OIG requested the communications with outside law firms that would demonstrate this healthy activity, especially for the top ten firms being reviewed, there were virtually no such indicia of management activity. Unfortunately the interviews and responses from the Law Department suggest that they view themselves as champions for the outside lawyers, not managers of them. OIG interviews of Law Department staff include anecdotes about individual items occasionally written off or hourly rates "discounted" – these instances were sporadic and had minimal impact. That several law firms spontaneously disclosed substantial, longstanding issues when they became aware of the GAO and OIG investigations demonstrates the absence of similar impact by the Law Department.

Most of the outside firms' attitudes, as exhibited in their bills and communications, demonstrate that they take Amtrak's business for granted. Amtrak provides the top firms with millions of dollars in business, but even Amtrak's Law Department views itself as a second-class client. It is the job of in-house counsel to insure that Amtrak uses lawyers who will treat it as a first-class client, or replace them with others who will. The objective is to make sure that the firms are not taking Amtrak for granted by overbilling, overstaffing, or performing poorly.

Amtrak does not need to be dictatorial, but it does need to be reasonably vigilant and respected. Once Amtrak begins to manage its outside firms more thoroughly, there should be ample give and take with the law firms and a healthy client-attorney relationship should develop.¹⁸

¹⁸ Amtrak should document all significant communications with outside counsel. This provides documentation of their management activities, for future reviews. Counsel may express concern about protecting the information, but it should be privileged.

Staffing Issues: Controlling staffing by the outside firms is the easiest way to keep their bills down and insure that fees are not wasted on inexperienced or unnecessary staff. Firms make money by adding staff, so in-house counsel should question the necessity for every timekeeper after the first. One junior attorney, looking to impress his superiors with lots of billable hours for on the job training, can bill a client \$40,000 or more in a single month. By keeping staff off Amtrak's tab in the first place, Amtrak can save millions in fees that will never be billed and, thus, avoid having to fight with outside counsel over huge write-offs after the fact. The staff assigned by Amtrak's lawyers typically included too many lawyers as well as other staff that were unnecessary or non-billable.

To overcome the limited revenue potential of hourly billing, firms faced with sticker shock for high hourly rates have resorted to overstaffing matters and to designating non-billable work done by clerical staff, for example, as billable. Left to their own devices, firms will assign a pyramid of such timekeepers, some experienced and some not, all billing part-time to this and other matters, which increases the number of people who have to be educated on the matter and kept up to speed. Reducing the staff saves the cost of the unnecessary people, reduces the time spent on startup, and limits the time billed for status briefings.

Heavy staffing, assigning staff with irrelevant or minimal experience, and poorly organized staff are signs of trouble, all of which were present here. Firms billing by the hour make substantial additional profits by overstaffing. Large staffs are not only less cost-effective, but the time wasted on conferences increases geometrically while the potential for disorganization also increases. Firms have also created new job categories to convert overhead items, like clerical work, into what they contend should be billable time. Firms may even contract for temporary staff, but, rather than pass that expense through at actual cost, attempt to mark them up while concealing their true nature by inserting their time entries among those of their actual staff. Even the most complex matters can be handled efficiently by small, dedicated (not part-time, distracted) teams using modern support tools.

The Amtrak Guidelines require advance approval to add to staff, prohibit charging for transition time, and suggest a typical organization of no more than one partner, one associate, and perhaps a supporting paralegal – all reasonable requirements. The requirements are spread out in several locations, but what is there is good. Guidelines at page 2, 4, 5.

We saw almost no indication that Amtrak's Law Department was noting, let alone controlling, the large staff assigned to many of these matters. Moreover, there were several suspicious categories of staff, including "specialists" often billing at twice the rate of paralegals, heavy use of "of counsel", temporary attorneys billed at professional rates (rather than actual cost), and partner-heavy staffing.

Selection of Counsel: The days are supposed to be gone when sophisticated clients would hand their legal work to only those law firms with a friend in the legal department. In-house lawyers should

maintain their objectivity, not become advocates for the outside law firms at the expense of their clients. Legal departments should be aware of the best firms in their field in the normal course of performing their jobs and have the special expertise to investigate potential law firms, with the best interest of their client in mind.

Amtrak's in-house lawyers appear to have been coopted by their outside firms, they rarely select new outside firms, they are making no apparent effort to engage in a thorough law firm selection process, and the firms they use are among the largest and most expensive in the country.

The bias in many client companies is to pick the biggest firms in town because either the client assumes that these firms must be the best or, at least, whoever selects them cannot be faulted later.¹⁹ This overlooks several important facts: (1) no matter how big a firm is, it may not have expertise with your particular issues, and (2) the biggest firms tend to get that way by charging large fees. We have found innumerable instances where clients hired a major firm because of perceived expertise, only to find dozens of junior attorneys fresh out of law school – or even temporary lawyers – on their bill doing the actual work. Larger firms also have a habit of taking their clients, even clients paying millions in fees, for granted, which is a major problem for Amtrak.

The Law Department is supposed to use its expertise to perform a more thorough, rational law firm selection process, not just pick the same firms any naive client would. Amtrak's Law Department has not investigated its firms properly and not considered alternative law firms that would be cheaper and provide equivalent, if not better, services. There are thousands of firms with expertise handling most of the work done for Amtrak – most of Amtrak's work is routine, both in subject matter and complexity. Finding smaller, appreciative firms, especially firms from outside expensive metropolitan areas, would save Amtrak millions a year in legal fees. For the few exceptions, more investigation may be necessary, but Amtrak's in-house lawyers are supposed to be doing that already.

The first step is to gather a list of qualified potential firms. Some legal departments run formal auditions or issue requests for proposals ("RFPs"), others go by word of mouth, but it is the responsibility of in-house counsel to canvass the profession and pierce general marketing talk and biases favoring the largest, most expensive firms to insure that the firms under consideration are really qualified and "fit" the type of matter. (Bad fits make mistakes and cost more.) Regardless how candidates are found, the search must be thorough, but that does not end the matter. In-house counsel must then dig deeply into the credentials of proposed staff, the firm's experience, its proposed plan and budget, references, hourly rates, and more to make sure the firm will "fit" this engagement.

¹⁹ This bias for large, expensive firms is a common problem, typically caused because (1) individual employees feel they will expose themselves to reproach if a smaller firm fails and (2) individual employees are not accountable for the fees wasted by picking large, inefficient firms.

Besides selecting a firm with relevant experience, Amtrak should be taking advantage of the selection process to induce competition among the firms. Once the selection is made, this competitive advantage is gone. Bargaining for a lower budget may only enhance the hypocrisy of unrealistic budgets, so the better option may be to induce the firms to put some teeth in the budget, drop hourly rates, eliminate marginal staff, or make other concessions.

Rewarding existing firms that perform well with more work is also acceptable, if they deserve it.²⁰ Amtrak needs to evaluate the performance of existing firms and, if they perform well, include them in the mix for major new assignments. For smaller, routine assignments, where the project is not going to involve, say, \$100,000 or more in budgeted fees, Amtrak might establish a policy of assigning them to existing firms with a good performance record.

Based on interviews by OIG staff of Law Department personnel, it appears that Amtrak almost never engages in any sort of in-depth selection process. The Law Department is going with the safe, expensive choice of “usual suspects” mega firms. Instead, it is tending to recycle the largest firms without analyzing whether to keep them and, when it does go out for fresh counsel, it selects large, general purpose, expensive law firms. Amtrak says it has tried auditions, but found them unhelpful – that may be true if the audition is not run well to overcome the firms’ resistance. Amtrak also has a large firm bias. Amtrak’s idea for considering smaller firms is to check with its minority and small business lists to see if there are any law firms on the list. Amtrak’s Law Department is far too lazy when it comes to selecting counsel.

While the firms Amtrak now deals with exclusively should not be disqualified (if they are performing well), they should not be the only firms considered and there must be independent evaluation by in-house counsel of the contenders. Amtrak’s existing firms are rarely terminated, although there has been at least one exception according to staff interviews. As an example of the haphazard selection process, ██████████ related that Amtrak considered two large, expensive, general DC firms to handle a NY case – yet one of the firms had earlier been replaced by the other because of unsatisfactory work. ██████████ has a personal rule that Amtrak will never hire an employment law firm that has ever represented employees, even in a mixed practice²¹ – his search for an employment law firm produced just one candidate from a field with thousands of specialist law firms.

²⁰ Without more thorough reviews of bills and performance, it is difficult for in-house counsel to assess the selection of counsel.

²¹ That sort of loyalty requirement is more common in labor contract and union practice, not routine employment litigation, such as employment discrimination cases.

Amtrak needs to run competitive, thorough selections of counsel to find cost-effective, qualified law firms that fit the work, appreciate the business, and will do the work well, at a reasonable price.

Overlapping Law Firms: To avoid duplication of effort by different law firms, legal departments must make efficient, rational project assignments to law firms, keeping track of these assignments to make sure the firms do not stray from their assignments. While geography and specialization may dictate hiring additional firms, generally speaking the fewer firms a company uses, the less waste there should be so long as the firms are responsive, cost-effective, and "fit" the matters they are handling. Left to their own devices, ambitious firms will encroach upon one another's territory as a means to eliminate competition and acquire more business.

We found numerous examples in the samples of firms conferring with one another, rather than dealing with the Law Department. There seem to be overlapping counsel, which was reflected in numerous inter-firm communications on some matters. [REDACTED] explanation for the use of at least four firms to handle the Bombardier and related litigation reveals a chaotic, ad hoc selection and management process.

We were unable to determine why this is, but it is the responsibility of the Law Department to manage such interactions to avoid waste. The Law Department should be the hub of all legal services, but it appears here that [REDACTED] had that role in many instances. A client with an extensive, experienced in-house legal department would not have outside general counsel, too.

After determining whether multiple firms are actually necessary, the Law Department must coordinate these efforts to avoid waste and confusion. Firms selected must "fit" their matters, *i.e.*, have relevant expertise, proper staffing, and handle matters cost-effectively.

Inadequate Record Keeping: Legal departments must maintain various key records for each legal matter, for a reasonable time, and in a readily retrievable form. This is necessary not only so that in-house counsel may monitor and review legal work, but to serve as a backup in the event firms lose materials (fire, flood, firm breakups, etc.), firms are terminated, work product is recycled to avoid duplication of effort, or the client wishes to conduct fee or performance reviews. Key records include what most firms call the pleading, correspondence, research, and discovery files, plus billing records (including invoices and expense documentation).²²

²² Exceptions can be made for burdensome, low priority documents. If the firms are making proper use of technology, *e.g.*, electronic transcripts and scanned documents, these can be duplicated electronically very cheaply and quickly at virtually no cost to the client. These days the better part of a million document images will fit on a DVD.

Amtrak's interest is in making sure that its information can be retrieved, is kept confidential – it should also not have to pay multiple times to locate the same information. Amtrak's Law Department was unable to produce, readily and promptly, basic information it should have had on hand to manage outside firms. The Law Department frequently used disorganization of its own files as an excuse to delay or fail to respond to OIG inquiries. Apparently, for example, many Amtrak files for [REDACTED] [REDACTED] have gone missing.

According to [REDACTED] the Law Department abides by Amtrak's records retention policy, whatever that means to them, but each in-house attorney operates as a virtual solo practitioner in maintaining these records for the matters they manage. Each attorney has his or her own practice for maintaining files, some apparently relying solely on the firms themselves to maintain files for them – meaning that they cannot possibly be managing the firms or monitoring their performance.

Amtrak gives no instruction to outside counsel on records retention either. Amtrak should declare that it owns all work product prepared on its behalf – you do not want the firms recycling your work product to other clients, especially given the loose conflicts rules contained in the side agreements with [REDACTED] and [REDACTED]. In the event of a dispute, or upon completion of the matter, it should be Amtrak's option to recover the files or have them destroyed. This is one item that should be addressed in revised Guidelines.

In short, the Law Department must keep all key files in readily retrievable form, which can be readily accomplished with commonly used electronic tools. The Law Department should also set a records retention policy for the law firms.

In-House Legal Work: With the modest amounts involved in many routine cases, which are by far the most common type of case handled by Amtrak, and the high headcount of the Law Department staff, I was surprised to learn that 99% of the Amtrak legal work is sent to outside counsel (other than claims and “corporate” work). Many in-house legal departments do more of their work in-house, taking over some of the work from outside counsel, thereby saving money by paying wholesale rather than retail. Outside counsel then act in the more limited roles of local counsel or providing specialized or discrete services it would not be cost-effective to hire in-house. Even with outside counsel handling a case, Amtrak should be doing more of the routine heavy lifting of discovery – the most expensive part of litigation – in-house or with its own vendor, converting materials to electronic form at wholesale prices rather than marked up retail rates charged by outside counsel. Having the capability to do more work in-house also gives a client more leverage in negotiating with and managing legal fees billed by outside firms, who are effectively competing with in-house counsel if they become too expensive.

Claims Litigation: Amtrak engages in a substantial amount of so-called “claims litigation,” *i.e.*, claims against Amtrak for personal injuries by employees and passengers and perhaps other routine

claims. This work is comparable to what insurance defense counsel typically do as commodity, routine litigation. Presumably Amtrak self-insures for nearly all these claims.

This is not complex litigation – discovery and motions practice are minimal, most cases are settled, and the cases typically turn on routine liability issues or medical testimony. Although the same basic legal standards apply, bills, files, and work product for this type of work should look entirely different, with many firms getting paid flat or fixed fees.

In this phase of our work, we did not spend much time reviewing claims-related bills or issues. Reviewing claims litigation bills requires a different approach because the typical billing problems are different, typically spreading time across many matters at once.

Although reviewing the files and bills is helpful, Amtrak should also compare its overall claims statistics (fees plus judgments and settlements, successes versus losses) with those of comparable businesses. Risk managers or risk consultants generally maintain that sort of information.

Recommendations -- Outside Counsel Management: Amtrak's Law Department is not fulfilling its role. Instead of being the aggressive protector of Amtrak's interests, many in the Law Department, including upper management, seem to view themselves as the advocates for outside counsel. While in-house counsel should have a professional working relationship with outside counsel, they must manage them to curtail the expensive flaws built into an hourly billing system that rewards inefficiency, insecurity, and inexperience.

There should be a paper and e-mail trail of management activity, and the firms' responses thereto. Hourly rates quoted to Amtrak should be checked with the firms' other client references and Amtrak personnel should survey comparable firms' rates. Amtrak should more readily replace expensive or poorly performing firms. Smaller firms and firms outside expensive metropolitan areas should be included in the selection process – the objective is to find firms that will not take Amtrak for granted.

Once law firms are hired, Amtrak must keep the staffing stable – no musical chairs – and restrict any additions to staff. Consideration should be given to doing more work in-house, especially the expensive document handling involved in discovery. Amtrak should maintain organized files for its cases to aid management.

Outside Law Firm Performance

My firm looked at a sample of bills and other information from six of the law firms billing the most to Amtrak between 2002 to 2005. I also looked at the work product of the DOT and Amtrak OIG personnel who reviewed many more bills from the ten top billing law firms in the same time period. Our focus was primarily upon what this would reveal about the Law Department's actual execution of its duties, not just what the Guidelines allowed or Law Department personnel said they were doing.

Examining the fees and performance of law firms requires an understanding of their unique structure, operation, and obligations. Law firms are not organized like most other businesses, they staff and approach work in a fashion that is different from the way most corporations work, and they are subject to special ethical and professional obligations. That law firms are different does not mean that they cannot be studied, understood, and managed. Indeed, lawyers are fiduciaries charged with higher obligations to serve their clients, but ironically their clients may be reluctant to give their lawyers direction or monitor their performance.

Unfortunately, this abdication of responsibility by clients tends to create a vacuum of direction for the lawyer. Moreover, a passive client often fails to exercise available rights, such as the right to determine whether the lawyer is subcontracting or delegating work to temporary or outside lawyers – unless the client knows about and exercises its rights, those rights may be lost at great cost to the client. Even the most diligent and well-meaning lawyers must have the client's input to appreciate the client's objectives and expectations. Left to their own devices, even diligent and well-meaning lawyers may waste time and money.

By rewarding time spent and not results, hourly fees encourage heavy staffing, procrastination, and multiplication of issues – lawyers who are experienced, efficient, and creative are not rewarded by hourly fees. Given that the incentives created by hourly billing may be contrary to the client's interests, the best way to counteract that tendency is to monitor the lawyer's performance and fees. Otherwise the client is faced with the very real prospect that, while the fees may be exorbitantly high, the quality of the law firm's performance may nevertheless be poor.

Legal Bill Content: Based on my review of a sample of bills from six law firms billing the largest amounts, I noted pervasive, obvious violations of the Billing Guidelines and general billing standards. There was almost no indication that anyone from the Law Department is reviewing the content of the bills, let alone enforcing the Guidelines. This was confirmed by a much larger review conducted by personnel from Amtrak and DOT OIG, with our assistance.

Here are some of the types of problems noted in the samples: (1) there are numerous incomplete and vague time entries; (2) there are hourly charges for clerical services that should be included in firm overhead and not billed separately; (3) there is a disproportionately large number of internal conferences among timekeepers in the same firm, which often indicates overstaffing and poor management; (4) there are examples of two or more timekeepers duplicating efforts, such as attendance of four or more timekeepers at meetings; (5) the formats of some firms' bills are unusual and tend to hamper examination; (6) the hourly rates of several firms are extremely high, even after being "discounted"; (7) there is very little documentation – usually none at all – to support out-of-pocket expenses passed through by the law firms; and, (8) there is little or no evidence of self-management by the law firms, such as write-downs or write-offs of fees.

As an example of why in-house counsel should be paying closer attention to the incoming bills, I noticed an odd pattern in the distribution of the [REDACTED] time entries in our sample. For lawyers billing by the hour, there would usually be more entries in the range of 0.1 to 1.0 hours than larger amounts (say, 4.0 or more hours). This effect should be very pronounced for task-based bills because every phone call, every conferences, and so on would be a separate, small entry – the most common entry should be 0.1. [REDACTED] was block billing – combining entries – but even so the most common entries should tend to be smaller, closer to 1.0 hours. Moreover, if the timekeepers are honestly recording time, the distribution of entries should be fairly smooth. In other words, 0.5, 0.6, and 0.7 should occur in roughly the same number of instances, and 3.5, 3.6, and 3.7 should also be in the same ballpark as one another (but fewer times than the smaller entries). [REDACTED] on the other hand, has far more large entries and very few small entries: The most common time entry is 9.0 hours. Plus, the distribution of [REDACTED] entries is far from smooth: There are ten 9.0 entries, but none for 8.9 or 9.1. From this evidence, my concern is that [REDACTED] time entries are inaccurate and inflated.²³

The following matrix summarizes the results of my firm's review of a sample of six hourly legal bills from six firms, which we used as a point of comparison with the reviews undertaken by Amtrak and DOT OIG personnel. Note that Amtrak is routinely using expensive, general purpose law firms with large, inexperienced staffing and high overhead. Amtrak should be making more effort to locate experienced, cost-effective firms up front.

²³ Exhibit E is a graph of the [REDACTED] Time Entry Distribution. The two lines are my representations of how the distribution would appear for a typical bill with block-billing (dark curve) or with task-based billing (lighter curve).

Firm	Block billing	Vague/Cryptic entries	All Problem Percent ¹	Staffing	Hourly Rates	Comments
██████	Slight amount	7% of sample	22% of sample	Moderate	High hourly rates	Better than most others in this sample, but substantial room for improvement.
██████	Moderate (6% in sample)	55% of sample	66% of sample	Heavy staff (8), partially explained by trial.	High hourly rates	Middle of the pack in the sample. This bill is high, but from trial time which may excuse some problems. Heavy expenses, heavy staff with heavy turnover.
██████	Yes (71% in sample)	30% of sample	89% of sample	Heavy, top heavy, with heavy training and clerical component	High hourly rates	Overall, the worst observed, with heavy staffing, attempts to pass off clerical/overhead as billable, failure to follow basic guidelines, and heavy expenses. We noted a very unusual time distribution, suggesting a disproportionate number of small entries (low) and large entries (high), which can be indicative of improper or padded billing.
██████	Not in sample	3% of sample	44% of sample	Heavy, inexperienced staff with heavy clerical component	High hourly rates	Overall, one of the worst observed, with a large expensive staff with expensive habits. Heavy clerical, research, expenses, conferences, digesting.
██████	Yes (67% of sample)	41% of sample	96% of sample	Heavy, inexperienced staff (2 part., 1 assoc., 3 junior assoc./trainees, 3 doc. para./clerical)	High hourly rates	Overall one of the worst observed, with a large staff with little relevant experience, high rates, poor timekeeping, lots of clerical work, duplication, conferences billed.

Firm	Block billing	Vague/Cryptic entries	All Problem Percent ¹	Staffing	Hourly Rates	Comments
██████ ██████	Not in sample	4% of sample	23%	Primary team 1 partner, 1 assoc., with some others.	Questions raised about discount, but rates otherwise reasonable.	Overall one of the best observed. Some personal and overhead expenses. Indications of improper minimum increment for calls/conferences.

Problem Time Entries: The table above references overall percentages of problem time entries from the sample of legal bills my firm reviewed. Here are descriptions of these problems, which are generally recognized as billing issues by judges and other legal authorities. These are all basic items that Amtrak's Law Department should have been monitoring and, in most cases, doing something about.

Block Billing: Amtrak's Guidelines prohibit block billing, which we call mixed entries. Without that requirement, we would normally not opine that a time entry may be disallowed on that ground alone – it is not a good practice, but it is not unethical or illegal. Prohibiting block billing helps Amtrak review the bills, if it ever actually does so, and to segregate activities by task so that these totals may be compared with budgets, for example.

Here is a breakdown of the percentage of this type of problem by firm in the samples my firm reviewed.

Law Firm	Mixed Time % Hours	Mixed Time % Fees
██████	0%	0%
██████████	61%	67%
██████████	0%	0%
██████████	0%	0%
██████	68%	71%
██████████	8%	6%

The following table contains examples of mixed time entries:

Law Firm	Date	Timekeeper	Description	Hours	Rate	Amount
			Review ██████████ documents for information regarding ██████████ related to ██████████ settlement offer; coordinated document production visit to ██████████ participated in electronic discovery conference call with ██████████ and ██████████	7.30	\$ ██████████	██████████
			Drafted responses to ██████████ Second Request for Production of Documents; participated in e-discovery calls with ██████████ and Amtrak personnel; conducted pre-production document review.	7.10	\$ ██████████	██████████
			Review and revise ██████████ ██████████ ██████████ draft initial instructions for ██████████ regarding Amtrak active emails.	4.40	\$ ██████████	██████████
			Meet with ██████████ counsel on electronic discovery issues; review ██████████ documents for hot documents; discuss ██████████ issues with ██████████ and ██████████	6.3	\$ ██████████	██████████
			Confer with ██████████ regarding ██████████ ██████████ reports; confer with ██████████ ██████████ ██████████ requests for ██████████ confer with ██████████ regarding active email collection and processing ██████████ email; draft cover and transmit initial ██████████ report to ██████████	4.90	\$ ██████████	██████████
			Develop strategy for negotiating with ██████████ regarding edocument review efforts, including estimates regarding potential progress by email materials review team; confer with ██████████; contacts regarding next processing steps including deduplication and keyword searching and draft letter to ██████████ regarding same; review and consider ██████████ initial search terms, confer with ██████████ regarding deduplication fees and costs of indexing and key word searches and options for discount regarding of individual queries to obtain key word "hit" counts.	5.40	\$ ██████████	██████████
			Speak with ██████████ set up summation; meet with ██████████ meet with ██████████ review Amtrak documents.	7.80	\$ ██████████	██████████
			Met with ██████████ and ██████████ regarding settlement and case status; corresponded with ██████████ regarding amendments to pleadings; began drafting motion to amend pleadings.	9.50	\$ ██████████	██████████
			Drafted responses to ██████████ interrogatories; placed calls to ██████████ and ██████████ regarding E discovery.	10.00	\$ ██████████	██████████

Mixed Time Examples

Internal Conferences & Memoranda: A significant amount of time was billed by these firms for internal conferences, *i.e.*, among their own staff. *See, e.g., In re Olson*, 884 F.2d 1415, 1428 (D.C. Cir. 1989) (attorneys with high hourly rates should not need so much conference time to discuss strategy). This does not include communications with client personnel, opponents, or the like. It is not uncommon for billing guidelines to restrict internal conferences, *e.g.*, by forbidding such charges or only allowing one attorney to bill for them.

Here is a breakdown of the percentage of this type of problem by firm in the samples my firm reviewed.

Law Firm	Internal Conference % Hours	Internal Conference % Fees
[REDACTED]	0%	0%
[REDACTED]	14%	15%
[REDACTED]	8%	8%
[REDACTED]	0%	0%
[REDACTED]	0%	0%
[REDACTED]	0%	0%

			Meet with [REDACTED] on discovery tasks. Conference call with [REDACTED] and [REDACTED] counsel on outstanding discovery issues.	1.10	\$ [REDACTED]	\$ [REDACTED]
			Call to [REDACTED] regarding discovery matters; reviewed [REDACTED] contract; met with [REDACTED] regarding document production issues.	0.70	\$ [REDACTED]	\$ [REDACTED]
			Review and edit Amtrak's objections and responses to [REDACTED] second request for production of documents; review settlement correspondence; meet with [REDACTED] regarding discovery issues.	1.00	\$ [REDACTED]	\$ [REDACTED]
			Review documents produced by [REDACTED] discuss trip to [REDACTED] with [REDACTED]	1.20	\$ [REDACTED]	\$ [REDACTED]
			Conducted preproduction document review; coordinated production of documents; calls to [REDACTED] regarding discovery issues.	5.90	\$ [REDACTED]	\$ [REDACTED]
			Preproduction review of documents; discussions with [REDACTED] regarding e-discovery issues; review of metrics for active email files of [REDACTED] and [REDACTED] review [REDACTED] instructions.	5.20	\$ [REDACTED]	\$ [REDACTED]
			Calls to [REDACTED] regarding e-discovery; call to [REDACTED] regarding location of [REDACTED] reports; reviewed Amtrak production for information on Amtrak personnel identified by [REDACTED]	5.70	\$ [REDACTED]	\$ [REDACTED]
			Review Amtrak documents for information on potential new document custodians; sent email reminder to custodians regarding discovery questionnaire; call to [REDACTED] regarding [REDACTED] reports; call to [REDACTED] regarding email search terms.	5.50	\$ [REDACTED]	\$ [REDACTED]
			Review of Amtrak documents for information on potential new document custodians; call to [REDACTED] regarding email search terms; emailed [REDACTED] regarding [REDACTED] issue.	5.00	\$ [REDACTED]	\$ [REDACTED]
			Review documents produced by Amtrak; discuss discovery issues and tasks with [REDACTED] discuss [REDACTED] and settlement issues with [REDACTED]	2.10	\$ [REDACTED]	\$ [REDACTED]
			Review and edit amended complaint and amended reply to counterclaim; discuss same with [REDACTED] meet with [REDACTED] and [REDACTED] to discuss settlement and discovery issues.	2.30	\$ [REDACTED]	\$ [REDACTED]

Internal Conference Examples

Cryptic Time Entries: As discussed in the first portion of this report, the Guidelines and legal authority require descriptive, detailed time entries. A proper entry needs to describe the “who, what, where, when, why, and how” of the timekeeper’s activities. See, e.g., *Webb v. County Bd. of Education*, 471 U.S. 234, 240 (1985); *United Slate, Tile & Composition Workers, Local 307 v. G&M Roofing & Sheetmetal Co.*, 732 F.2d 495 (6th Cir. 1984); see also, *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (attorney should "maintain billing time records in a manner that will enable a reviewing court to identify distinct claims").

Here is a breakdown of the percentage of this type of problem by firm in the samples my firm reviewed.

Law Firm	Cryptic % Hours	Cryptic % Fees
[REDACTED]	8%	7%
[REDACTED]	51%	41%
[REDACTED]	0%	0%
[REDACTED]	0%	0%
[REDACTED]	34%	30%
[REDACTED]	57%	55%

Here are examples of cryptic time entries:

[REDACTED]	[REDACTED]	[REDACTED]	Review documents from [REDACTED]	5.0	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Review documents from [REDACTED]	5.6	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Review documents from [REDACTED]	5.8	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Review documents from [REDACTED]	5.3	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Review documents from [REDACTED]	6.8	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Review Amtrak documents.			
[REDACTED]	[REDACTED]	[REDACTED]	Review documents from [REDACTED]	5.0	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Review documents from [REDACTED]	9.4	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Review documents from [REDACTED]	6.2	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Review [REDACTED] documents.	4.9	\$ [REDACTED]	[REDACTED]

Cryptic Time Samples

Clerical Time Entries: Legal fees already compensate law firms for the lawyer's or paralegal's salary, plus the firm's overhead and profit of the firm. Therefore a firm may not attempt to charge separately for overhead – it's included in the hourly rates. The work done by clerical staff is an example of non-billable overhead included in the hourly rates of professional timekeepers. *Missouri v. Jenkins*, 491 U.S. 274 (1989); *New Mexico Citizens for Clean Air and Water v. Espanola Mercantile Company, Inc.*, 72 F.3d 830, 834 (10th Cir. 1996) (citing *Halderman ex rel. Halderman v. Pennhurst State Sch. & Hosp.*, 49 F.3d 939, 942 (3rd Cir. 1995)) ("When a lawyer spends time on tasks that are easily delegable to non-professional assistance, legal service rates are not applicable.")

Here is a breakdown of the percentage of this type of problem by firm in the samples my firm reviewed.

Law Firm	Clerical % Hours	Clerical % Fees
[REDACTED]	0%	0%
[REDACTED]	23%	12%
[REDACTED]	0%	0%
[REDACTED]	24%	15%
[REDACTED]	0%	0%
[REDACTED]	0%	0%

[REDACTED]	[REDACTED]	Preparation of documents for scanning and imaging for production; coordination with vendor regarding same; miscellaneous organizational tasks.	2.7	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	Prepared and organized documents for production; reviewed privileged documents for entry into privilege log	4.5	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	Continue with organizational tasks; coordination of [REDACTED] production and email regarding same.	2.5	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	Continue with [REDACTED] indexing in preparation for printing and attorney review; miscellaneous organizational tasks; coordination with [REDACTED] on [REDACTED] cd's (label errors).	4.3	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	Assist [REDACTED] with preparation of documents for scanning/imaging; coordination with [REDACTED] and vendor on production issues; document organization.	1.0	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	Attend to miscellaneous organizational tasks and [REDACTED] indexing for printing and review.	1.2	\$ [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	Continue with [REDACTED] indexing in preparation for printing and attorney review; miscellaneous organizational tasks.	2.9	\$ [REDACTED]	[REDACTED]

Clerical Time Examples

Recommendations – Outside Law Firm Performance: I examined samples of legal bills issued by the firms who billed the most in the 2002 - 2005 time period covered by our review. My focus was primarily upon the inferences that could be drawn from the bills about the performance of the Amtrak Law Department, which was supposed to be managing the firms and their fees. I found that the Law Department was not enforcing its own Guidelines, nor was it performing its role as manager of Amtrak's outside counsel.

To me, these bill samples reveal that these law firms are taking Amtrak for granted. They are billing for numerous timekeepers, including too many junior and senior timekeepers in many instances. Many, sometimes most, of their time entries do not comply with the Guidelines. The hourly rates, even after the Amtrak discounts, were high – this is largely a result of picking expensive metropolitan firms.

Methodology & Notes

1. Information Reviewed: The factual basis for my opinions is information obtained through DOT and Amtrak OIG. I have relied upon my general knowledge and experience in the field regarding issues such as standard billing practices.
2. Methods: Under my supervision, an employee of my firm reviewed copies of the billing information provided. These materials were electronically scanned and converted into Microsoft Excel spreadsheets. The same employee initially reviewed and coded time entries according to various types of problems (or potential problems) as described above. I reviewed her work. This data is then sorted and filtered for my analysis using tools included in the spreadsheet program.
3. Review: Because they are issued by legal professionals, subject to requirements beyond those imposed on most commercial vendors, there are several layers of analysis to be conducted for any hourly legal bill. The burden of preparing billing records and proving the time spent, as well as that the time was reasonable and necessary, is on the law firm, which creates the records in the first place. First, and most fundamentally, the bill's content and format must provide the basic details, such as the subject of communications or research, to inform the client – or a judge – what was being done so that one can determine that the work itself, as well as the charge for it, was reasonable and necessary. Second, there are some types of time entry meeting this content requirement, but which appear inappropriate, unreasonable or unnecessary from reviewing that time entry. (An obvious example would be a 25 hour time entry.) Third, one must look beyond the face of the bill to determine whether the fees meet the legal standards contained in statutory and case law. This requires consideration of the bill in its legal context, *i.e.*, not just on its face alone, to determine whether it meets external standards for what is reasonable. (Examples include common concerns about excessive internal conferences, duplication of effort, and clerical work.) Fourth, there are various grounds upon which otherwise reasonable, necessary, and properly documented fees and expenses may be forfeited, such as ethical infractions by the lawyer or other legal rulings. This is beyond the scope of this report, however.
4. Authority: The various categories of problems with time entries for which we code are based on the rationale used by court decisions and other authorities to determine the reasonableness of legal fees in comparable cases. The general standard is whether the fees and expenses are necessary and reasonable, under the circumstances.

5. Scope: This memo presents my opinions based on the information available to me. We have not performed a financial or accounting audit of these fees and expenses. Our examination is more comparable to an accounting review or performance or operational audit, concerned more with our impressions of subjective questions rather than verifying every detail in the bills.
6. Absence of Direct Law Department or Law Firm Input: Our work is being done in confidence, which means we have had no direct input from the Law Department or the law firms. This means that we are not, for example, performing any tests that might reveal evidence of fraud, including fraud by insiders, fictitious vendors, or the like.
7. Interviews: All interviews were conducted by OIG staff, sometimes with our input. We reviewed – and relied upon – interview notes prepared by OIG staff. I was not present at the interviews.
8. GAO Review: I read relevant portions of a U.S. GAO Statement of Preliminary Facts and Key Information for a Review of Amtrak's Management and Accountability Policies and Practices (June 2005, Code 544087). Our review confirms the validity of the GAO concerns.

Exhibits

- A. Resume of John W. Toothman
- B. Amtrak Billing Guidelines (1998)
- C. Matrix Comparing Amtrak Guidelines & Side Agreements
- D. Side Agreements
 - 1. [REDACTED]
 - 2. [REDACTED]
 - 3. [REDACTED]
 - 4. [REDACTED]
 - 5. [REDACTED]
 - 6. [REDACTED]
- E. Graph for Distribution of [REDACTED] Time Entries

The Devil's Advocate

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RESUME OF JOHN W. TOOTHMAN

(703) 684-6996
(703) 759-2388 (fax)

Employment

The Devil's Advocate (1993-present): Founder of legal fee management and litigation consulting firm.

LitWatch, Inc. (1999-present): Publisher and Editor-in-Chief of litigation news service.

The Toothman Law Firm, P.C. (1993-present): Civil litigation and trial practice in federal and state courts, including appeals. (The firm was formerly known as John W. Toothman, PC, and Toothman & White, PC.)

Shulman, Rogers, Gandal, Pordy & Ecker, P.A. (1989-1993): Partner in charge of the firm's Alexandria, Virginia office. Commercial litigation practice in federal and state, trial and appellate courts, including litigation against the United States. Represented the U.S. Small Business Administration in receivership proceedings.

Grad, Toothman, Logan & Chabot, P.C. (1986-1989): Associate, then partner in firm eventually known as Grad, Toothman, Logan & Chabot, P.C. Commercial and tort litigation and trial practice in state and federal court (trial and appellate), as well as litigation against the United States.

U.S. Department of Justice, Civil Division, Federal Programs Branch (1984-1986): Trial attorney with wide array of client agencies and issues, including constitutional, statutory, and administrative law, ERISA, FOIA, employment discrimination, boycott, and other substantive issues. Top Secret, SI, and SCI security clearances.

Akin, Gump, Strauss, Hauer & Feld (1983-1984): Associate attorney in antitrust litigation section.

Howrey & Simon (1981-1983): Associate attorney, primarily in antitrust and intellectual property. Representation of an industrial trade association.

Education

Harvard Law School, J.D., cum laude (1981)

Ames Moot Court Competition Semi-Finalist

Research Assistant supplementing H. Hart, H. Wechsler, P. Bator, P. Mishkin
& D. Shapiro, *THE FEDERAL COURTS & THE FEDERAL SYSTEM* (2d ed. 1977)

Cambridge & Somerville Legal Services (clinical education)

"Complex Civil Litigation" (third-year paper)

University of Virginia, M.S., Chem. Eng. (1979); *B.S., Chem. Eng., with honors* (1977)

National Science Foundation Fellowship, Memminger Fellowship, Tau Beta Pi, Sigma Xi, Alpha Chi Sigma,
AICHE Scholarship Award, Dean's List, Intermediate Honors

Other Relevant Experience & Publications

Arbitrator, Fee Arbitration Service Panel, DC Bar Attorney/Client Arbitration Board (1994-1998)

Arbitrator, Virginia State Bar, Fee Dispute Resolution Program, 18th Cir. Comm. (June 1995 to present)

Co-author, with Douglas Danner, TRIAL PRACTICE CHECKLISTS 2d (West Group 2001;
3 vols. supplemented annually)

Co-author, with William G. Ross, LEGAL FEES: LAW & MANAGEMENT (Carolina Academic Press 2003)

Author, Chapters 11-13, *Fifth Annual Litigation Management Supercourse, Volume I* 575-594 (PLI March 1994)

Article, "For Trials, Get A Trial Attorney," 14(51) *National Law Journal* 17-18 (Aug. 24, 1992)

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Guest Lecturer, Trial Advocacy, National Law Center at George Washington University (Spring 1988)

Lecture, Georgetown University CLE, "Receiverships" (May 1991)

Lecture, Alexandria Bar Ass'n CLE, "Witness Preparation" (June 1992)

Lecture, Alexandria Bar Ass'n CLE, "Beyond Rambo: Effective Civil Litigation Tactics" (March 1993)

Panel Member, Alexandria Bar Ass'n CLE, "Ethics for the Trial Attorney" (March 1993)

Lecture, Alexandria Bar Ass'n CLE, "What's All This Nonsense About TQM, Value Billing, And
Legal Bill Audits?" (Oct. 1993)

Panel Member, "Law Firm Governance 1994," (BDA program; Feb. 1994)

Moderator, Alexandria Bar Ass'n CLE, "Practice Before the Virginia Court of Appeals" (April 1994)

Panel Member, ABA Section of Litigation, "Roundtable for In-House & Outside Counsel" (Oct. 1994)

Lecture, Alexandria Bar Ass'n CLE, "An Ounce of Prevention: Billing Problems That Drive Clients
Crazy" (Jan. 1995)

Lecture, North Carolina Ass'n of CPAs, "Legal Cost Containment Trends" (Sept. 1995)

Lecture, Alexandria Bar Ass'n CLE, "Attorney Fees: Law & Practice in Virginia" (Jan. 1996)

Lecture, Fairfax Bar Ass'n CLE, "Billing & Collection Practices" (May 1996)

Lecture, Int'l Munic. Lawyers Ass'n, "Managing Litigation Costs" (April 1997)

Moderator, RIMS, "Managing Legal Fees" (May 1997)

Panel Member, ABA Health Law Section & Am. Ass'n of Health Plans, "In-House Counsel Workshop"
(April 1998)

Moderator, RIMS, "Warning Signs" (April 1998)

Moderator, RIMS, "Legal Fee Audit Guidelines" (April 1999)

Panel Member, American Ass'n of Law Libraries, "Getting the Client to Value Legal Research" (July 1999)

Moderator, RIMS, "Legal Fee Management" (May 2000)

Recipient, Ross Essay Award, American Bar Association (1995)

Bar & Related Affiliations

Admitted to practice law in the District of Columbia (1981), Maryland (1990) (inactive), and Virginia (1987).

Also admitted to practice before the U.S. District Courts for the Eastern District of Virginia (and Bankruptcy Court), District of Columbia (inactive), Colorado, and Maryland (inactive); U.S. Court of Federal Claims (Claims Court); U.S. Courts of Appeals for the Federal, District of Columbia, and Fourth Circuits; and, U.S. Supreme Court.

NATIONAL RAILROAD PASSENGER CORPORATION GUIDELINES FOR OUTSIDE COUNSEL

INTRODUCTION

The Law Department of the National Railroad Passenger Corporation ("Amtrak") has prepared these Guidelines for attorneys engaged to represent Amtrak. They are a part of and generally govern the engagement.

The Law Department supervises and maintains a close working relationship with outside counsel. We view in-house staff and outside counsel essentially as co-counsel. Together we are engaged in a joint effort to provide our client, Amtrak, with high quality, cost-effective legal services. The Law Department always reserves the right to participate to the extent it deems appropriate in any legal matter referred to outside counsel. This may include staffing a particular matter jointly with outside and in-house lawyers.

In most instances, Amtrak retains particular lawyers, not law firms, based on those lawyers' perceived skills, knowledge and experience. The specific attorney retained to lead the engagement (the "engagement attorney") is responsible for ensuring that these Guidelines are circulated to, read by and complied with by all personnel who will be involved in providing legal service to Amtrak.

Amtrak is a private corporation, created by Congress and partially funded by taxpayers, that performs the important function of providing a nationwide system of intercity passenger rail transportation. Because Amtrak operates in the public interest and in the public light, we require our outside counsel to conform to the highest standards of ethical and professional behavior, including in all dealings with courts, opposing counsel, government officials and the public. Amtrak expects its outside counsel to know and comply strictly with all applicable rules of ethics and professional conduct and all rules of court, including local rules. Counsel are also expected to cooperate with the Law Department in responding to audit and/or information requests from federal agencies, congressional staffs and the company's Inspector General.

Any questions regarding these Guidelines should be addressed to the Law Department attorney responsible for managing the particular legal matter for which you have been engaged ("the Managing Attorney"), or to Amtrak's General Counsel. We welcome helpful comments or suggestions, and look forward to working with you.

LAW DEPARTMENT MANAGING ATTORNEY

All Amtrak legal matters referred to outside counsel are actively managed by a Managing Attorney, except certain claims cases, discussed below, that are managed by a Claims Director. (Where a matter is being managed by a Claims Director, all obligations owed by outside counsel to a Managing Attorney under these Guidelines apply equally to the Claims Director.) In almost every instance, the Managing Attorney will be a lawyer with substantial experience in the type of matter being referred. The Managing Attorney should be your principal point of contact with Amtrak. Copies of all important documents generated in the course of the engagement, such as pleadings, motions, drafts of contracts, advice and opinion memoranda, and non-routine correspondence should be sent to the Managing Attorney. All significant decisions in the course of the legal matter should be discussed with and approved by the Managing Attorney in advance. No settlement offer or negotiation offer or concession may be made or responded to without express authorization from the Managing Attorney.

FEES, EXPENSES AND DISBURSEMENTS

Rates. Amtrak expects to receive a substantial discount from outside counsel's normal fee structure. In general, Amtrak anticipates that it will receive at least the same discount offered to a firm's government or other large corporate clients, whichever is lower. Any increase in rates during the course of an engagement must be discussed with and approved in advance by the Managing Attorney. Amtrak welcomes proposals involving non-traditional and innovative fee structures.

Unacceptable Professional Costs. Amtrak retains outside counsel based on a demonstrated expertise in handling particular types of matters. Accordingly, Amtrak cannot pay for:

- the cost of outside counsel becoming familiar with the general statutory and case law relating to Amtrak;
- the cost of educating junior attorneys in the substantive law relating to the particular matter which is the subject of the engagement; or
- the cost of bringing a new attorney "up to speed" should changes in the initial staffing of a matter become necessary.

Similarly, Amtrak considers professional time spent on certain administrative tasks to be a cost of doing business. Thus, Amtrak cannot pay for:

- time spent clearing conflicts of interest, including time spent obtaining conflict waivers; or
- time spent in preparing or negotiating bills or budgets, or in responding to requests for clarification or explanation of an item on a budget or a bill.

Unacceptable Expenses and Disbursements. Amtrak assumes that profit and overhead are included in outside counsel's quoted billing rates. In particular, unless expressly agreed otherwise, Amtrak assumes that the following items are costs of doing business and cannot pay for:

- secretarial or word processing services and overtime;
- transmittal letters;
- in-house photocopying at more than ten cents per page;
- time spent photocopying;
- time spent in routine file review or maintenance;
- time spent opening or closing a file;
- local telephone calls;

-- office supplies;

-- telecopy or facsimile charges, other than the actual cost of a long distance phone call.

Reimbursement at Actual Cost Only. Disbursements will be reimbursed only at outside counsel's actual cost. In particular, there should be no mark-up for items such as computerized legal research services (LEXIS and Westlaw); long-distance telephone calls; outside photocopying; overnight courier or messenger service; and goods or services provided by outside vendors or consultants.

Use of Amtrak In-House Document Management Capability. Amtrak has substantial in-house document management capability, including high-volume copying equipment. You should consult with the Managing Attorney before incurring any substantial copying or document management costs to determine if the project can be more efficiently undertaken by Amtrak in-house staff.

Sales Tax Exemption. Amtrak is exempt from state sales and other taxes. Before sending substantial photocopying and other document jobs to outside vendors, consult the Managing Attorney. Frequently Amtrak can provide a tax exemption certificate or number for jobs requested in Amtrak's name by agents and not incur sales tax.

BILLING

The Law Department makes every effort to process outside counsel bills expeditiously. You can help us turn your bills around more quickly by observing the following guidelines:

Frequency and De Minimis Amount. Unless otherwise agreed, invoices should be sent to Amtrak on a monthly basis, to the attention of the Managing Attorney. However, because of the prohibitive administrative costs of processing and paying small bills, no bill should be submitted for an amount less than five hundred dollars, unless it is the final bill for a matter. In the event that fees and costs in a given month on a matter total less than five hundred dollars, those fees and costs should be carried forward and billed the following month.

Time Increments. Attorney and other professional time should be billed in 0.1 hour (six minute) increments. Amtrak will pay only for actual time incurred. Amtrak will not pay any "minimum charge" per activity, such as 0.2 hour per phone call regardless of actual length.

Block Billing Prohibited. Amtrak requires that invoices identify the time expended on each activity included in the bill. Amtrak will not process invoices prepared in a "block billing" format, in which total time spent on a number of activities during the course of a day is aggregated.

Example:

Acceptable:

Telephone conference with opposing counsel regarding outstanding discovery (0.3); research regarding estoppel (1.5); begin draft of motion for summary judgment (2.0).

Unacceptable:

Telephone conference with opposing counsel regarding outstanding discovery; research regarding estoppel; begin draft of motion for summary judgment. Total: 3.8 hours.

Detail. Description of services and costs should be complete and precise. For example, "prepared deposition summary" and "telephone conference with Joe Smith" are insufficient, while "summarized first volume of deposition of plaintiff John Jones" and "telephone conference with Joe Smith to discuss scheduling of Jones deposition" are acceptable. Invoices should state the name and billing rate of each attorney, paralegal or other professional who billed time to the matter that month. In addition to the amount billed during the billing period, all invoices should list the cumulative total for all fees billed on the matter to date. All invoices should include your firm's taxpayer identification number and should separately itemize all disbursements and costs.

Audits. Amtrak may, from time to time, in its sole discretion, audit outside counsel bills. Amtrak is itself audited from time to time by the General Accounting Office, the company's own Inspector General and other external auditors, usually at the request of Congress or a Congressional Committee. By undertaking to provide legal services to Amtrak, outside counsel agrees to cooperate fully with all such audits.

BUDGETS

Initial Budget. Within thirty days of the assignment of a new legal matter (or in advance if requested by the Managing Attorney), outside counsel should prepare and submit to the Managing Attorney for approval a budget estimating the fees and expenses expected to be incurred through the matter's conclusion. Budgets are not required for litigation matters that will be completed within 30 days or for which the estimated fees and expenses do not exceed \$5,000. For complex matters in which estimated fees and expenses exceed \$50,000, the budget should be broken down into "phases," tracking the matter from inception to conclusion. For example, the "phases" of a complex litigation matter might include: pre-litigation investigation; preparation of pleadings; discovery; dispositive motions; preparation for trial; trial; and post-trial motions. The budget should include the estimated completion time for the matter or for each phase of the matter. The initial budget should identify the name and billing rate for each attorney, paralegal or other professional who will bill time to the matter.

Updated Budgets. Amtrak uses budgets for both business planning and tracking of the progress of a matter and its cost-effectiveness. Therefore, outside counsel should attempt to make initial estimates as realistic as possible. At the same time, Amtrak recognizes the difficulty of estimating legal fees and expenses at the beginning of a matter, and understands that estimates can change as a matter progresses. Amtrak therefore requests counsel to prepare and submit an amended budget whenever circumstances change to the point that the estimated cost for a matter or a phase of a matter increases or decreases significantly. In any event, the budget should be reviewed and an update submitted every six months. In addition, with certain types of litigation, the claims and strategic defenses of a lawsuit can change dramatically depending upon information revealed during discovery, and such changes ultimately affect the bottom-line of a lawsuit. Consequently, the Managing Attorney may ask you to provide us with a quarterly budget. This does not eliminate your responsibility to provide more frequent updates either in writing or by telephone, as appropriate.

STAFFING

As noted above, in most instances, Amtrak retains particular lawyers, not law firms, because we believe those lawyers possess exceptional knowledge, skills and experience and will provide first-class legal representation to the Corporation. Accordingly, the need for any change in the staffing of a matter should be discussed in advance with and approved by the Managing Attorney. In general,

Amtrak believes that most legal matters it refers to outside counsel can be adequately and appropriately staffed by one partner and one associate, supported by one paralegal. If you believe that a particular matter requires additional staffing, you should discuss your reasoning in advance with the Managing Attorney. If you wish to have a junior attorney accompany a more experienced lawyer to a meeting, negotiation, deposition or hearing as a learning experience, the junior attorney's time and travel expenses should not be billed to Amtrak.

TRAVEL

General Rules. Outside counsel should travel on Amtrak business only when necessary. Where possible, conference calls, telephonic hearings and the like should be utilized instead of in-person meetings and appearances. Travel by more than one attorney is usually unnecessary, and must be approved in advance. In no event will Amtrak will pay for first class airfare. Amtrak expects outside counsel to take advantage of cost-effective discounts and special airfare and hotel rates to the maximum extent possible.

Travel by Train. Where practical and cost-effective, outside counsel is encouraged to travel by train. Unless otherwise agreed in advance, travel by train is required between Washington, D.C., Baltimore, Philadelphia, and New York.

Reimbursement Rates. Amtrak will pay outside counsel's full hourly rate only for travel time during which the attorney is actually performing work for Amtrak. The work being performed during travel should be specifically identified on the bill. Other travel time will be reimbursed at 50% of the full hourly rate. Under no circumstances, however, should Amtrak be billed for travel time during which outside counsel is performing work which may be billed to another client, even though the outside counsel may be traveling on Amtrak business.

Food and Lodging. Expenses for food and lodging should be moderate, and incurred in a prudent manner. The cost of staying at luxury hotels and of meals at unusually expensive restaurants will not be reimbursed.

MISCELLANEOUS

Confidentiality. You should not discuss any aspect of your representation of Amtrak with anyone outside your firm, including other clients or the press; even the fact of your representation of Amtrak in specific matters should not be disclosed without prior permission. All inquiries from the press, members of the public and others regarding an Amtrak legal matter should, with no further comment, be referred to the Managing Attorney.

Legal Research. Research can be one of the most costly aspects of legal services. Major research projects (any research requiring more than 2 or 3 hours) should not be commenced without approval from the Managing Attorney. In many instances, useful information will be contained in the Law Department's files, or there will be an attorney in the Law Department who has substantial experience in or knowledge of a particular subject. Copies of any memoranda developed in the course of research should be provided to the Managing Attorney.

Amtrak Employee Contacts. Unless otherwise instructed, all contacts between outside counsel and Amtrak personnel, including former Amtrak employees, should be arranged through the Managing Attorney. All requests for legal advice or services by Amtrak employees outside the Law Department

should be communicated to the Managing Attorney prior to undertaking such services. In communicating with Amtrak personnel in the course of litigation, you should not assume familiarity with either the particular case or the litigation process. When seeking to schedule Amtrak employees for meetings, depositions or trial testimony, please give as much advance notice as possible.

ADVICE AND NON-LITIGATION MATTERS

For all requests for legal advice and services relating to transactional, contractual, commercial, non-litigation contract claims, and other corporate projects and matters, the following requirements shall supplement these Guidelines and shall govern to the extent they differ from the requirements set forth in other sections.

Estimates. Estimates of fees and expenses expected to be incurred on an advice or non-litigation matter and estimates of when such services could be completed should be submitted to the Managing Attorney upon request for such legal services and prior to commencing any work on the matter. When requested, such estimates should be submitted in writing. If the matter can be separated into phases, estimated budget and completion times should be identified for each phase. The Managing Attorney must be advised before a budget or time estimate is exceeded, and a revised estimate should be provided.

Separate Bills. Frequently, transactional and other non-litigation matters are supervised by Law Department attorneys but are not paid out of the Law Department budget or require segregated accounting. In such instances, separate bills for multiple projects handled by a law firm are required. To expedite processing your bills, the need for separate billing should be discussed with the Managing Attorney when each new matter is undertaken.

Written Advice/Memoranda. In most instances, legal advice should be conveyed orally to the Managing Attorney. The cost of preparing written advice, opinions of counsel, and memoranda will not be paid for by Amtrak unless, and then only to the extent, explicitly requested or authorized by the Managing Attorney.

CONDUCT OF LITIGATION

Objectives and Philosophy. Amtrak believes that litigation should be pursued in an aggressive but straight-forward manner, keeping in mind the overall objective of expeditious and cost-effective dispute resolution. In its unique role as a private corporation created and partially funded by taxpayers to carry out an important public purpose, Amtrak is in the public eye. Outside counsel will be seen as a representative of Amtrak, and outside counsel's conduct can reflect either positively or negatively on the Corporation. Amtrak therefore requires outside counsel to conduct themselves in litigation at the highest ethical and professional level.

Deadlines and Filing Requirements. The Engagement Attorney is responsible for insuring compliance with all court rules, schedules and deadlines, and for keeping informed of changes and additions to federal, state and local rules, as well as any rules that may be imposed by individual courts and judges.

Settlement and Alternative Dispute Resolution. The possibility of settlement and/or the use of Alternate Dispute Resolution ("ADR") should be considered early in the course of litigation, and

reevaluated often. Early settlements of valid cases can often save considerable resources and costs. Amtrak also recognizes that many times plaintiffs and/or their attorneys are unable to estimate the true value of a case because of the personal and emotional issues involved. Often, a neutral, third party is useful in assisting the parties in evaluating their positions and the realistic value of their respective cases. Accordingly, you should consider the advisability of employing alternative dispute resolution techniques such as voluntary mediation, binding or non-binding arbitration, and the like. All settlement offers or proposals, as well as requests from the opposing counsel or the court for ADR proceedings, should be promptly communicated to the Managing Attorney.

Prohibited Tactics. The Law Department does not sanction the taking of extreme advocacy positions or the use of coercive, delaying or obstructive tactics. In particular, discovery should be undertaken in a prudent manner, and should never be used to harass or unduly burden the opposing party or counsel. The use of early dispositive motions to narrow or simplify the issues in a complex case is strongly encouraged.

Removal. As a general rule, all lawsuits brought against Amtrak in state court should be removed to federal court whenever possible. If you believe that removal is not in Amtrak's best interest in a particular matter, you should discuss your reasoning with the Managing Attorney.

Law Department Review of Filings. Except in extreme emergency situations (and for claims cases, as discussed below), all substantive pleadings, motions or court filings should be provided to the Managing Attorney sufficiently in advance of the filing deadline to permit an opportunity for meaningful review.

Experts. The need for as well as the selection and retention of experts should be discussed in advance with the Managing Attorney. The Law Department is familiar with a broad range of experts and should always be your first source of inquiry. Except in unusual circumstances, experts should be retained in writing with the terms of the engagement, including absolute confidentiality, specifically stated. Examples of acceptable retention letters are available from the Law Department. Experts should be advised that they will be required to submit monthly invoices itemizing time and expenses in the same manner as outside counsel. Amtrak's billing and travel guidelines should be communicated to all experts promptly upon retention.

Appeals and Bonds. Outside counsel are not authorized to file a notice of appeal or obtain a bond without consulting with and obtaining approval from the Managing Attorney. You should contact the Managing Attorney immediately upon entry of any judgment against Amtrak to discuss the necessity and advisability of filing a notice of appeal and of obtaining a bond. Similarly, you should contact the Managing Attorney immediately upon the filing of a notice of appeal by any other party. Drafts of appellate briefs should be provided to the Managing Attorney for review at least one week in advance of the filing date.

Individually Named Defendants. In certain circumstances, a plaintiff may sue company employees in their individual capacities. When an employee's conduct arguably falls outside the scope of his or her management authority, as well as in other circumstances -- e.g., regulatory or other enforcement proceedings -- a conflict of interest could arise in the context of your representation of Amtrak and individually-named defendants. Accordingly, we ask that you thoroughly investigate and evaluate such lawsuits at the onset of your engagement and be prepared to recommend whether all named defendants should be required to enter into a joint representation agreement.

ADDITIONAL RULES FOR CLAIMS LITIGATION

At any given time, the Law Department is managing more than two thousand matters involving claims for personal injury, death, and/or property damage against Amtrak or a railroad to which Amtrak is contractually obligated to provide indemnification. In order to manage this large caseload effectively and efficiently, the Law Department has prepared the following special rules for claims cases. These rules supplement the general guidelines set out in this document, and will govern most claims engagements.

For major claims matters, Amtrak may impose special document handling, case review and case management requirements. For instance, in such cases we will probably make special requests for information and require that all pleadings be reviewed before they are filed. Moreover, any time you have a case you believe involves a legal principle that could set an important precedent for Amtrak or its business operations, you should bring that matter to the attention of the Managing Attorney/Claims Director.

Initiation of Claims Engagements. In most instances, responsibility for supervising claims cases rests with a Managing Attorney. In certain cases, that responsibility will be delegated to one of the Law Department's Claims Directors. Where a Claims Director is supervising a matter, the Claims Director has the same authority and responsibilities as a Managing Attorney. When you are engaged as outside counsel for a claims case, you will receive an engagement letter. The letter will identify who is supervising that particular case and the Amtrak case number. At the same time, you will receive the suit papers. The investigation file will be forwarded to you by the claims agent.

Communications with Law Department Staff. All correspondence and communications pertaining to the case should be addressed to the Managing Attorney/Claims Director, with a copy to the claims agent, except that communications relating to further investigation or to discovery should be addressed directly to the claims agent identified in the assignment letter, with a copy to the Managing Attorney/Claims Director. The original or a single copy of any correspondence or document directed to the Managing Attorney/Claims Director is sufficient for our records. In no case should duplicates be sent to more than one member of the law or claims staff in Washington, although claims personnel in the field should be copied as indicated above. However, all bills for legal services and expenses, irrespective of who is supervising the matter is, should be sent to Amtrak headquarters in Washington, with the Managing Attorney/Claims Director being identified on the bill.

Document Management. In order to manage effectively the extremely large volume of documents generated by our claims caseload, the Law Department has determined that, in most instances, it is unnecessary to forward to Amtrak much of the paper that is routinely generated in the course of claims litigation. Unless otherwise instructed, the following rules should be followed:

Do Forward:

- Motions in limine, to dismiss or for summary judgment, with supporting memoranda and affidavits, and any orders or opinions entered thereon;
- Narrative medical reports and summaries, reports of non-medical experts (or a summary), reports of rehabilitation evaluations, reports of accident reconstruction experts, etc.;
- Copies or summaries of documents, other than those identified below, that bear significantly on liability or damages;

- Trial briefs, pre-trial statements, witness lists, pre-trial orders, verdicts, judgments, opinions, substantive orders, findings of fact and conclusions of law, post-trial motions and supporting briefs, notices of appeal and appellate briefs and decisions;

- Releases, dismissals, settlement orders, and satisfactions of judgment.

Do Not Forward Unless Specially Requested:

- Copies of Answers (unless there is some unique feature to the Complaint or Answer deserving our attention);

- Discovery propounded to plaintiff;

- Interrogatories or requests for production propounded to defendant, unless our assistance is required in the preparation of responses. However, significant new information developed in answering plaintiff's discovery requests that may aid in our evaluation of the case should be forwarded in narrative form;

- Notices of depositions;

- Copies of depositions;

- Copies of documents produced;

- Copies of motions for enlargement of time, for further answers to interrogatories, to compel production, for compulsory physical examination, and court orders entered on the same unless our attention or assistance is required;

- Pleadings, documents or court orders of a procedural nature not material to our evaluation or case management;

- Medical records, except in unusual circumstances;

- Copies of routine correspondence.

Settlements. Our general practice is that a claims agent, and not outside counsel, negotiates settlements. The Managing Attorney/Claims Director may delegate this function to outside counsel under appropriate circumstances. Generally, you should solicit early demands from plaintiff's counsel. Claims cases tend to get more expensive as they age and only a small percentage ultimately go to trial. We expect your cooperation in aggressively pursuing case preparation and resolution and avoiding continuances, thereby lessening expense. Give serious consideration to the use of structured settlements and vocational rehabilitation experts. Again, we have found these to be cost effective in damages mitigation.

Removal and Venue. Non-FELA cases should be removed to federal court whenever possible. If you believe doing so is not advisable in a particular case, you should discuss your reasoning with the Managing Attorney/Claims Director. As a general rule, you should seek to have FELA cases litigated in a venue as close as possible to the place where the accident occurred. Plaintiff's attorneys normally seek venues known for sympathetic juries and high verdicts; moreover, it is expensive for Amtrak to bring witnesses to locations remote from the area of the accident. Again, if you believe this is not advisable in a particular case, discuss your reasoning with the Managing Attorney/Claims Director.

- **Return to Work.** In FELA cases, make every effort to assist Amtrak in returning the plaintiff/employee to work.

Conduct of Case.

Case and Plaintiff Identification. You should put plaintiff's full name and Amtrak's case number(s) on all correspondence. You should provide plaintiff's home address, social security number and date of birth when requesting a draft for settlement or satisfaction of judgment.

Discovery Efficiency. You should review discovery requests to ascertain what can be answered from the investigation file prior to requesting assistance from the claims agent. Please retain for future use copies of documents or materials that are routinely requested.

Surveillance. Give early and serious consideration to the use of surveillance. We have found this to be one of our most cost-effective investigative tools. Prior to ordering any surveillance, however, you must obtain approval from the claims agent.

Significant Pleadings. You must get the prior permission of the Managing Attorney/Claims Director before proceeding to file a cross-claim, a counterclaim, third party pleadings, a motion to dismiss, a motion for summary judgment, a motion for new trial or an appeal.

Special Verdict Forms and Interrogatories. To the extent possible, you should make use of special verdict forms or interrogatories. If you do not believe this is appropriate in a specific case, you should contact the Managing Attorney/Claims Director.

Bonds. You should consult with the Managing Attorney/Claims Director before obtaining any necessary bonds.

Summaries. Do not prepare summaries of medical records or depositions, interrogatories or other discovery materials unless there is a specific reason to do so, such as preparation for an upcoming deposition or trial. Significant information developed through discovery that is material to case evaluation should be included in your Status Report(s).

Retention of Experts. You may not hire any consultant or expert witness, except a doctor to perform an IME of the plaintiff, without permission of the Managing Attorney/Claims Director. You should furnish a reasonably accurate projection of total charges when requesting such permission.

Depositions. No depositions should be taken in a claims matter without the prior approval of the Managing Attorney/Claims Director. In the event it is determined that depositions are appropriate, the following guidelines should be followed:

Plaintiff. With the exception of small claims and de minimis cases, plaintiff's deposition should generally be taken as soon as possible under your local rules. However, in cases where the investigation file provides a reasonably thorough picture of plaintiff's version of liability and damages, discuss with the Managing

Attorney/Claims Director whether the plaintiff's deposition should be foregone for tactical reasons.

Amtrak Employees. Amtrak-noticed depositions of Amtrak employees are not authorized. Such witnesses should be interviewed and/or a statement taken.

Non-Employee Fact Witnesses. Depositions of fact witnesses should be taken only to preserve testimony for trial in situations where the witness's availability is questionable and the testimony is potentially important. Otherwise, from both a strategic and an expense viewpoint, interviews and/or statements are preferable.

Economists and Vocational Rehabilitation Experts. Amtrak-noticed depositions of economists and vocational rehabilitation experts are not authorized unless and until a report and the concurrence of the Managing Attorney/Claims Director have been obtained.

Attending Physicians. Amtrak-noticed depositions of treating physicians are authorized only to preserve favorable trial testimony, only after a report has first been obtained, and only after the Managing Attorney/Claims Director has concurred.

Crossing Accident Experts. The advisability of deposing plaintiff's crossing expert depends upon a number of factors: the identity of the particular expert witness and counsel's familiarity with the expert; the ability to secure background information on the witness through the NARTC; the subject matter of the testimony and its importance to the case; and the scope of damages at stake. If you believe such a deposition is advisable, you should seek approval from the Managing Attorney/Claims Director.

Other Experts. Expert depositions are always costly and often uninformative. They often have the effect of forcing the expert and opposing counsel to prepare more thoroughly than they otherwise might. If you believe that such depositions are advisable, you should seek prior approval from the Managing Attorney/Claims Director.

Reports.

Initial Case Evaluation. Within 30 days after receipt of the investigation file and prior to beginning discovery, send the Managing Attorney/Claims Director and the claims agent your initial case evaluation, using the Amtrak Status Report Form, a copy of which is attached to these Guidelines as Attachment 1. These evaluations often lead to expeditious settlements.

Updated Status Report Following Plaintiff's Deposition. Unless otherwise instructed, you should send an updated Case Status Report to the claims agent and the Managing Attorney/Claims Director immediately following the plaintiff's deposition.

Quarterly Status Reports. You should send an updated Status Report to the claims agent and the Managing Attorney/Claims Director on at least a quarterly basis.

Pretrial Report. When discovery is reasonably complete, and as far in advance as feasible (not less than 30 days) of a final pretrial conference, a trial date, or a settlement conference, you should fax to the Managing Attorney/Claims Director and the claims agent an Amtrak Pretrial Report Form, a copy of which is attached to these Guidelines as Attachment 2. In the event that a pretrial conference, settlement conference or trial date is set on short notice, we expect immediate telephonic notification.

Daily Trial Reports. Together with the claims agent, you should call the Managing Attorney/Claims Director with a report at the conclusion of each day of trial.

Final Trial Report. Within one working day of the conclusion of trial, whether by verdict, settlement, motion or otherwise, you should fax a completed Amtrak Trial Report Form, a copy of which is attached to these Guidelines as Attachment 3, to the Managing Attorney/Claims Director and to the Deputy General Counsel, Tort Litigation at (202) 906-2019.

Fees and Expenses.

Expenses for Outside Service Providers. Expenses for outside service providers incurred in the investigation and evaluation of fact issues or in assisting in claims handling (e.g., accident reconstructionists, crossing experts, consulting engineers, doctors, investigators, vocational rehabilitation consultants and nurses, ergonomists, photographers, etc.) should not be included in your bill. Rather you should indicate your approval of such invoices and forward them to the Managing Attorney/Claims Director who will arrange to pay the provider directly.

Cumulative Fees and Costs. You should include a cumulative total of legal fees and expenses to date for each case for which you send us a bill.

Miscellaneous.

Routine Use of Mail. You should not routinely use expedited or overnight mail delivery. First class mail is preferred as the most economical method of correspondence.

Non-Claims Issues. You should contact the Managing Attorney/Claims Director when non-claims issues, such as labor, personnel, contract, corporate, or environmental arise in a claims case. The Law Department has lawyers available for assistance in these and many other areas.

Travel. Do not travel to distant depositions or interviews without the permission of the Managing Attorney/Claims Director. Any billing for travel must be specific as to the purpose and subject matter.

March 1998

NATIONAL RAILROAD PASSENGER CORPORATION
PRETRIAL REPORT

(FAX to the supervisory person and the claims agent 30 days prior to a settlement conference, a pretrial conference, or a trial.)

Date of Report:

Case Name:

Type of Case:
Amtrak File No:

Date Lawsuit Filed:

Amtrak Trial Atty:
Amtrak Supv. Person:
Opposing Trial Atty:
Court:
Other Parties:
Injured Person:
Date of Incident:
Liability Facts:

Claims Agent:

Judge:

Age:

Employment:

Anticipated Trial Date:

Injuries and Dates of Disability:

Medical Treatment:

Plaintiff Key Contentions:

Defendant Key Contentions:

	Pitf.	Def.	Pitf.	Def.
Wage Loss:				
Medical Expense:	Past		Future	
Other Special Damages:	Past		Future	

Probable Outcome on Liability:

Probable Verdict Range:

Highest Likely Verdict:

Estimated Fees and Costs Through Discovery:
Estimated Fees and Costs Through Trial:
Suggested Amtrak Experts and Estimated Costs:
Significant Procedural Dates:

Negotiations:

Settlement Recommendation:

Maximum You Would Recommend in Lieu of Trial to Verdict:

Strengths & Weaknesses:

Investigation Needed:

Discovery Needed:

Additional Comments:

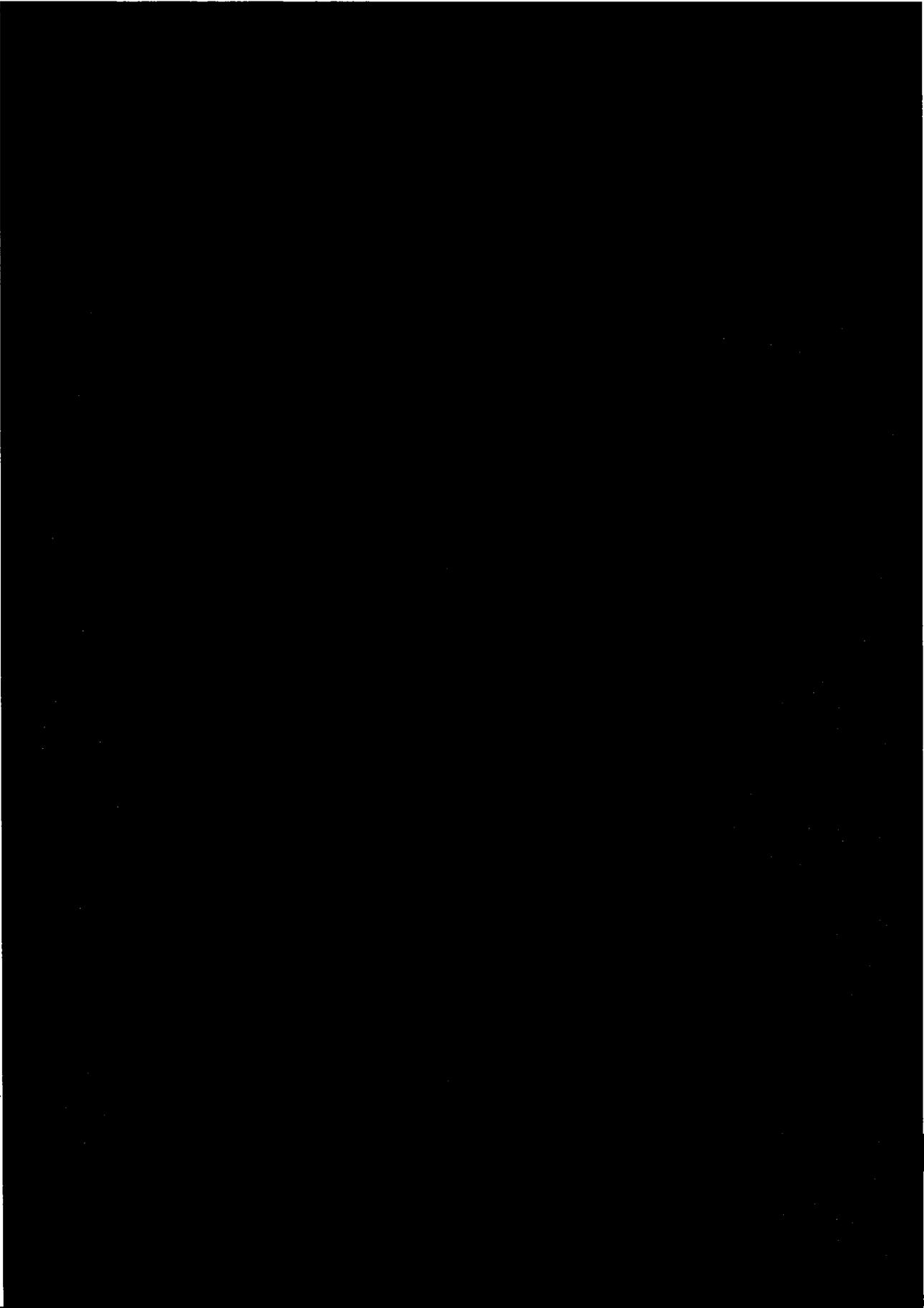
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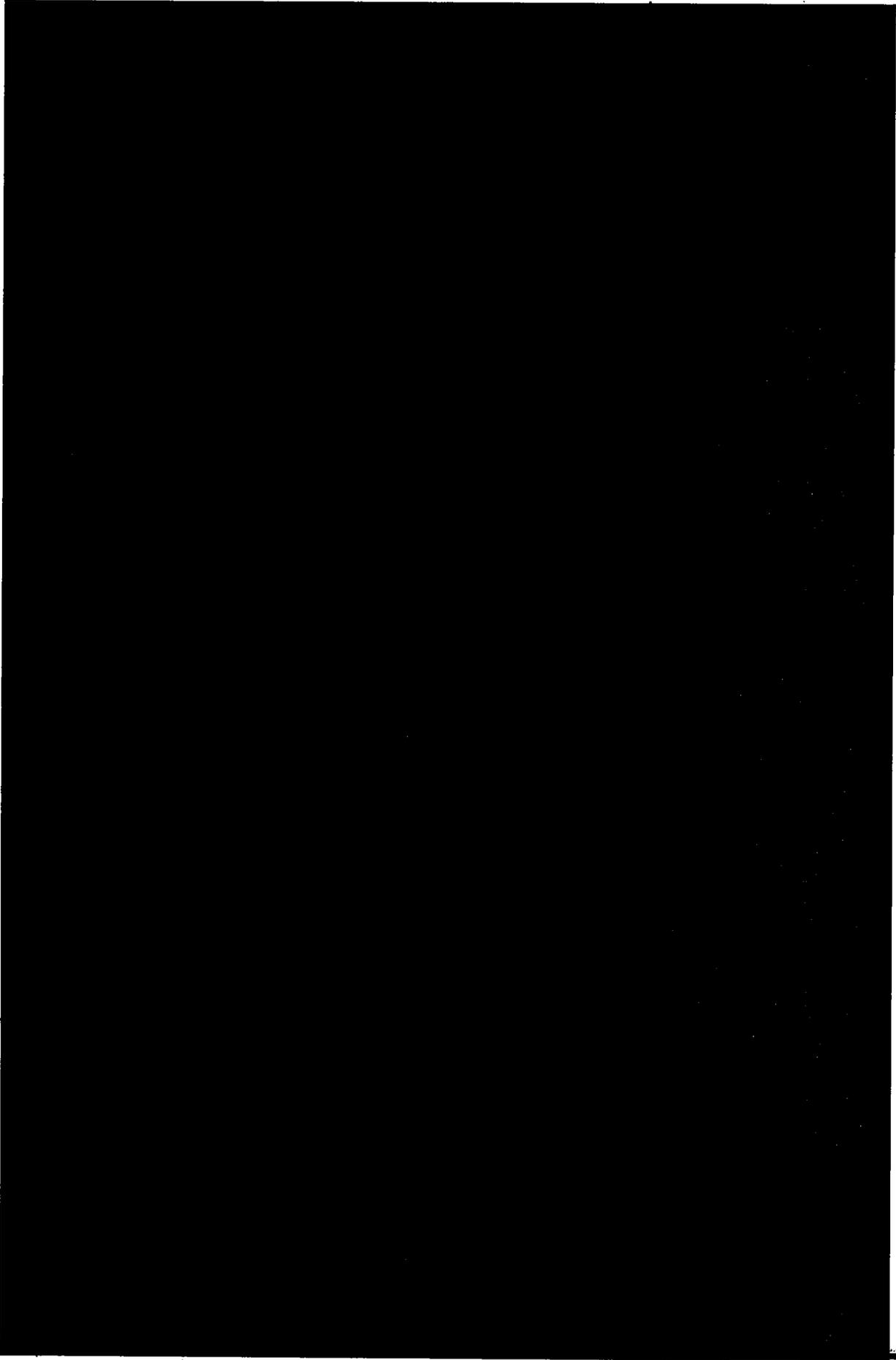
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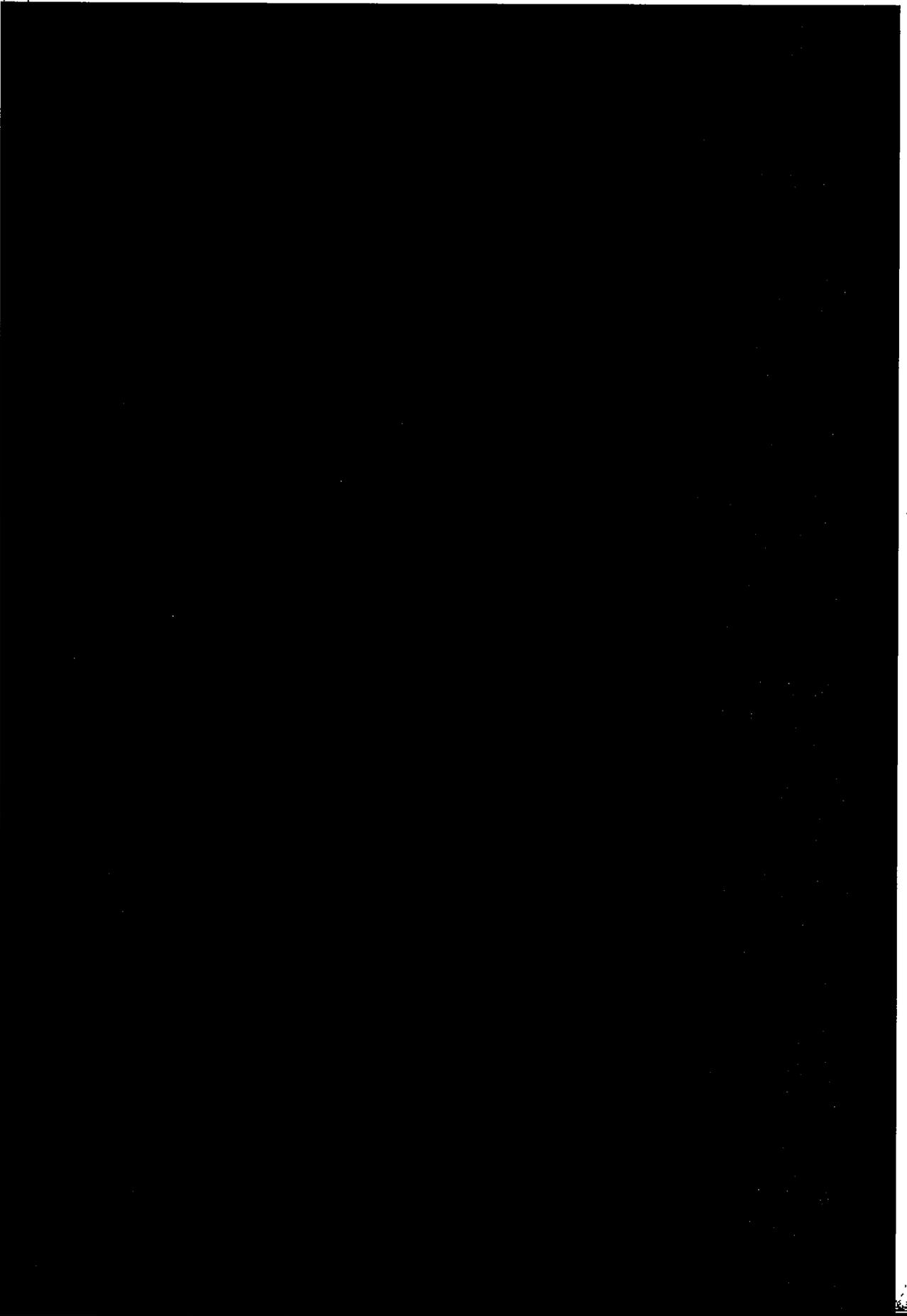
ATTACHMENT II

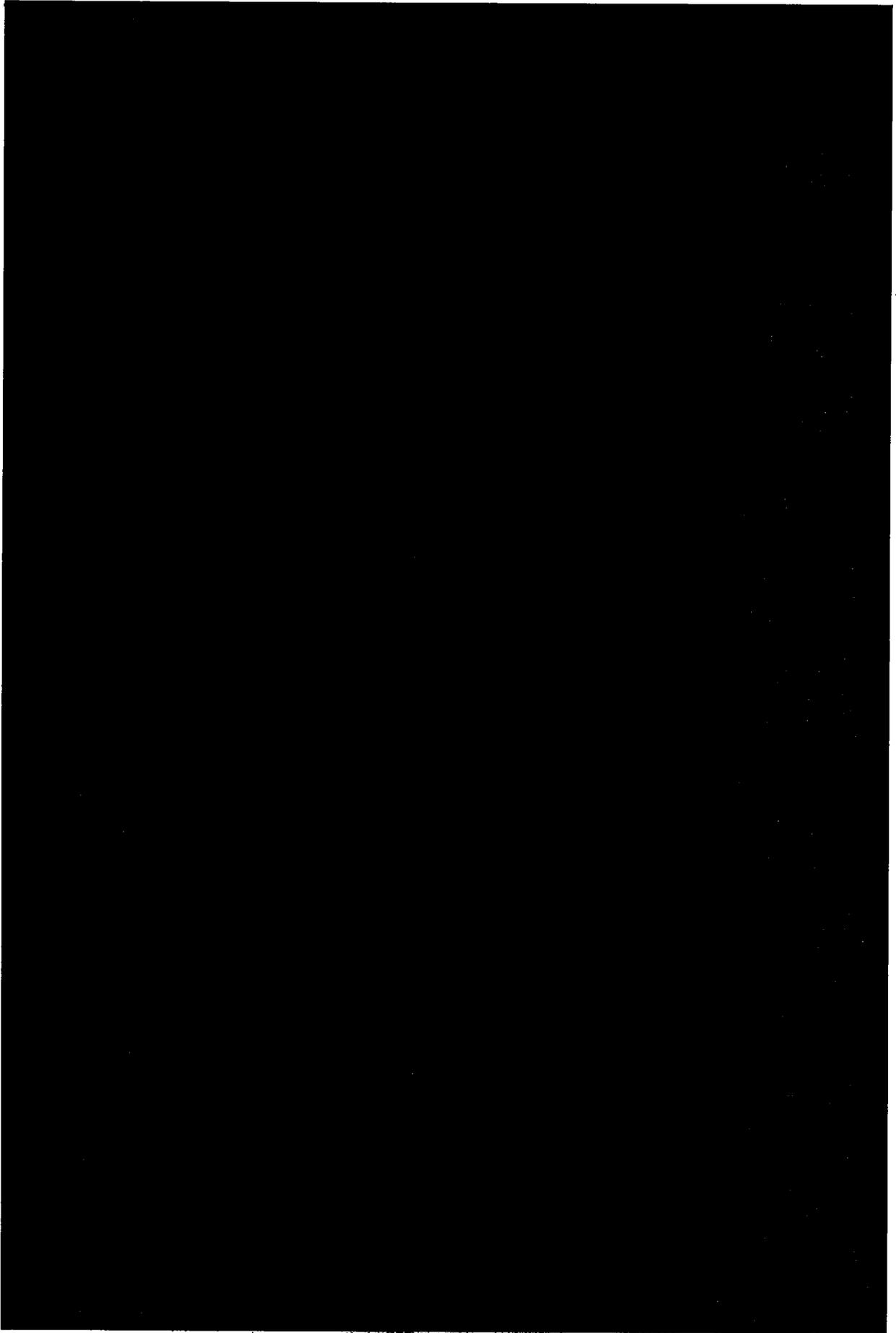
Comparison of Side Agreements with Amtrak Outside Counsel Guidelines (1998) Comparison & Impact of Side Agreements				
Topic	Original 1998 Guideline Features	Side Agreement	Side Agreement	Agreement
Relationship	Amtrak seeks a close working relationship, like co-counsel or joint representation. Amtrak is hiring particular lawyers, not entire firms. The engagement attorney is to work with a specific Amtrak "Managing Attorney." All "important documents" are to be copied to the Managing Attorney, who must also be consulted and approve all "significant decisions."	No apparent reason for Amtrak to sign this agreement. Signed by Ms. [redacted] for Amtrak. Relationship between side agreement and Guidelines is uncertain. A provision attempts to spread this agreement across all new matters and to [redacted] matters.	No apparent reason for Amtrak to sign this agreement. Signed by Mr. [redacted] for Amtrak. Incorporates Guidelines by reference, but unclear about impact if terms diverge. Provision attempts to apply this agreement to all other matters.	No apparent reason for Amtrak to sign this agreement. Addressed to Ms. [redacted] for Amtrak. Relationship between side agreement and Guidelines is uncertain. No reference to Amtrak Guidelines. Copy 1 saw is unsigned by Amtrak.
Hourly Rates	Amtrak "expects to receive a substantial discount" from "normal fee structure." Amtrak expects to "receive at least the same discount offered" to other gov't or corporate clients. Rate increases must be "discussed" and "approved" by Amtrak in advance. Amtrak is open to non-hourly arrangements.	Discount is lowered to 10% and only applies to lawyer fees (not paralegals). Assurance that Amtrak rates are comparable to similar clients is deleted from this side agreement. [redacted] gives itself unilateral discretion to change rates - eliminates Guideline control on unapproved increases. Rates increased 10% at the top and 50% at the bottom in two years.	Attempts to pass through temp or contract timekeepers at firm's rates, not actual cost, with no apparently notice to Amtrak. Provision for periodic hourly rate changes overrides Amtrak requirement for advance approval. Hourly rates are quoted without reference to any discount or comparable client guarantee.	Hourly rates are quoted, without reference to discounts or comparable client guarantee. Contains statement that Amtrak has agreed in advance to annual rate adjustments without any limit set.
Unacceptable Charges	Amtrak has a list of discouraged charges, like basic research, junior attorney training time, transition time. Amtrak also declines to pay for administrative activity, like conflicts checks and billing discussions. Amtrak is not to pay for overhead items, giving review, local calls, support and part of other charges. Amtrak has a basic rule that it will pay only actual cost, i.e., no profit on expenses.	New provisions reverse various restrictions in the Guidelines, like no word processing, some faxes, overtime and other internal expenses are charged at [redacted] own "standard rate." The "Standard rate" provision avoids the Guidelines and [redacted] ethical obligations not to profit from expenses. Vague reference to [redacted] side agreement to the Guidelines is eliminated altogether here.	List of fee items (para. 1) includes items like "file review" and travel that are excluded or limited by Guidelines. List of charges includes 20 cents per page for some copying, which should be higher than cost.	List of charges includes high charge for copies (25 cents) and all faxes (\$1.25 per page), circumventing Amtrak restrictions.
Billing	Amtrak has a list of billing formalities, including a preference for monthly bills and tenth hour actual time increments (no minimum charges). Block billing is expressly prohibited, with examples of good and bad entries given. "Complete and precise" billing descriptions are required. Expenses must be itemized. Each invoice should have a running or cumulative total of fees billed on that matter to date. Firms are warned that Amtrak may audit their bills or be audited itself.	Payment required in 30 days, with aggressive collection and termination terms. Late charge of 12% added. [redacted] may attach Amtrak funds it holds for other purposes to pay its bill. Attempts to withdraw in a dispute. Any fee dispute is submitted to binding arbitration before a [redacted] Bar panel. Two odd terms in the arbitration: (1) [redacted] sets its own in-house fees for prosecuting a fee dispute, (2) [redacted] sets its current, undiscounted rates if it wins, even for lower, discounted time. Other terms are comparable to [redacted] side agreement.	Contains a provision giving the firm the unilateral authority to quote and billed hourly rates if firm determines it deserves more, e.g., in complex, valuable, or otherwise extraordinary matters. Firm expects payment in 30 days, and questions about bills should be raised "promptly." Attempts to authorize firm to stop work on "non-emergency" matters for non-payment, which implicates ethical rules. Late payment charge of 1%/month. Specifies binding AAA arbitration of fee disputes.	Attempts to obtain Amtrak's advance approval to withdraw if fees are not paid within 45 days. Firm expects payment in 30 days. Interest on unpaid bills is 6%.
Budgets	Amtrak requires an initial budget within 30 days of retention, then updates at least once every six months, more often if something significant comes up. Budgets for larger matters must be broken down. Budgets go through the entire matter. There is a small matter exception. The initial budget is supposed to identify all staff and give their rates, which dovetails with the staffing requirements.	Similar to [redacted] but [redacted] now includes caveats about results not being guaranteed.	Provides for shifting of fees and expenses of prevailing party in event of a fee dispute.	Firm expects payment in 30 days. Amtrak expected to review bill and contact firm with questions.

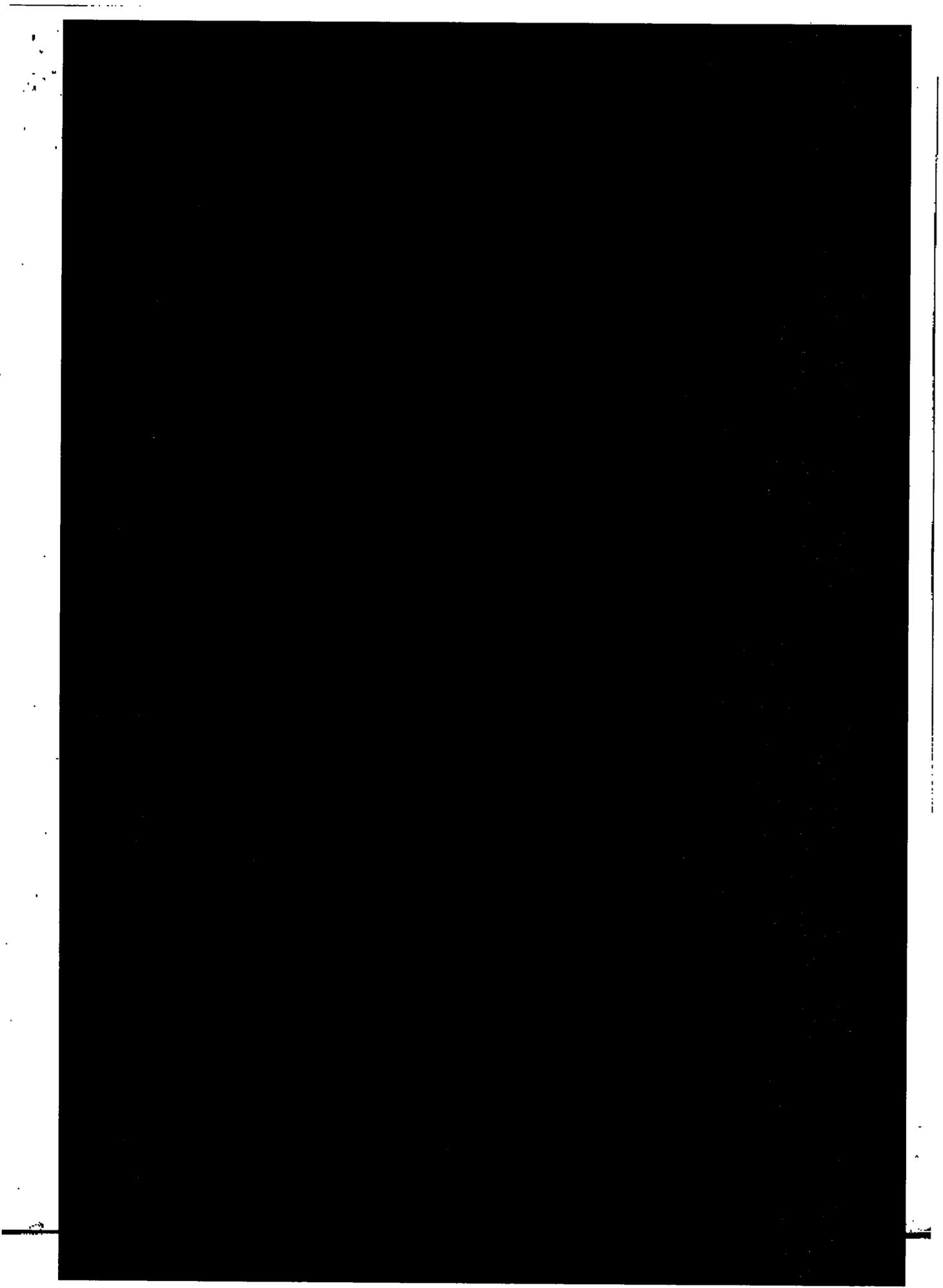
Comparison of Side Agreements with Amtrak Outside Counsel Guidelines (1998)					
Comparison & Impact of Side Agreements					
Topic	Original 1998 Guideline Features	Side Agreement	Side Agreement	Side Agreement	Side Agreement
Staffing	Amtrak emphasizes that it selects particular attorneys for their expertise. Staffing changes must be discussed and approved by Amtrak in advance. Amtrak expresses a preference for no more than one partner, one associate, and one paralegal for support. Amtrak suggests that, if the firm wishes to have more than one attorney attend an event, that should not be billed to Amtrak. Amtrak discourages unnecessary travel, with advance approval required for more than one attorney to travel. Travel by train is encouraged. Travel time is paid at 50% rates, unless actual work is being done – nothing should be billed to Amtrak if work is being done for others. Travel costs are expected to be kept modest, not at first class or luxury rates.	Amtrak gives itself unilateral control over staffing.	Schedule of rates lists 7 partners and 8 associates, which is a large, top heavy team.	Provision in Para. 1 apparently contemplates unapproved staffing changes.	Identified staff is limited to 2, but left open.
Travel	Recognizing that research can be expensive, Amtrak requires prior approval before firms undertake research projects more than 3 hours. Copies of the research product are to be provided to Amtrak, which aspires to provide a central resource. For transactional and other non-litigation work, Amtrak requests estimates, which cannot be exceeded without approval. Written memos are discouraged – advice is not to be given in writing unless otherwise approved.				
Legal Research	Amtrak has a series of statements about its attitude toward litigation and its prosecution. Amtrak wants the expenses of its litigation to be as expeditiously and effectively as possible. Amtrak expects its lawyers to behave ethically and comply with court rules and deadlines. Amtrak encourages early discussion of settlement. Buried in this section is a requirement that all court filings be provided to Amtrak in advance for review. Specific rules are provided for retaining experts, noticing appeals, and individual defendants.	Restrictions on recovering Amtrak fees are imposed – and Amtrak does not own the work product it is paying for.			Firm may dispose files in accordance with its unstated document retention policy.
Non-Litigation					
Litigation Tactics	Amtrak has a separate set of rules for handling claims litigation, which tend to be more numerous, but more routine, litigation. Notable provisions include a requirement for an initial case evaluation and other reports at specified milestones. Some of the most wasteful practices, like routine use of dispositive motions and depositions, are curtailed.				
Claims Litigation		N/A			
Other Provisions	N/A	N/A	Contains advance waiver of some future conflicts, with exceptions for overlapping subject matter. Firm required to notify Amtrak of future conflicts.		Contains conflict waiver of some unrelated cases.

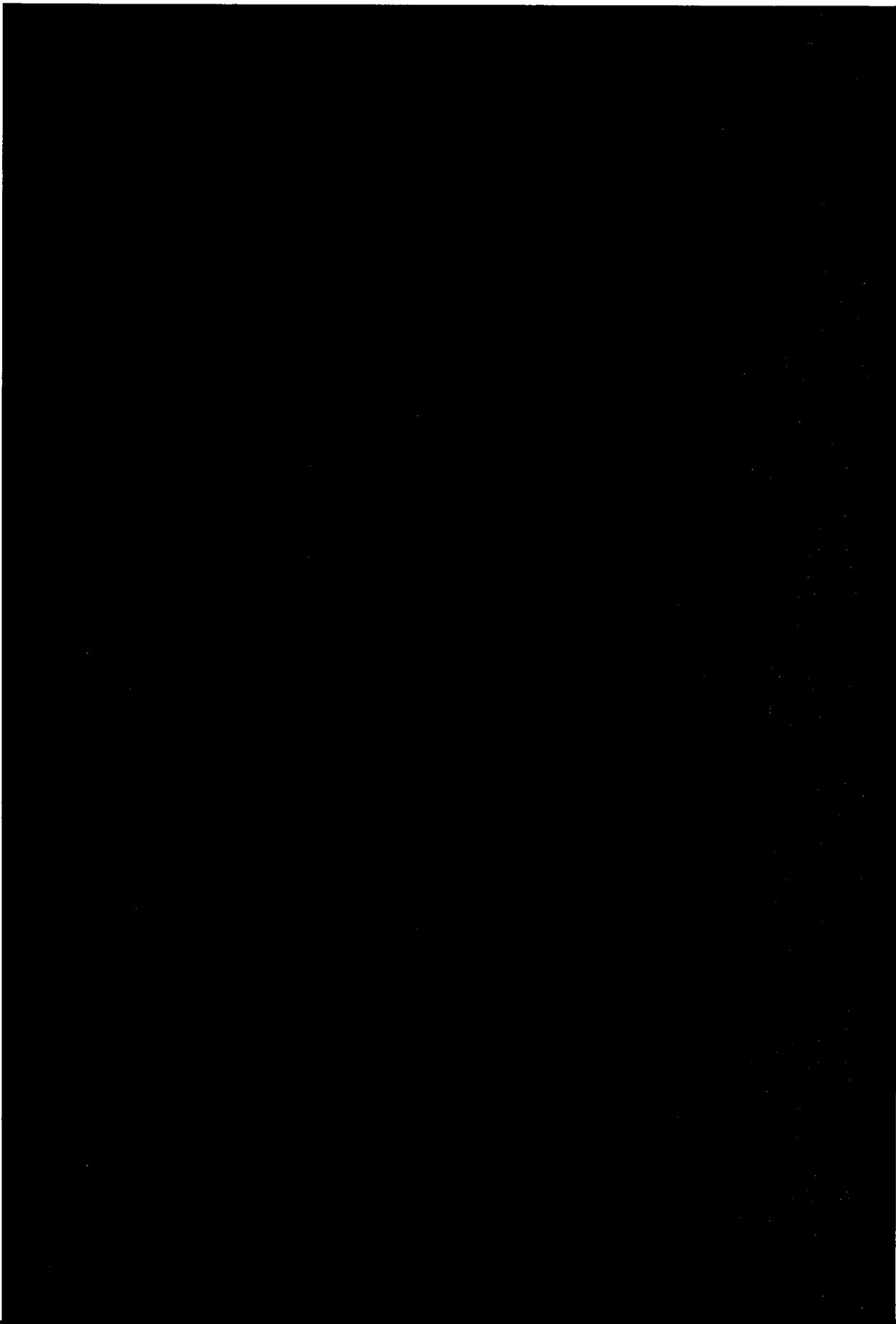


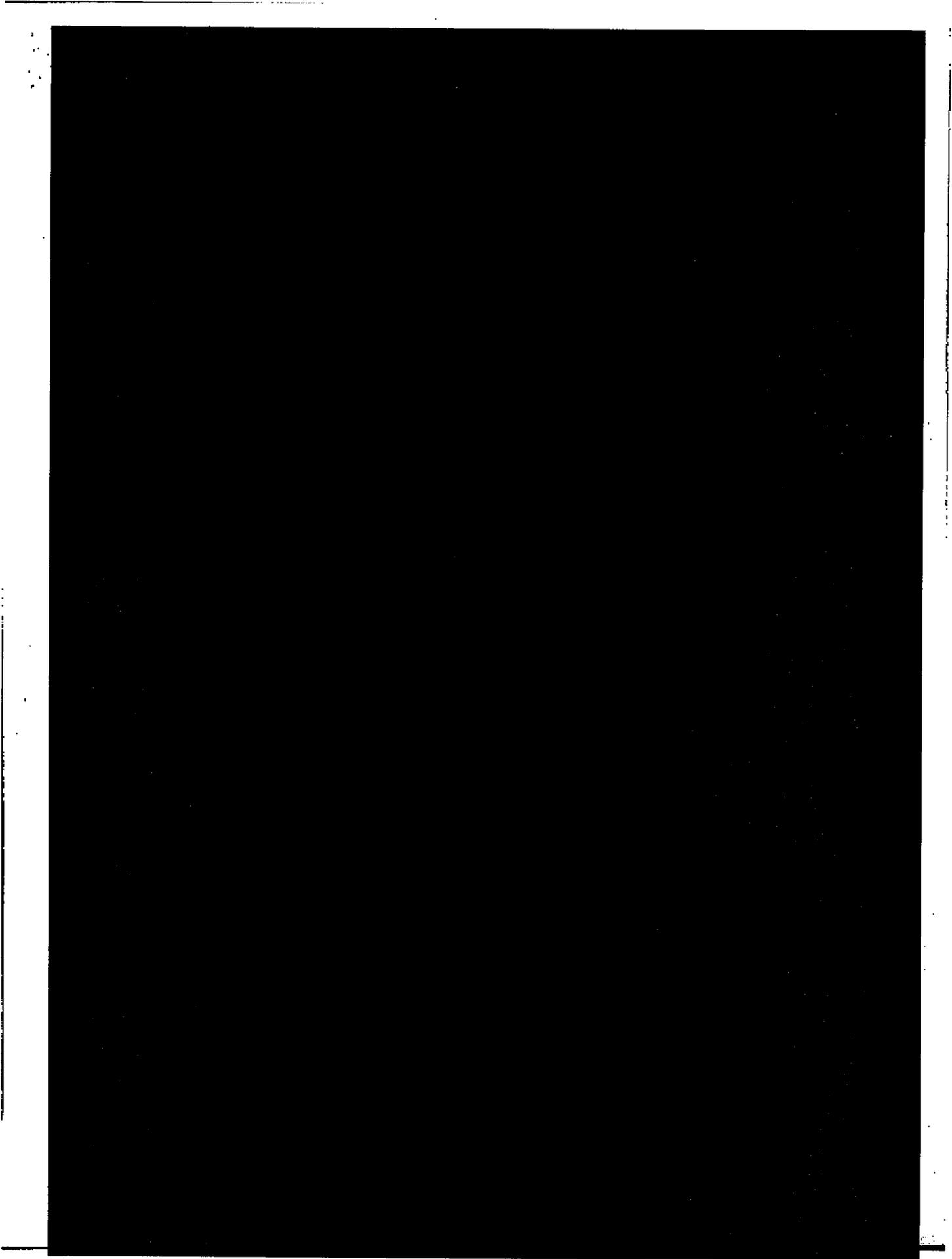


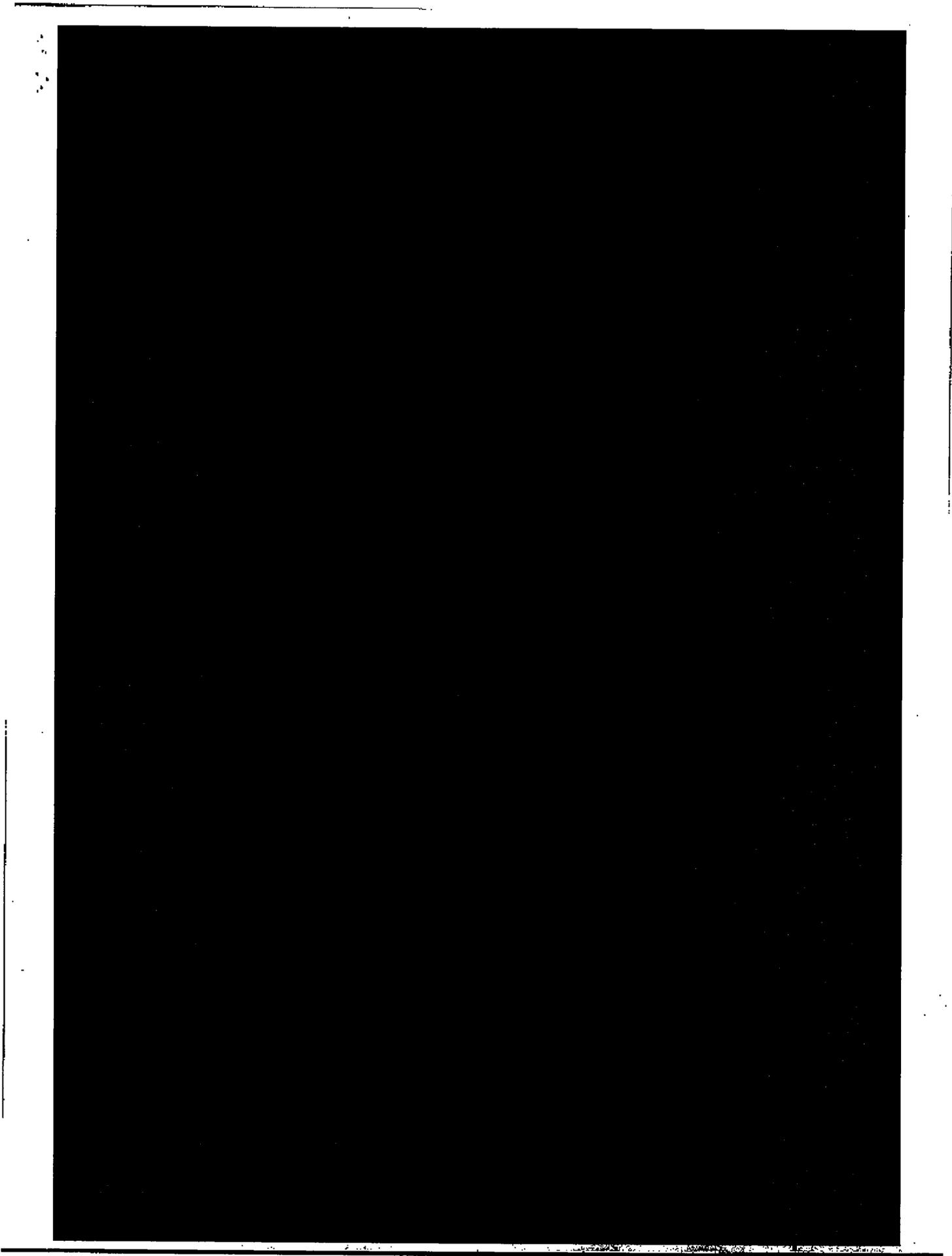




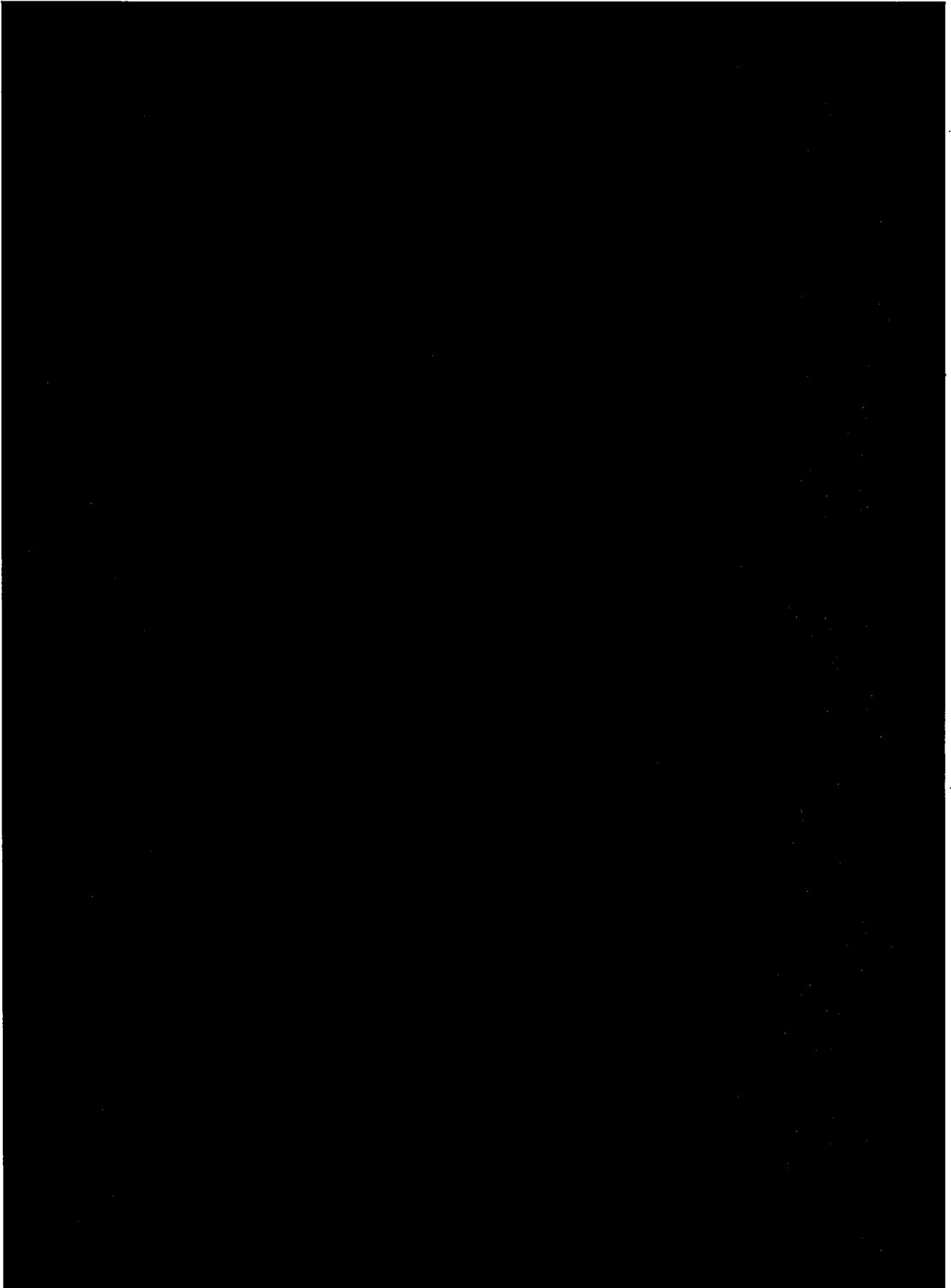


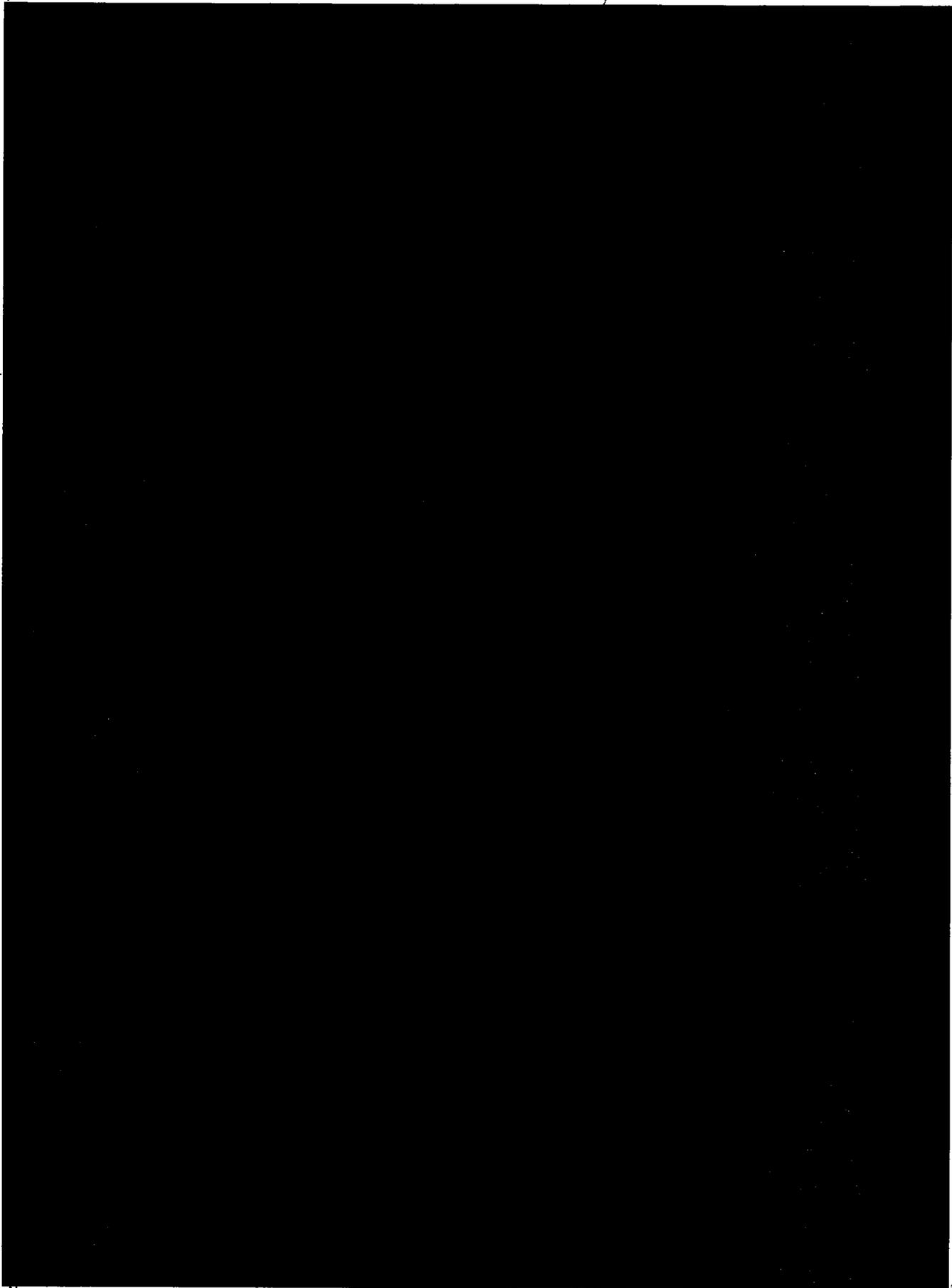


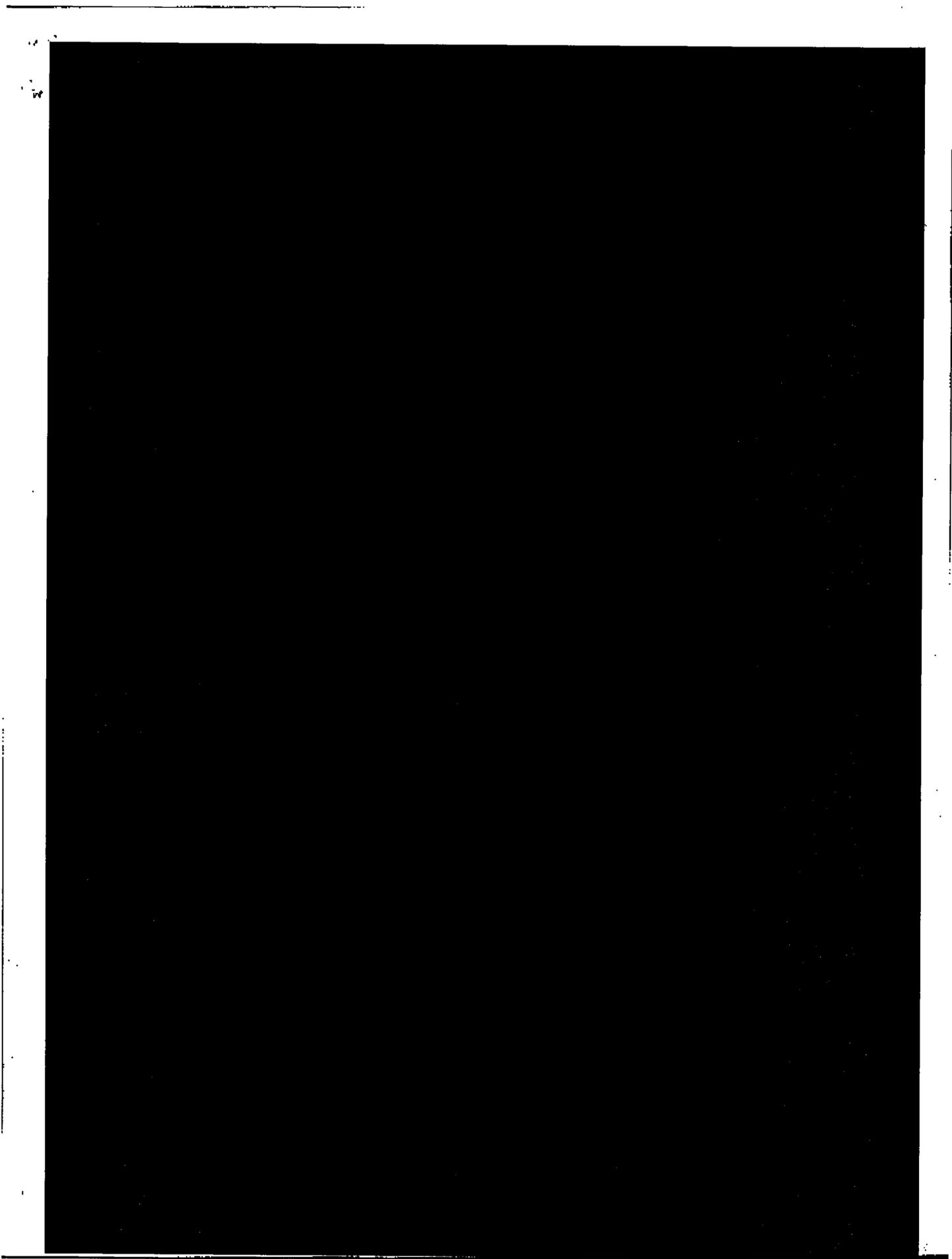


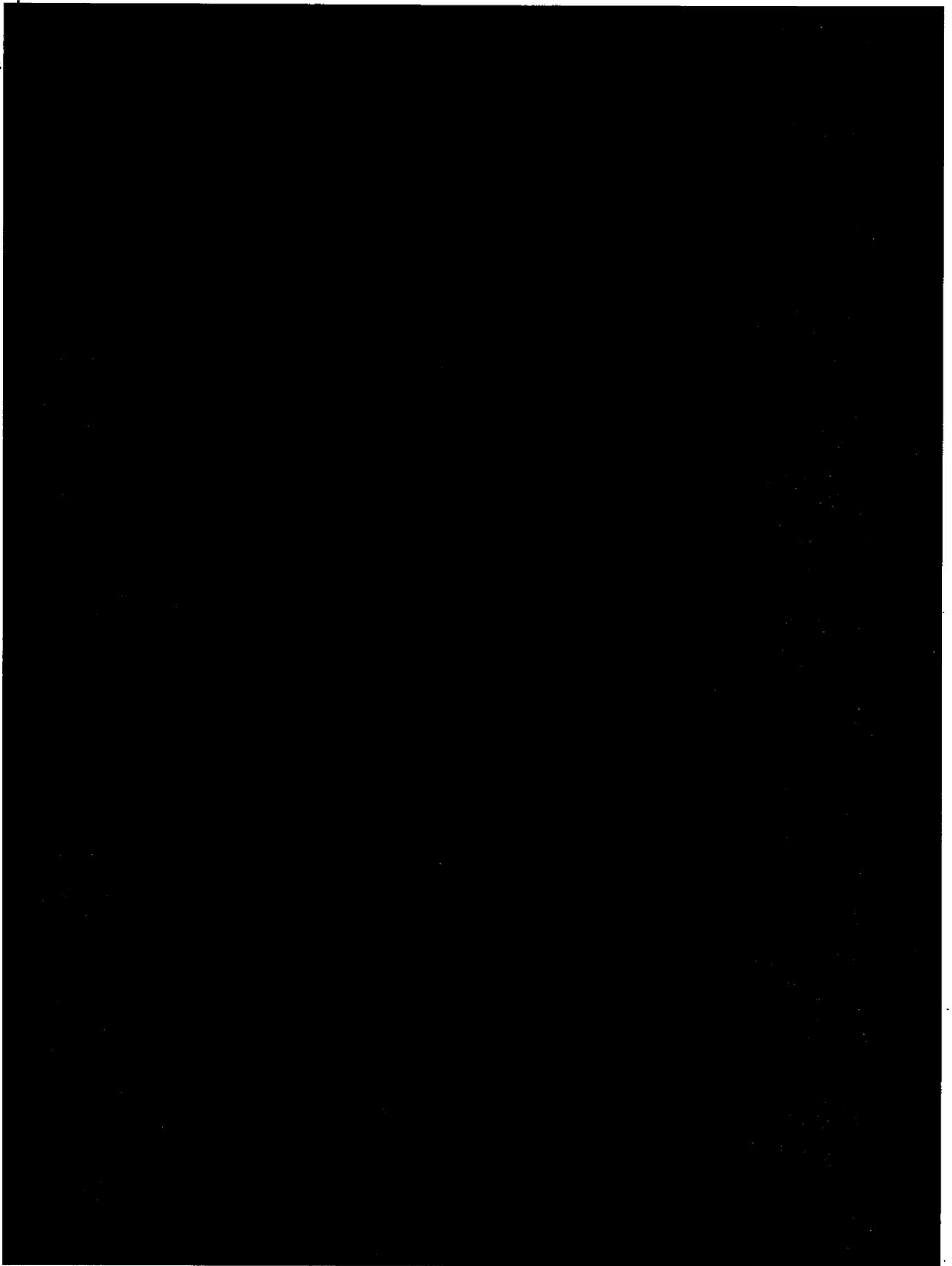


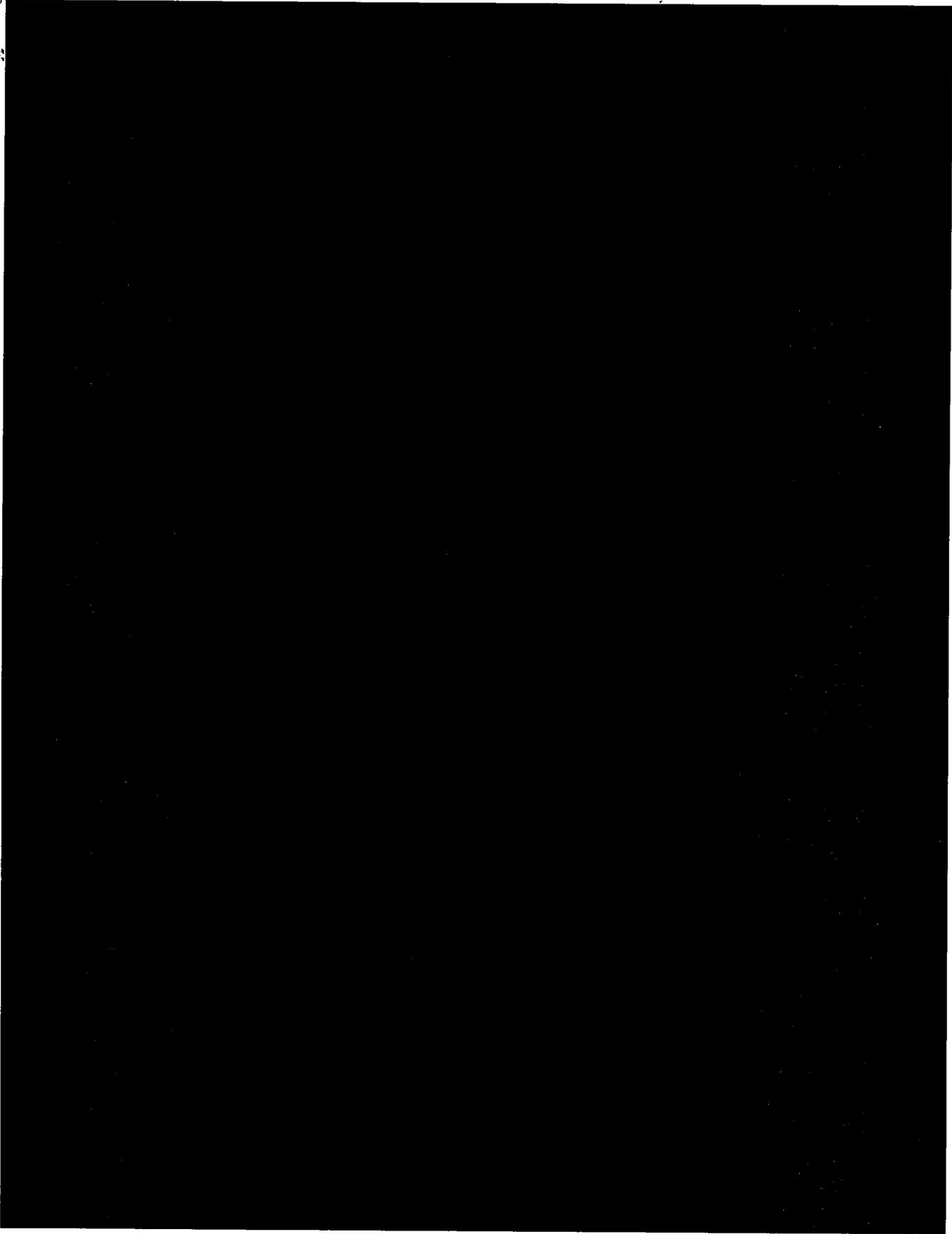
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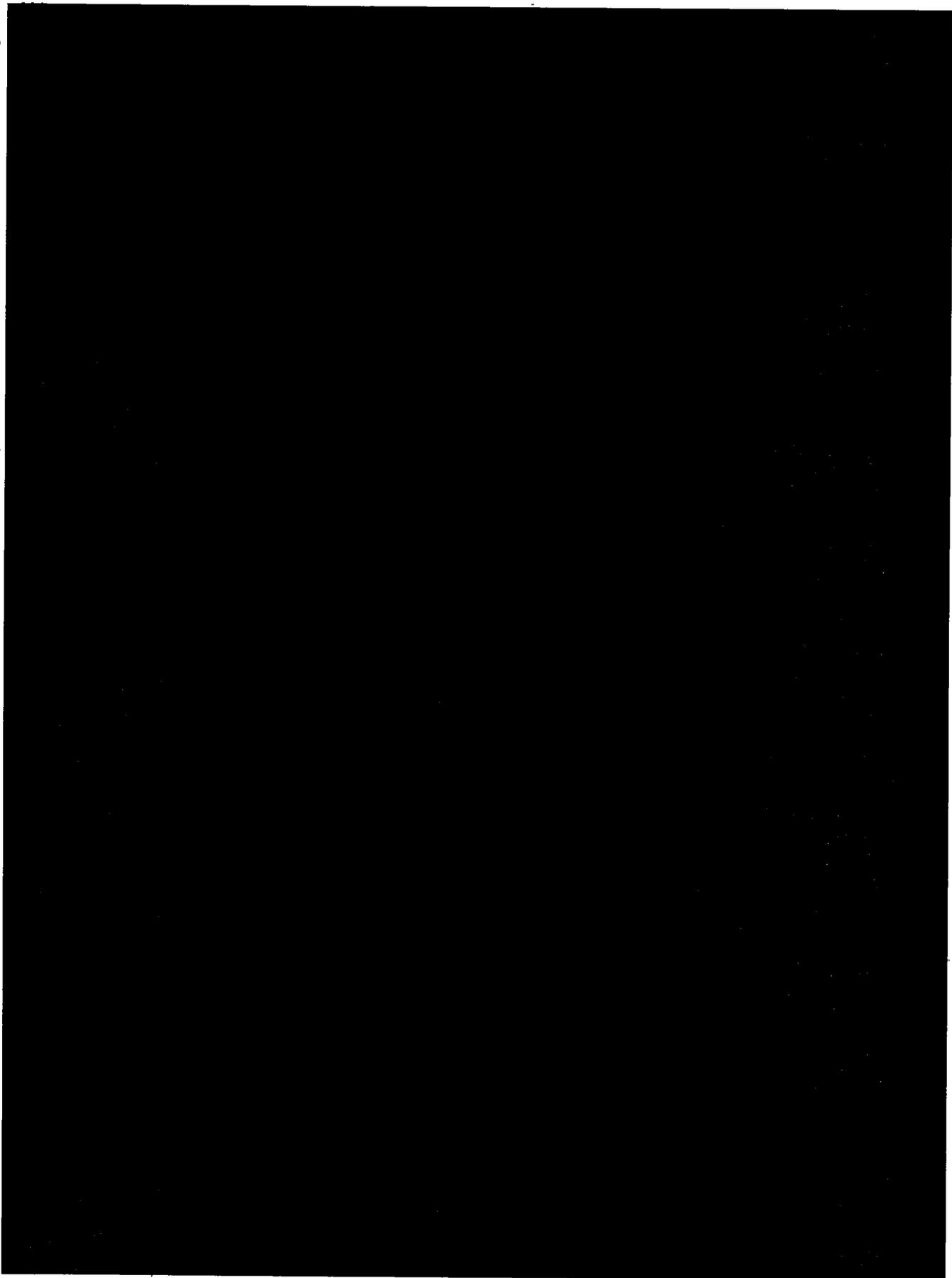


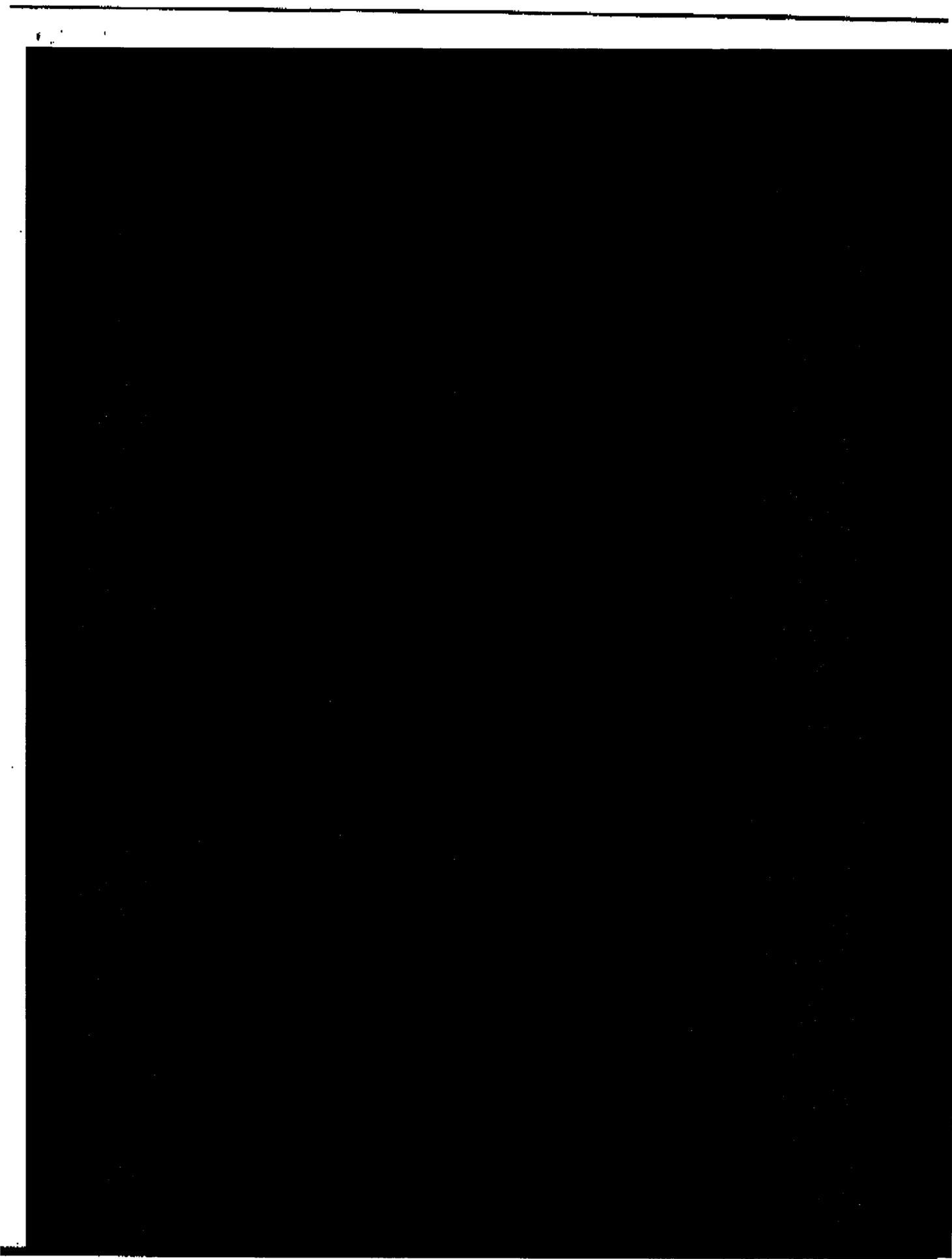


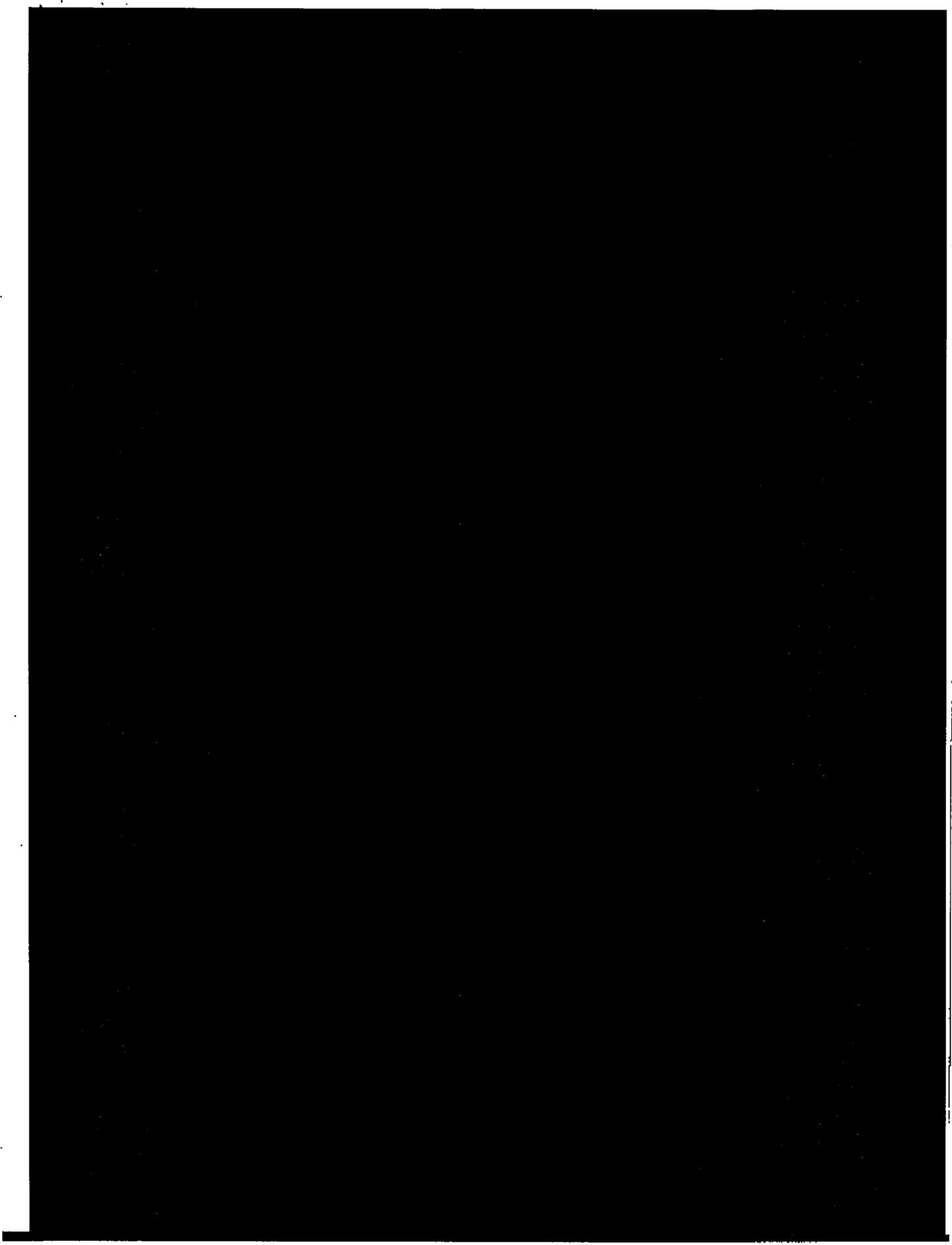


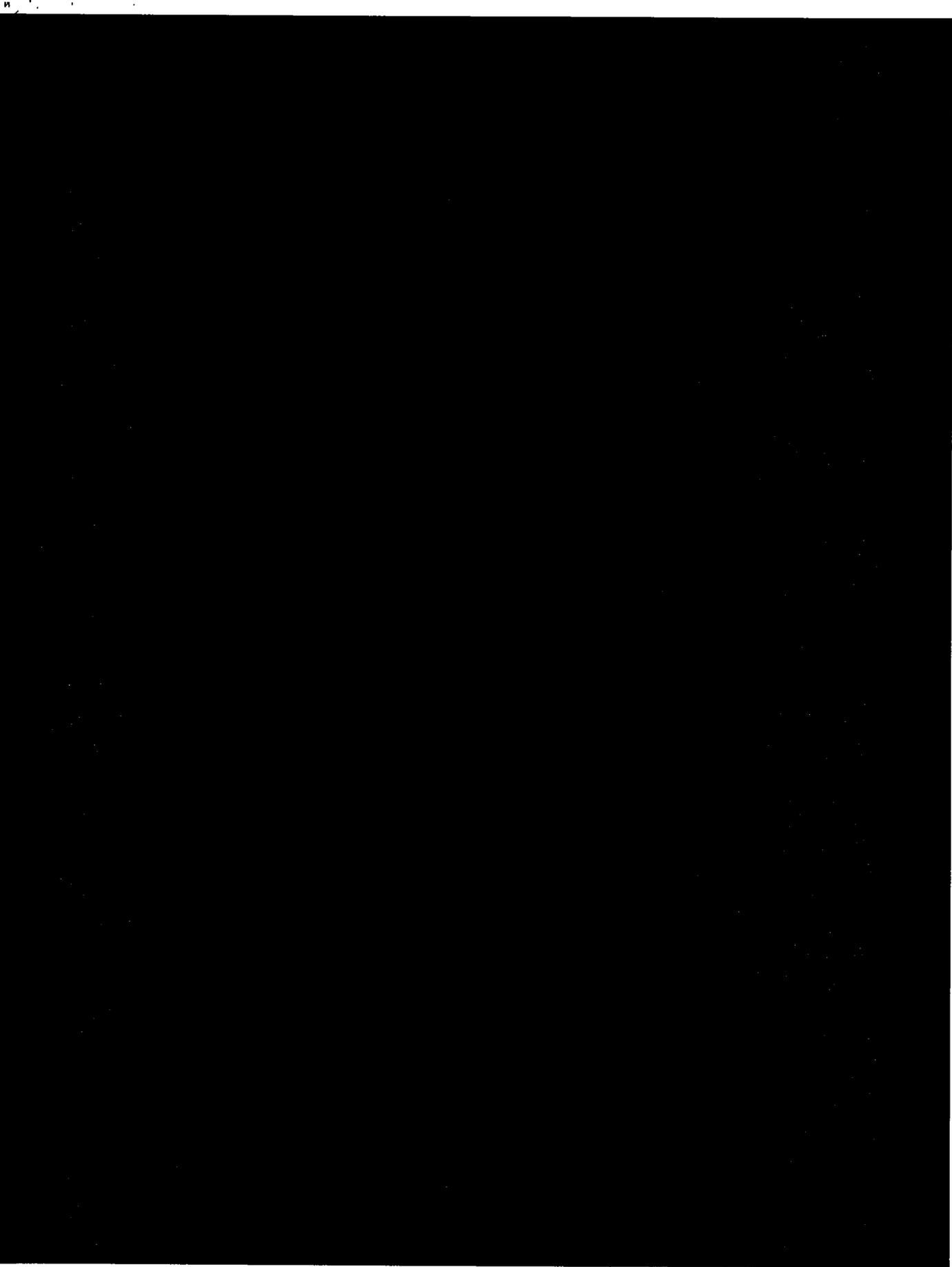


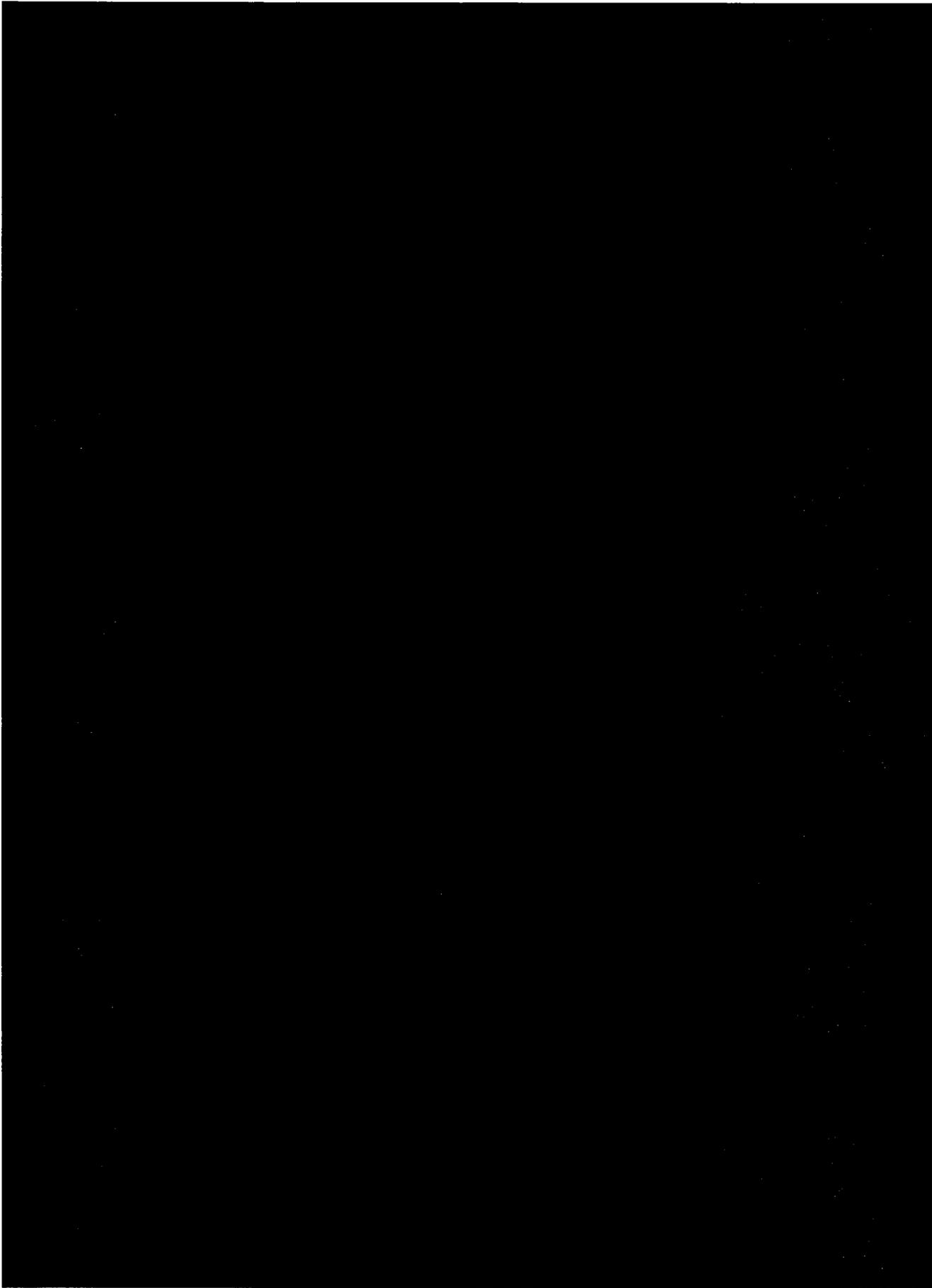


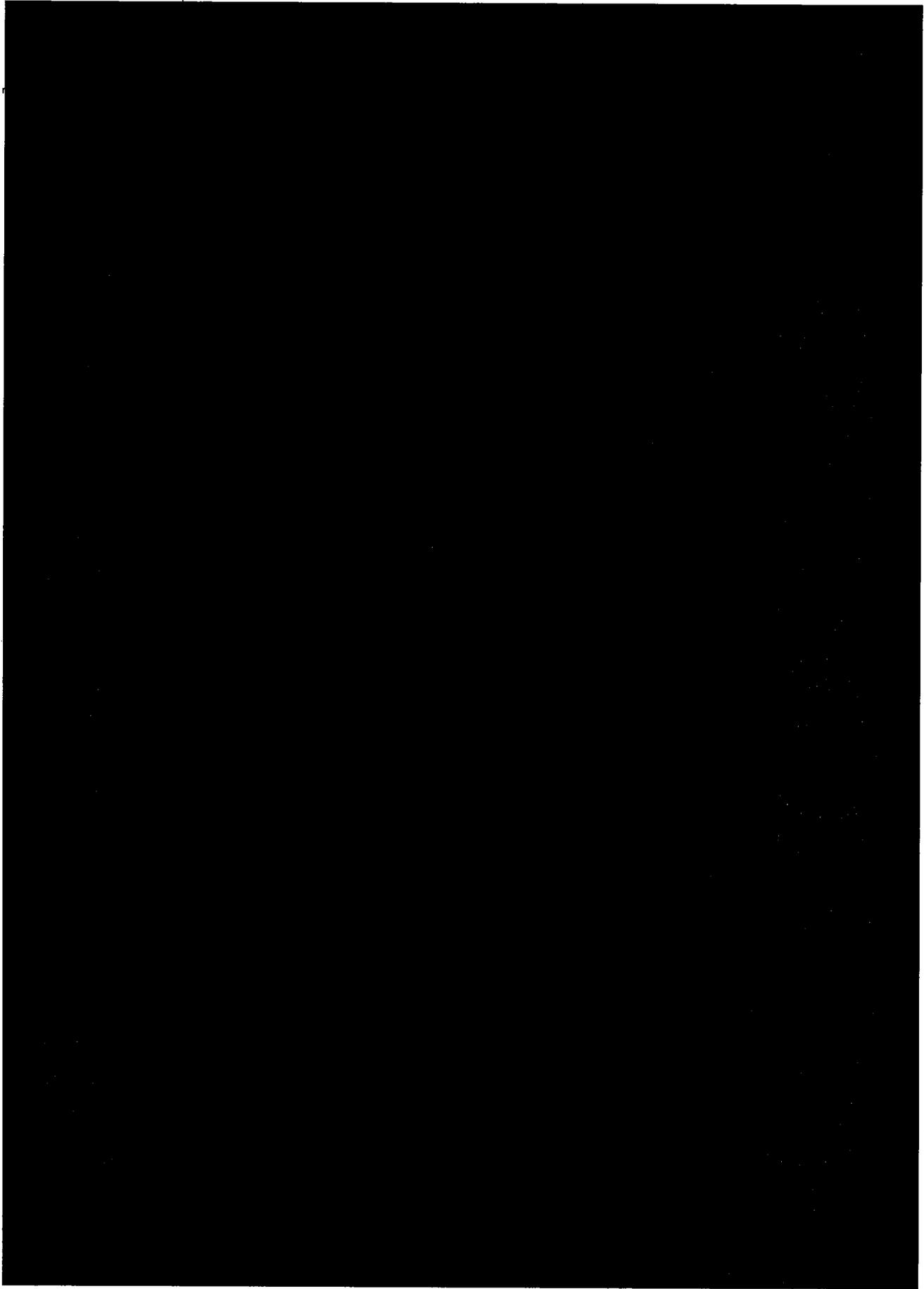


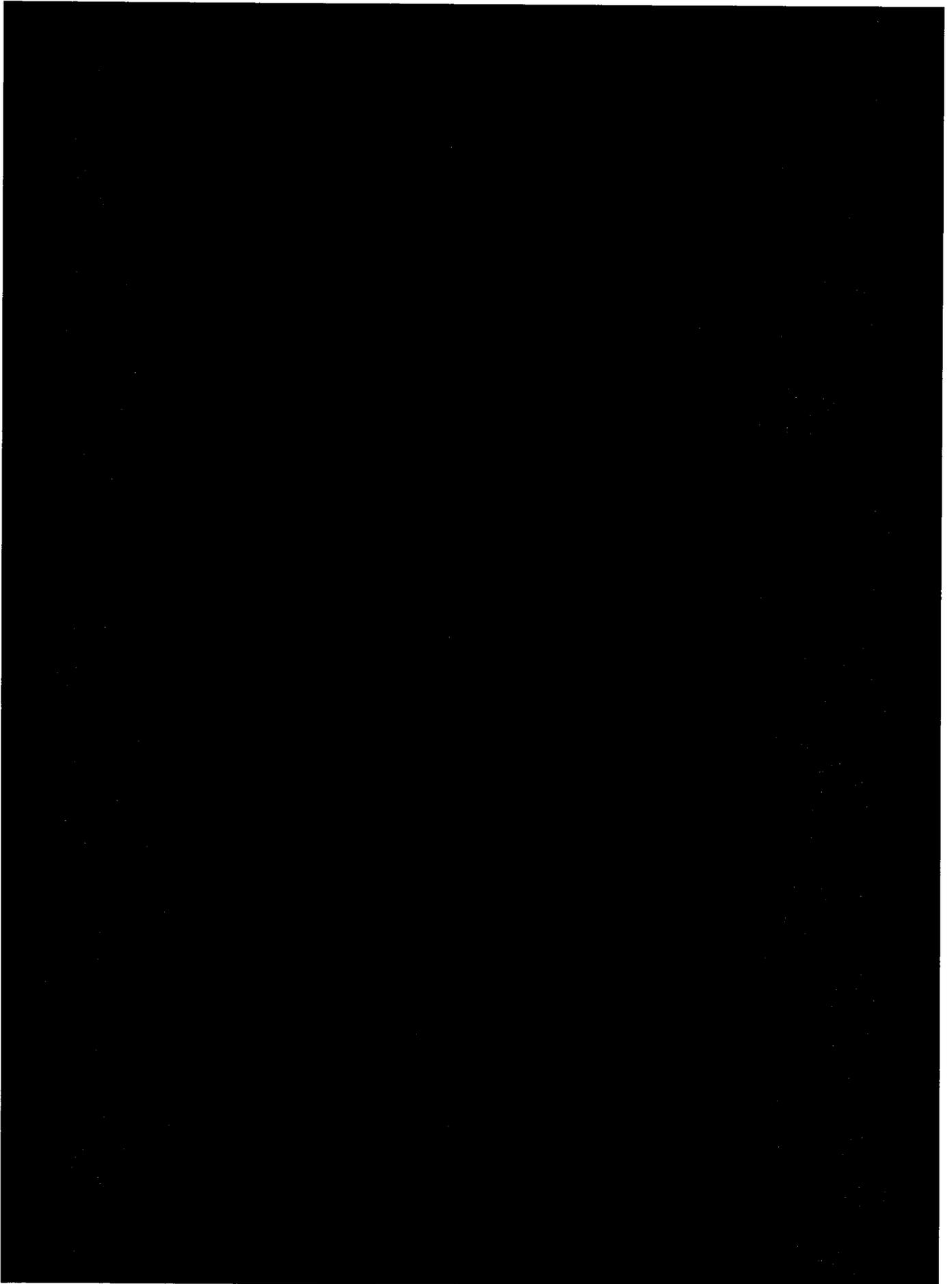


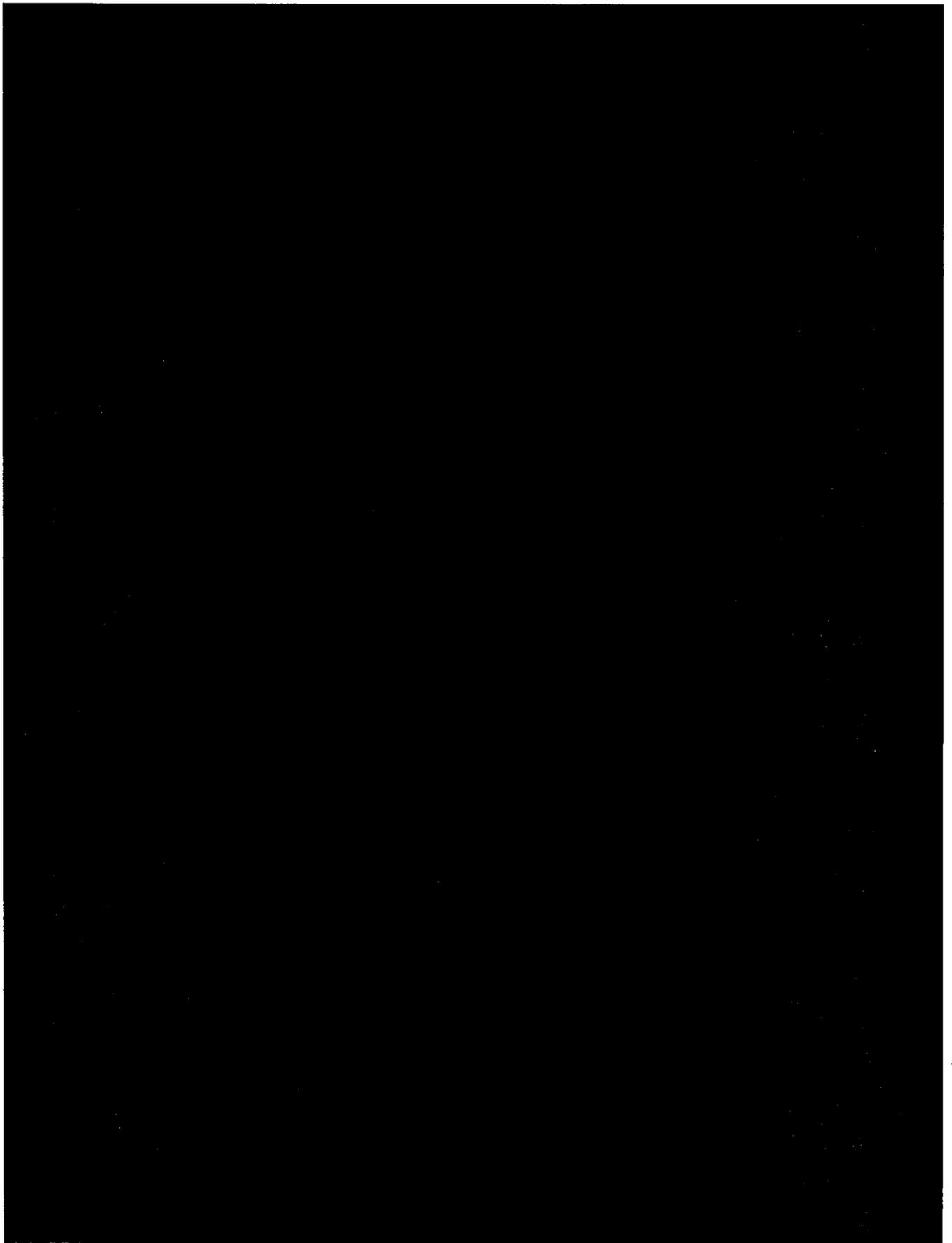


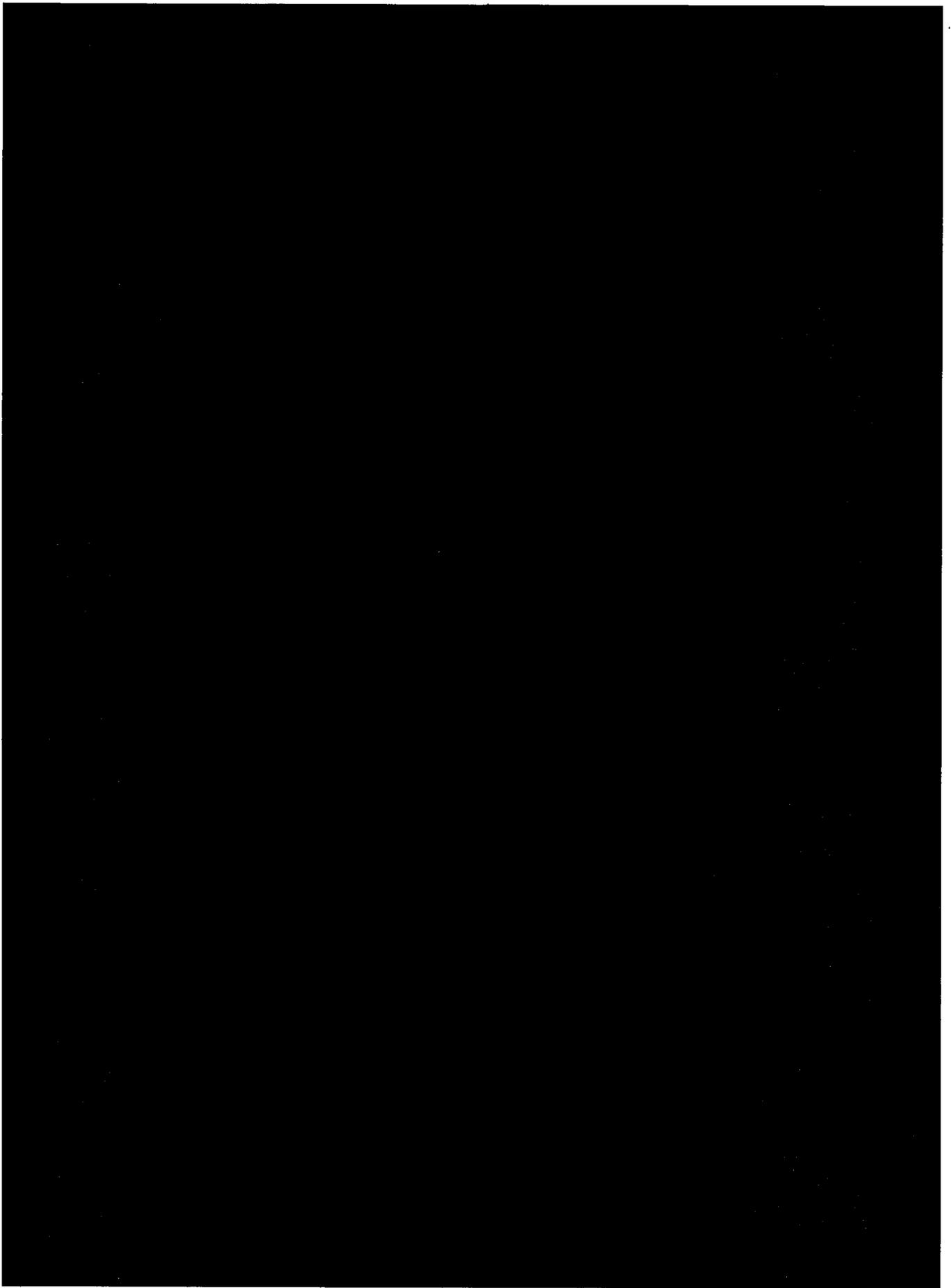


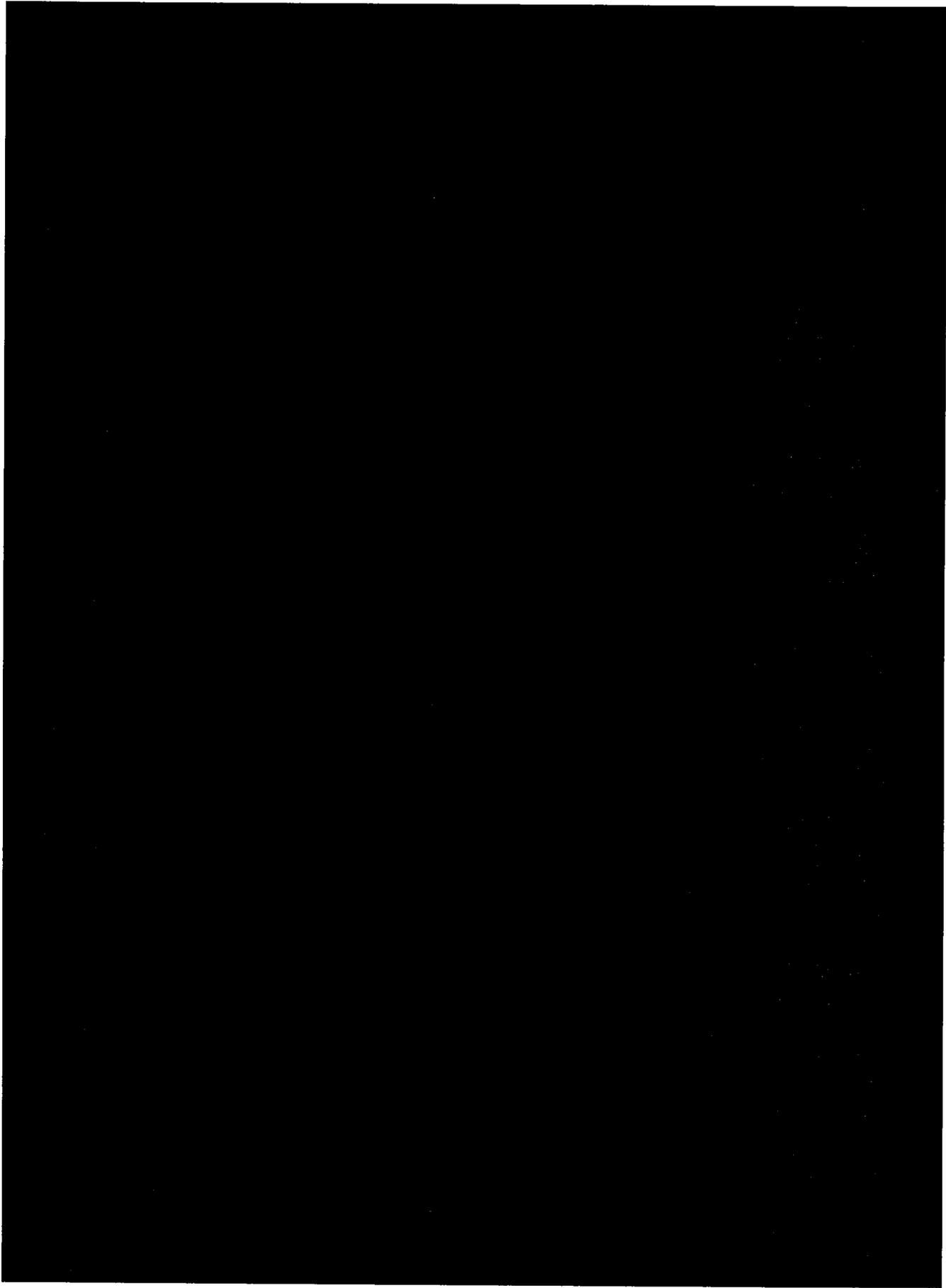


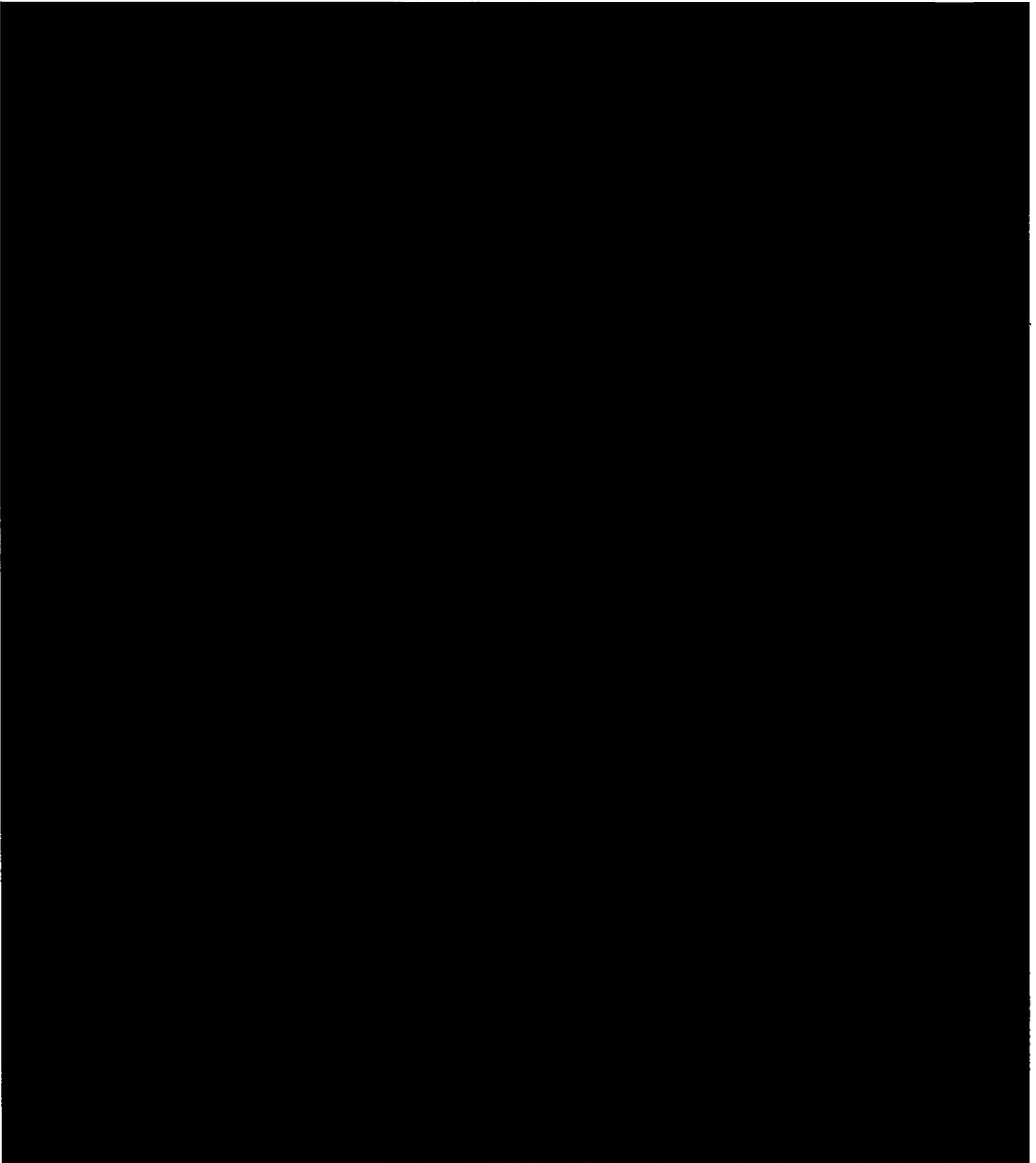


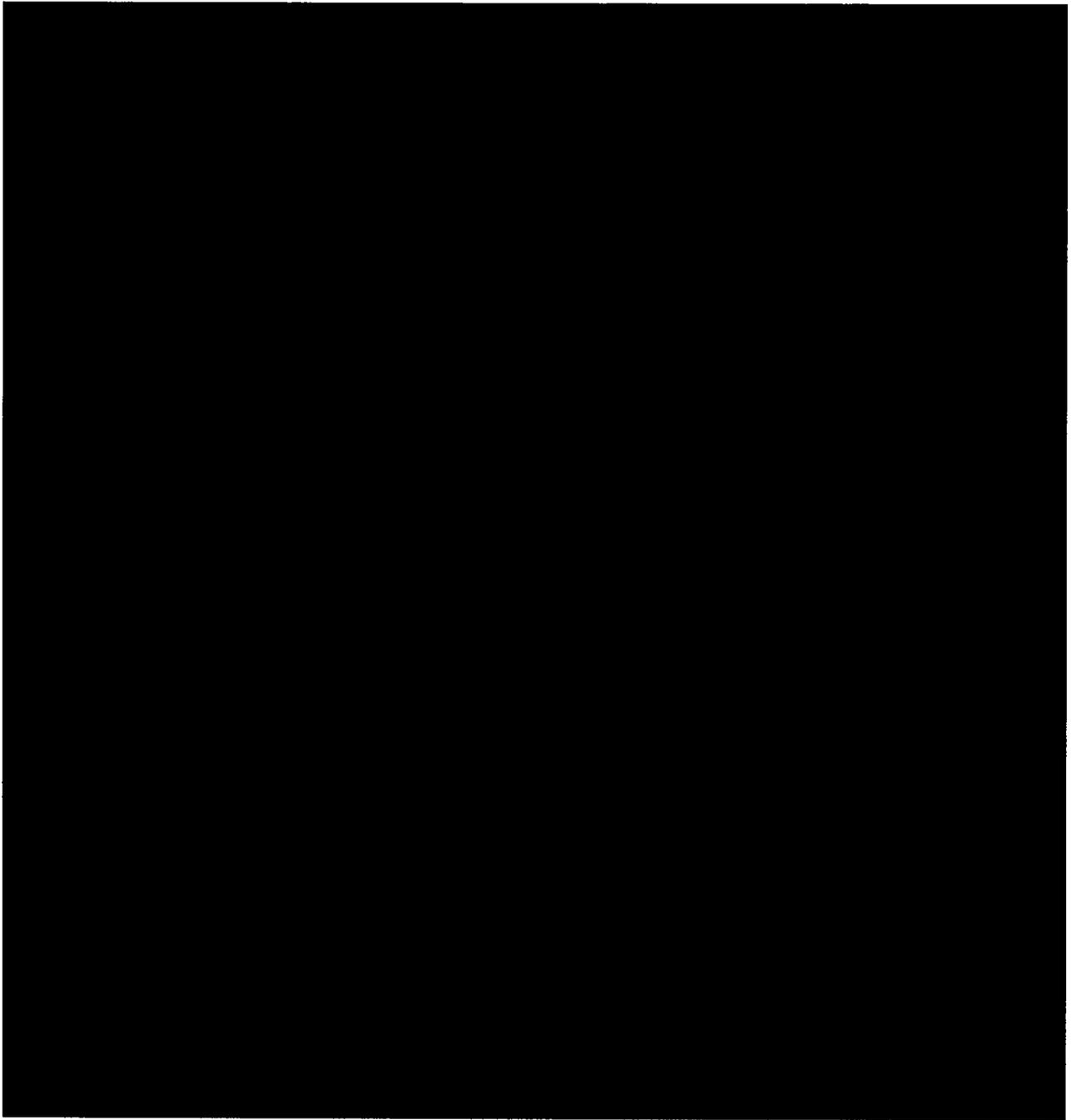


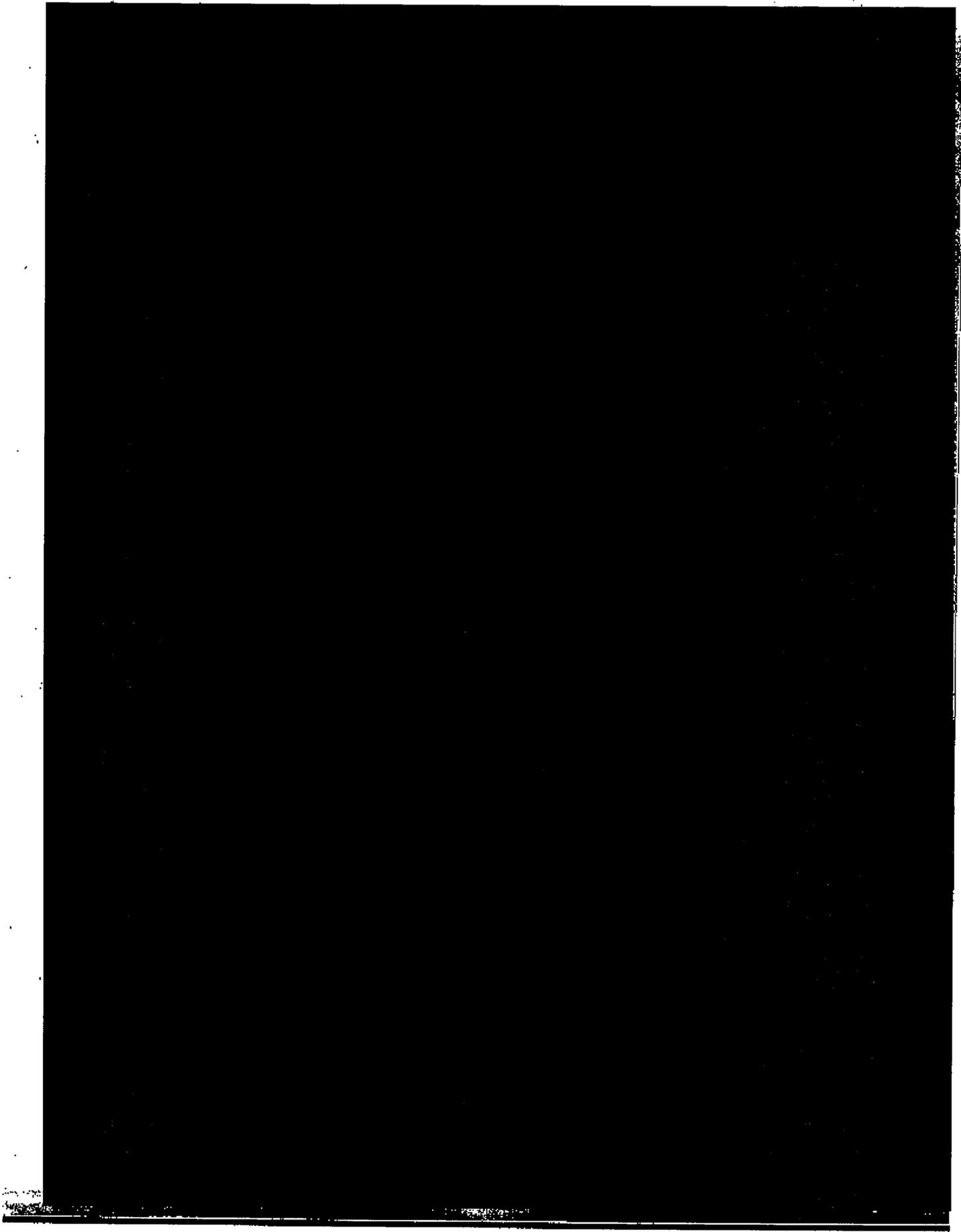


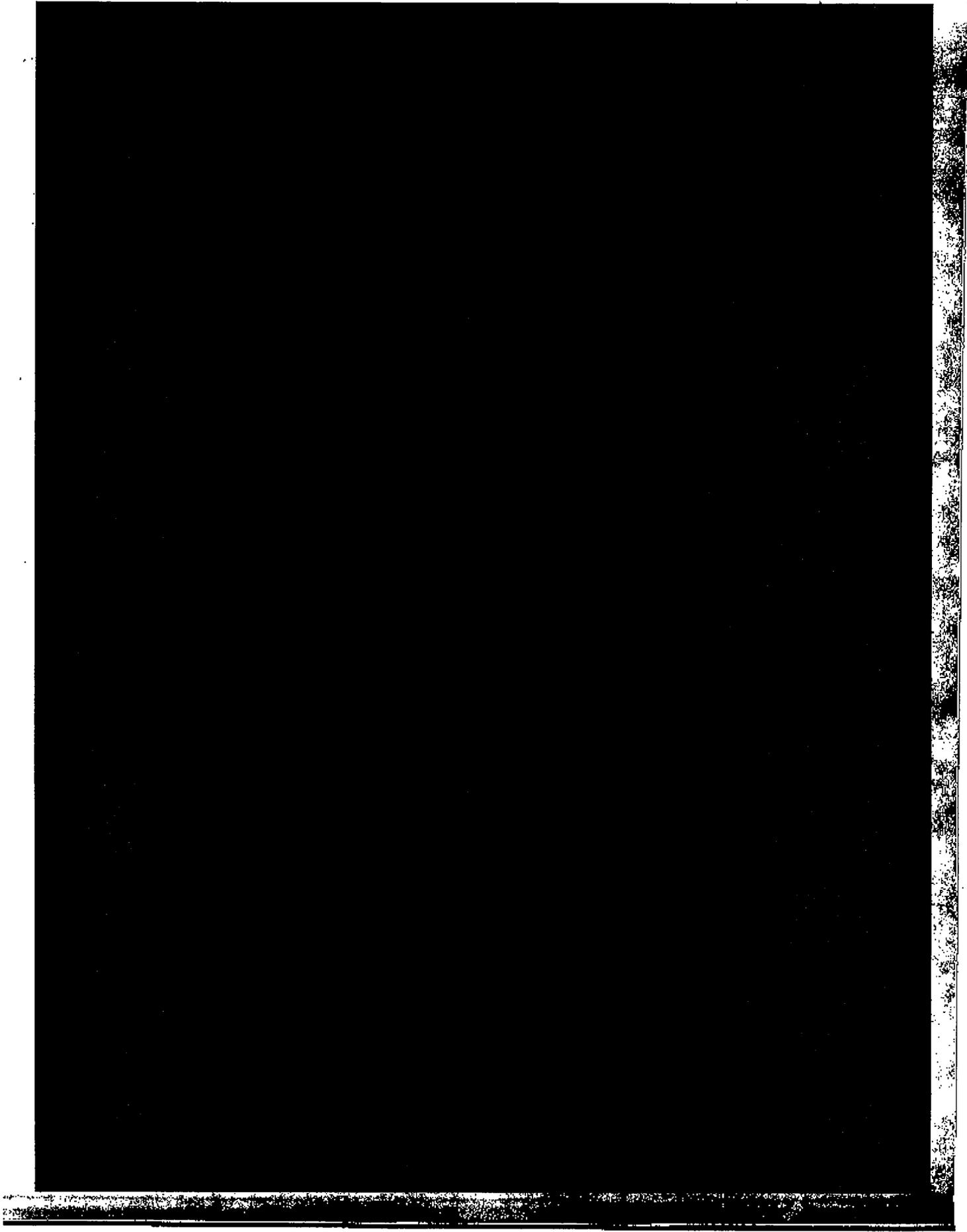


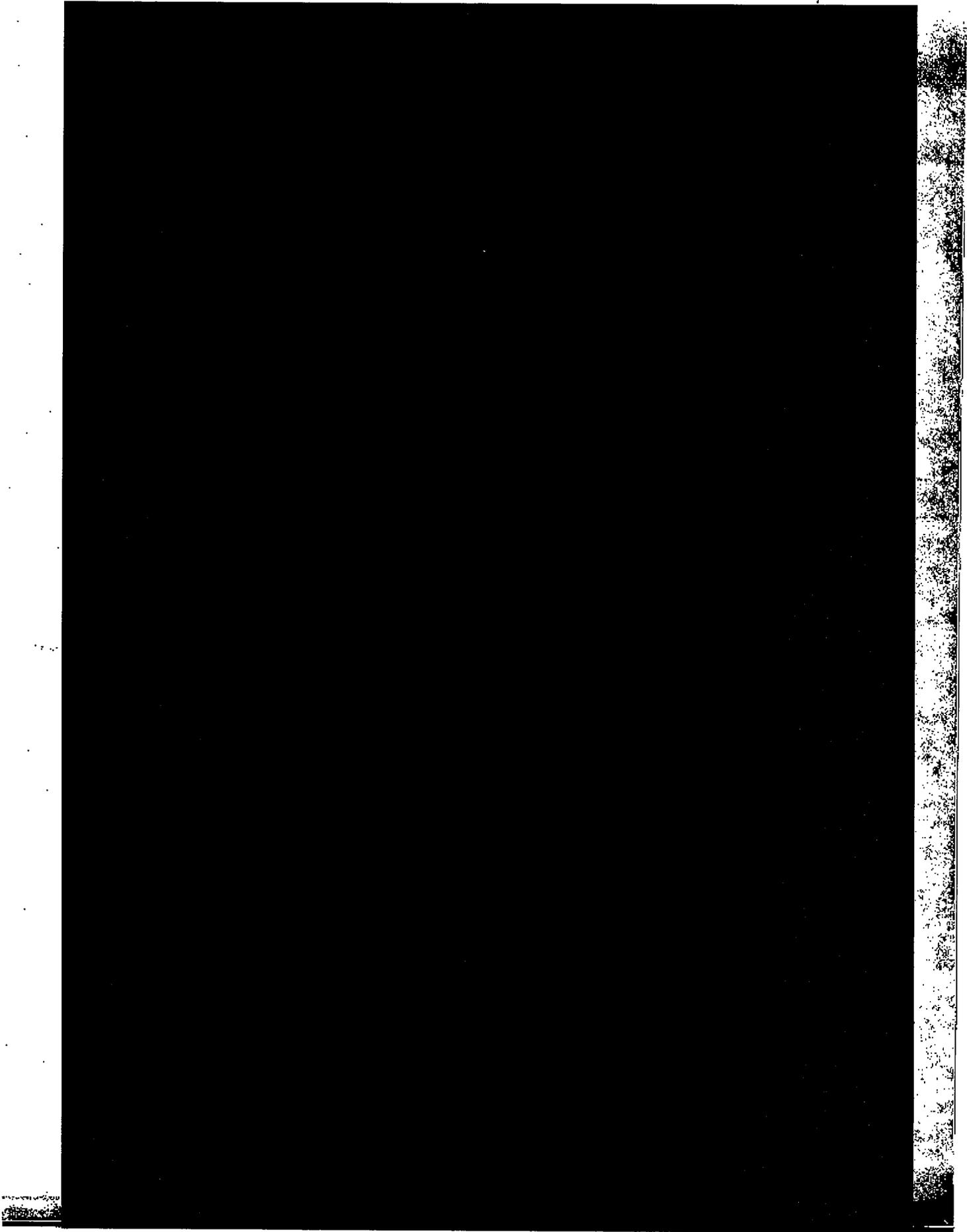


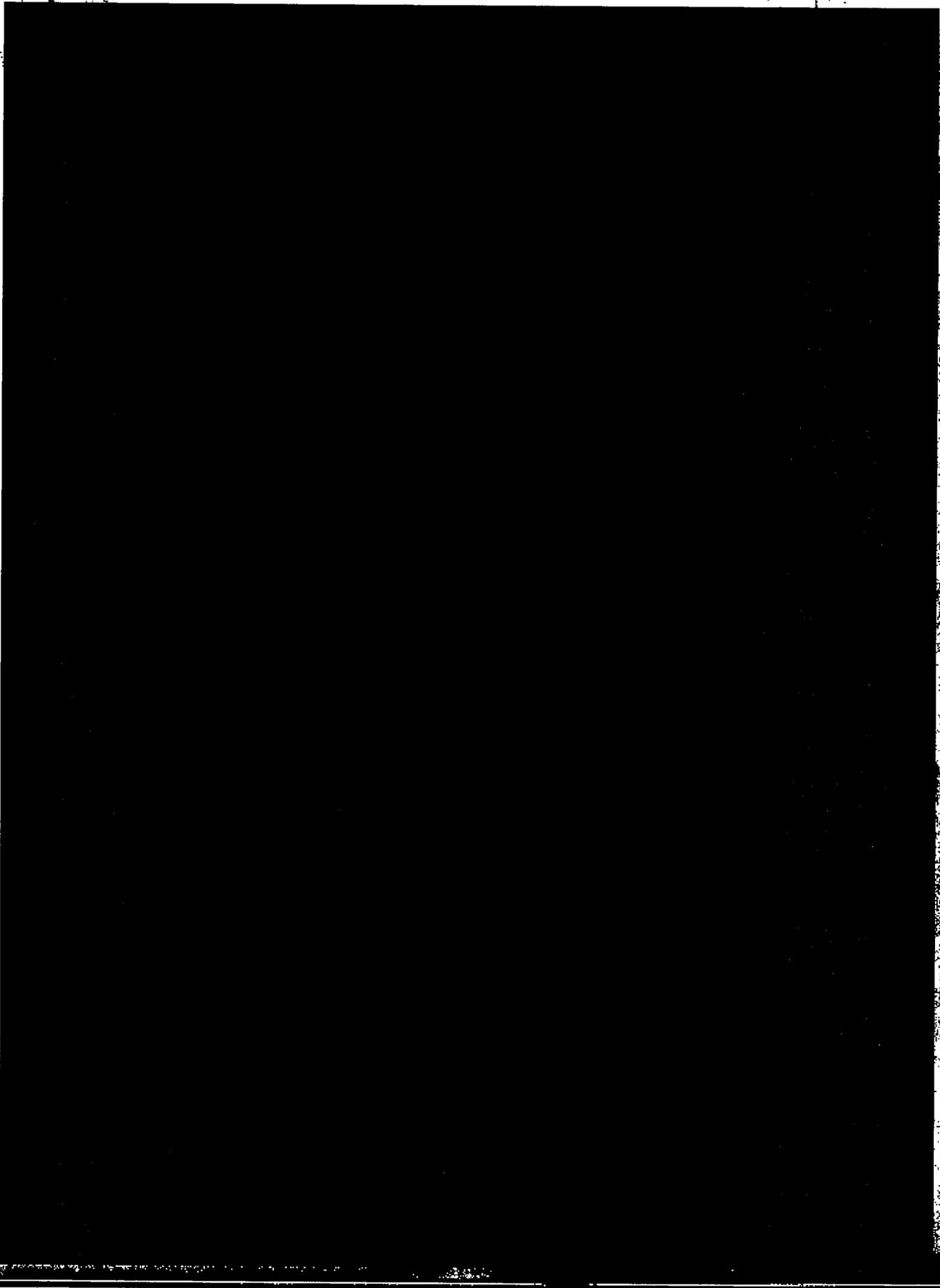


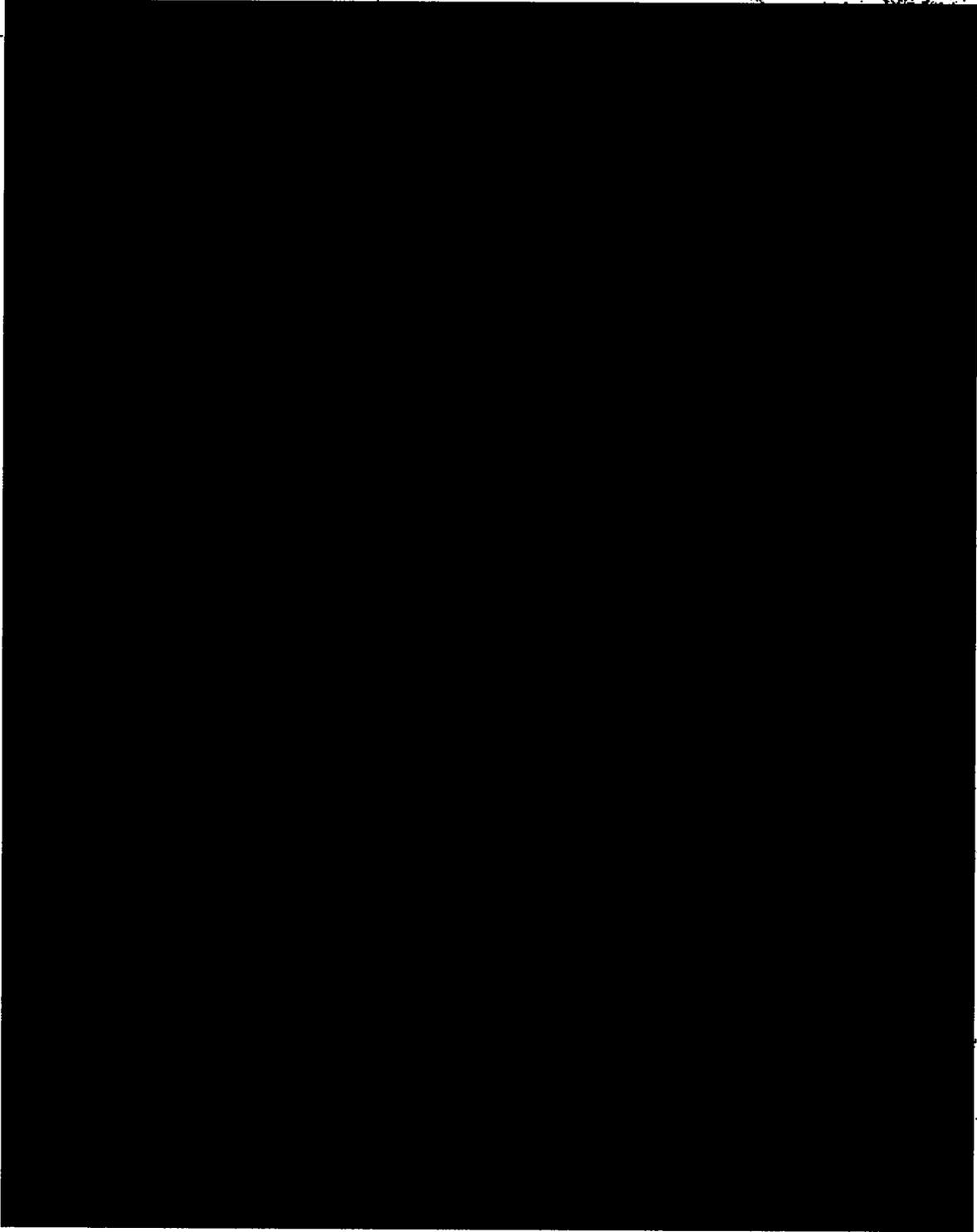


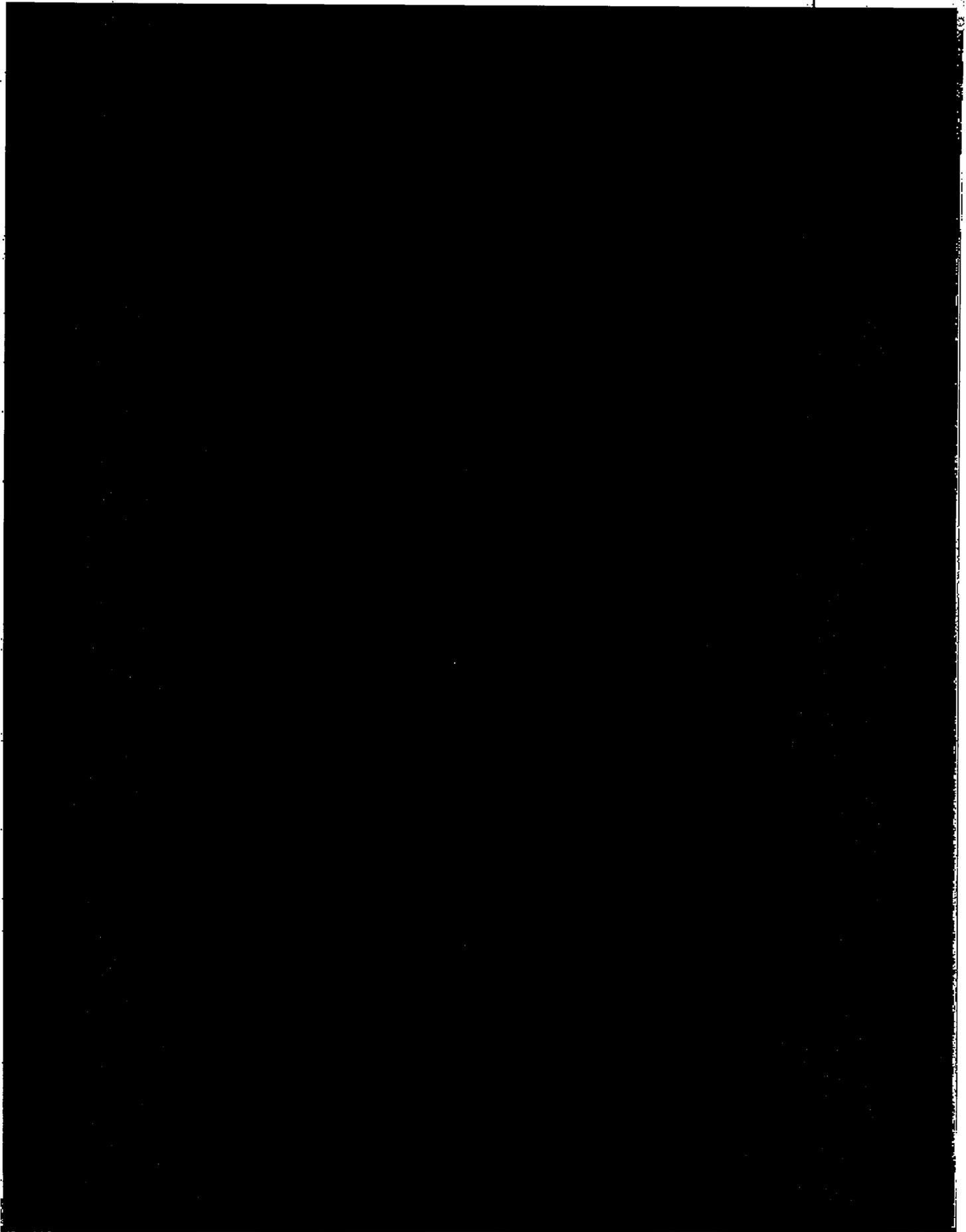


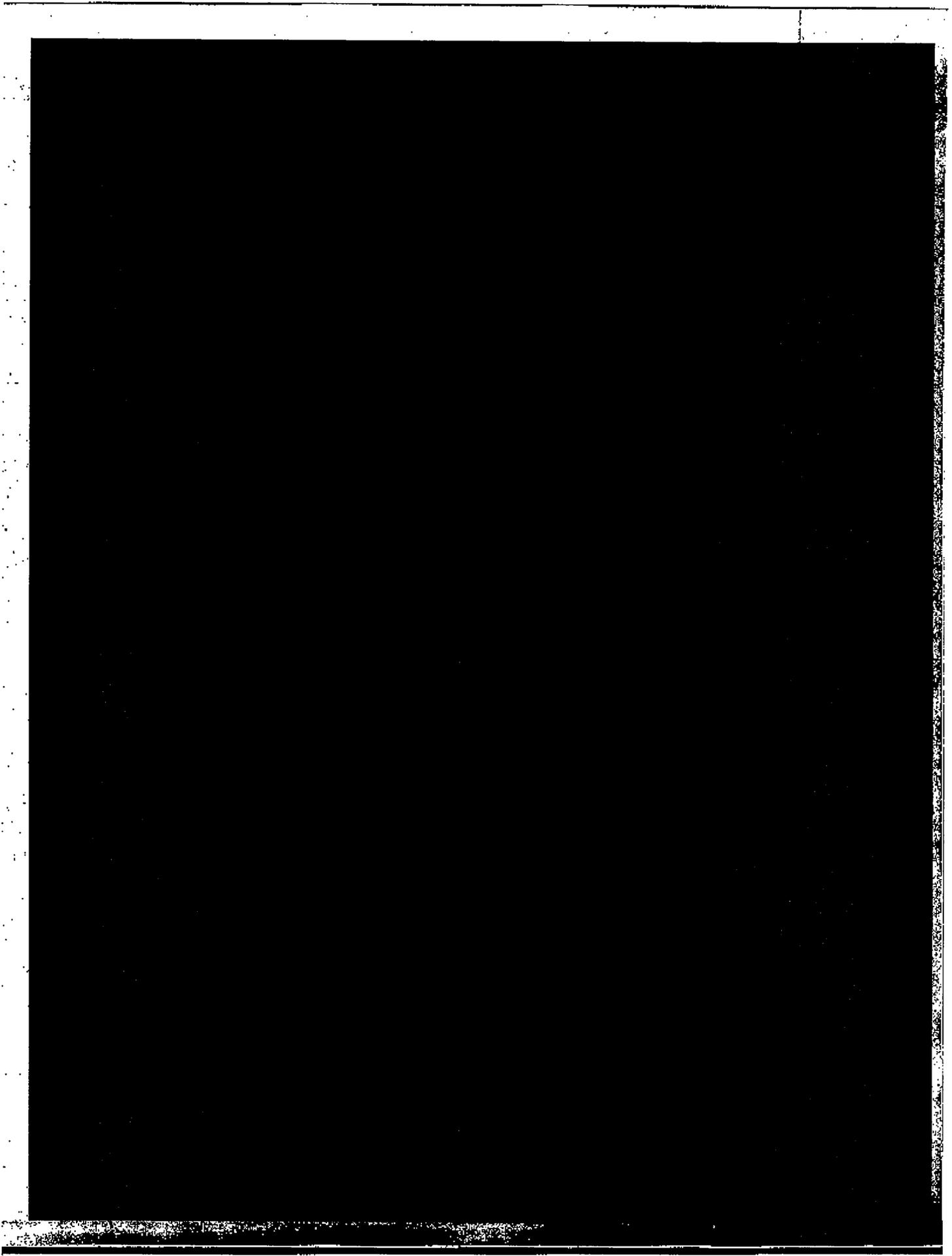


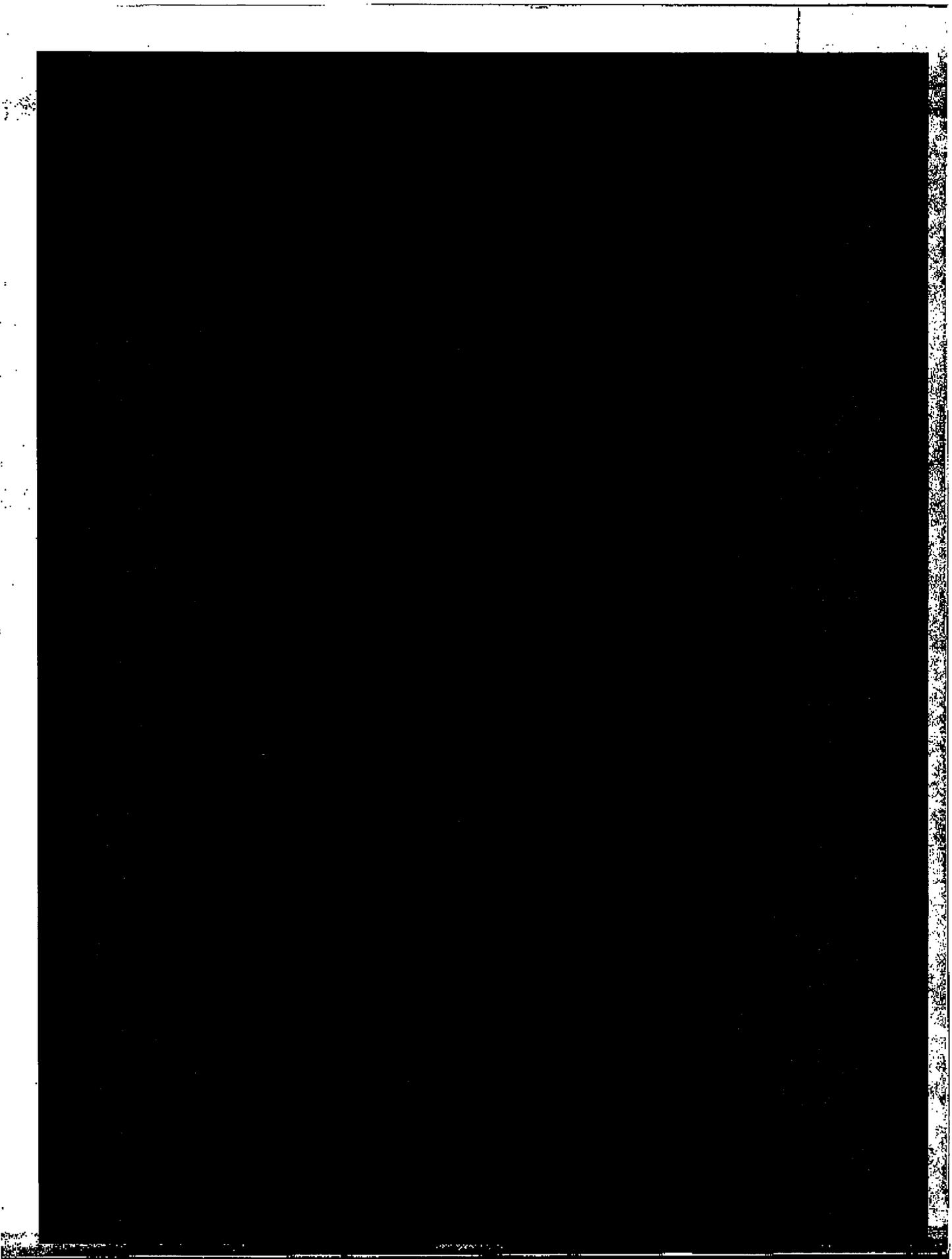


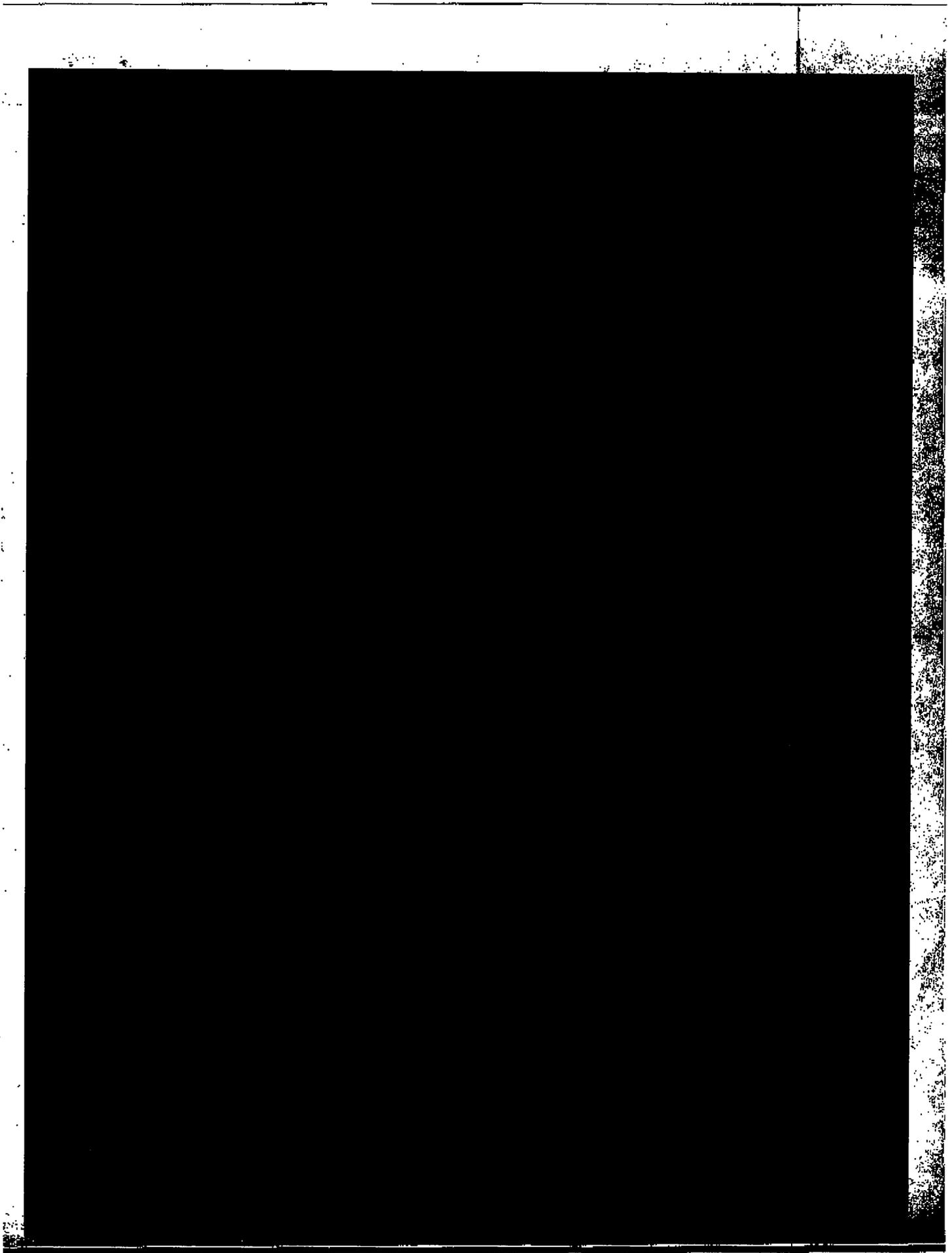


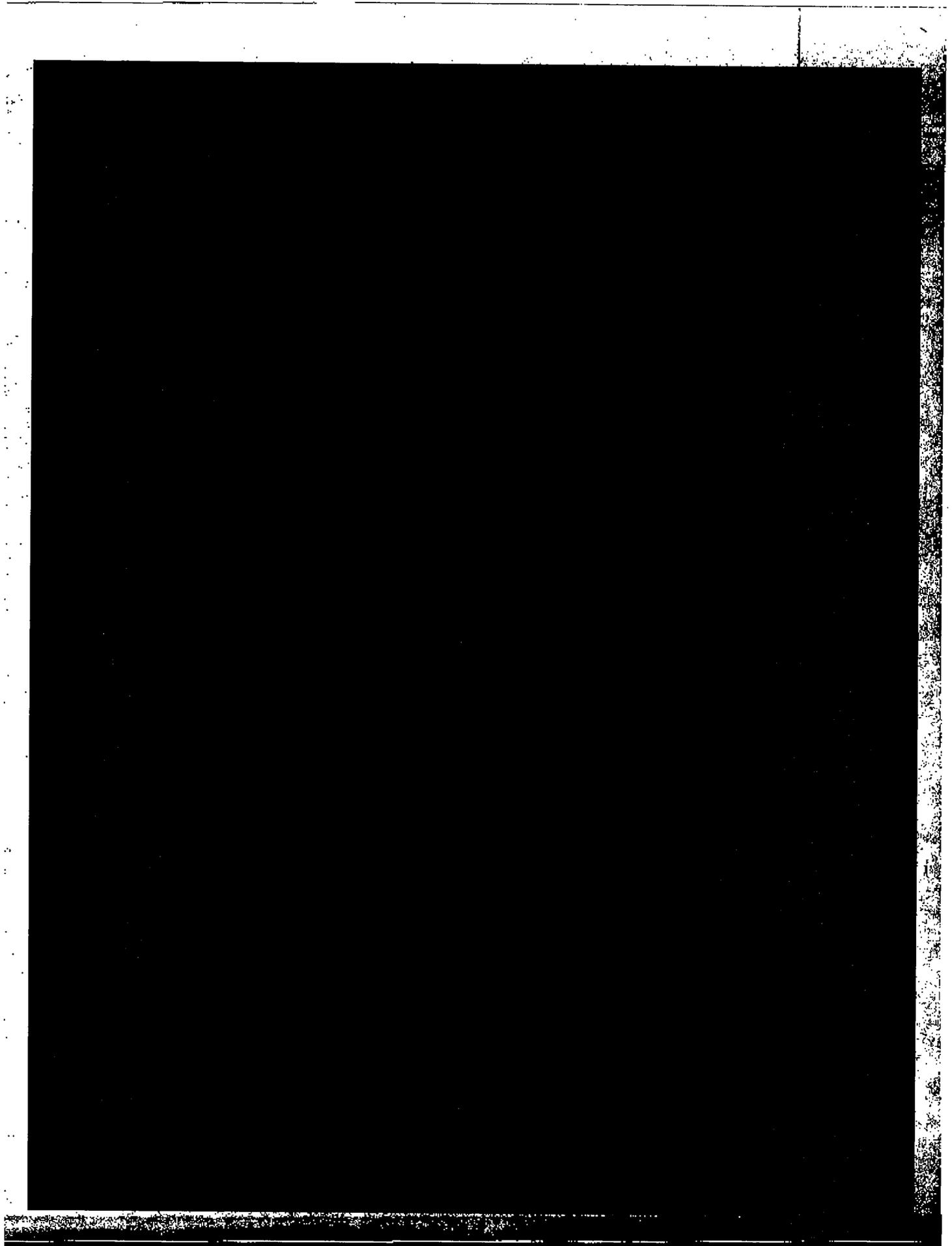












Distribution of Time Entries

