

MEMO

RE: A.B. 374

TO: STATE BAR HUMAN RIGHTS COMMITTEE

FROM: JOHN WARWICK MONTGOMERY

SUMMARY:

A.B. 374 is a wire interception bill introduced to cover intrastate electronic eavesdropping. It is patterned after federal law. The basic statute is Title III of the Omnibus Crime Control and Safe Streets Act of 1968, codified at 18 U.S.C.S. 2510-2520, which covers interstate wiretapping.

RECOMMENDATION:

Oppose the bill, but encourage its revision to eliminate the serious flaws it still has in common with Title III of the Omnibus Crime Control Act of 1968.

BACKGROUND:

In Berger v. New York (1967) 388 U.S. 41 and Katz v. United States (1967) 389 U.S. 347, the Supreme Court held that eavesdropping constituted a search and seizure and was therefore subject to the warrant requirement of the Fourth Amendment. In Berger and Katz, the Court set out what a statute authorizing eavesdropping must contain in order to pass constitutional scrutiny.

The constitutional pre-requisites identified in Berger were the following: (1) There must be probable cause to believe that a particular offense has been or is being committed; (2) the conversations to be intercepted must be particularly described; (3) the surveillance must be for a specific and limited period of time, to minimize the intrusion into privacy; (4) continuing probable cause must be shown if the warrant is to be renewed; (5) eavesdropping must terminate once the evidence sought has been seized; (6) there must be notice unless a factual showing of exigency is made; and (7) there must be a return on the warrant so that the court may supervise and restrict the use of the seized conversations. See Berger v. New York (1967) 388 U.S. 41, 54-60, 18 L.Ed. 2d 1040 87 S.Ct. 1873, conformed to 20 N.Y. 2d 801, 284 N.Y.S. 2d 456, 231 N.E.2d 132.

A.B. 374 is to authorize and provide guidelines for law enforcement officials to wiretap in conformance with constitutional standards. This bill was previously introduced in 1979 (S.B. 931). Currently the State Attorney General's Office requested this bill be drafted because California prohibits both state electronic eavesdropping and the introduction into evidence in a state proceeding of interceptions gleaned by federal agents under the federal wiretap law.



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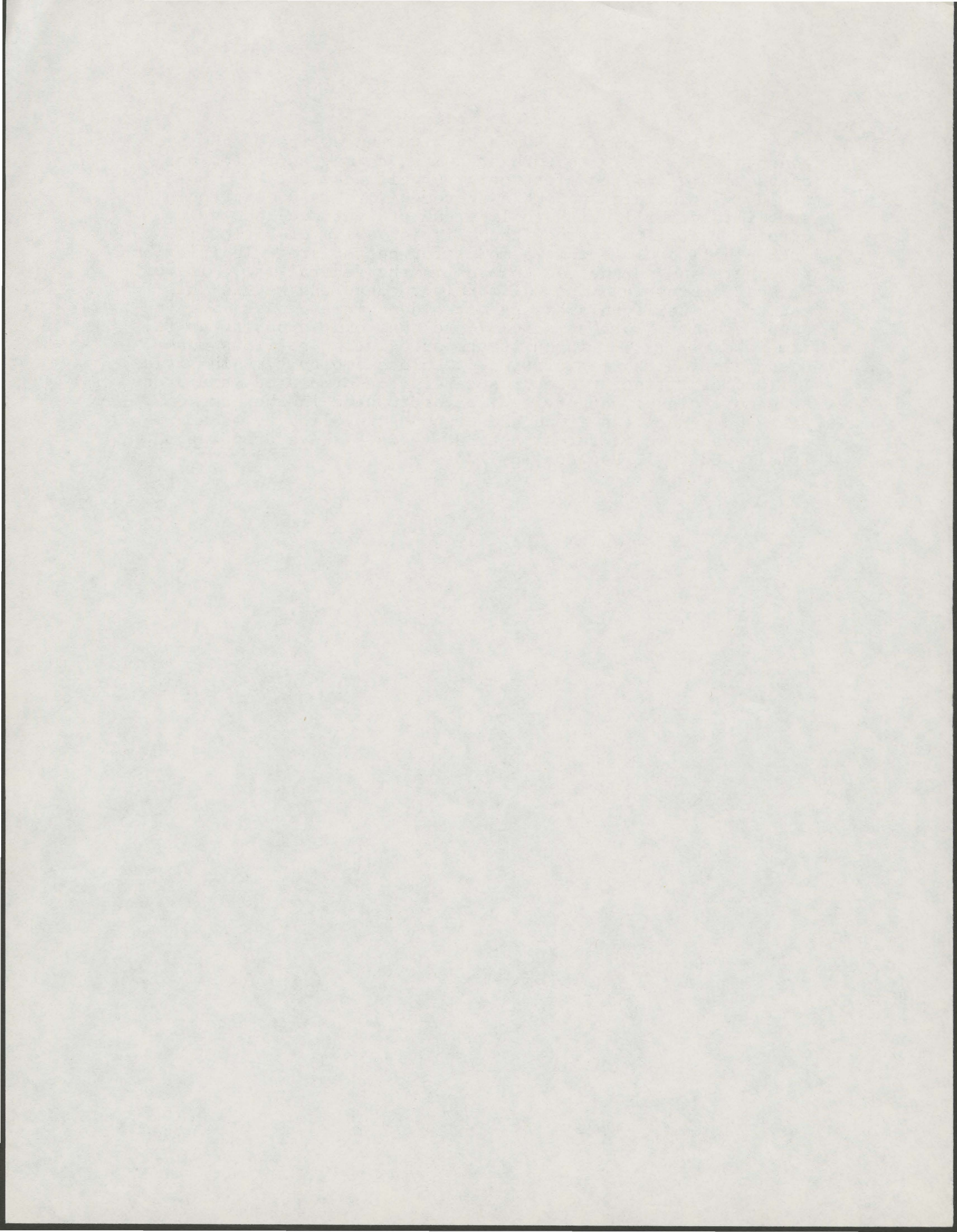
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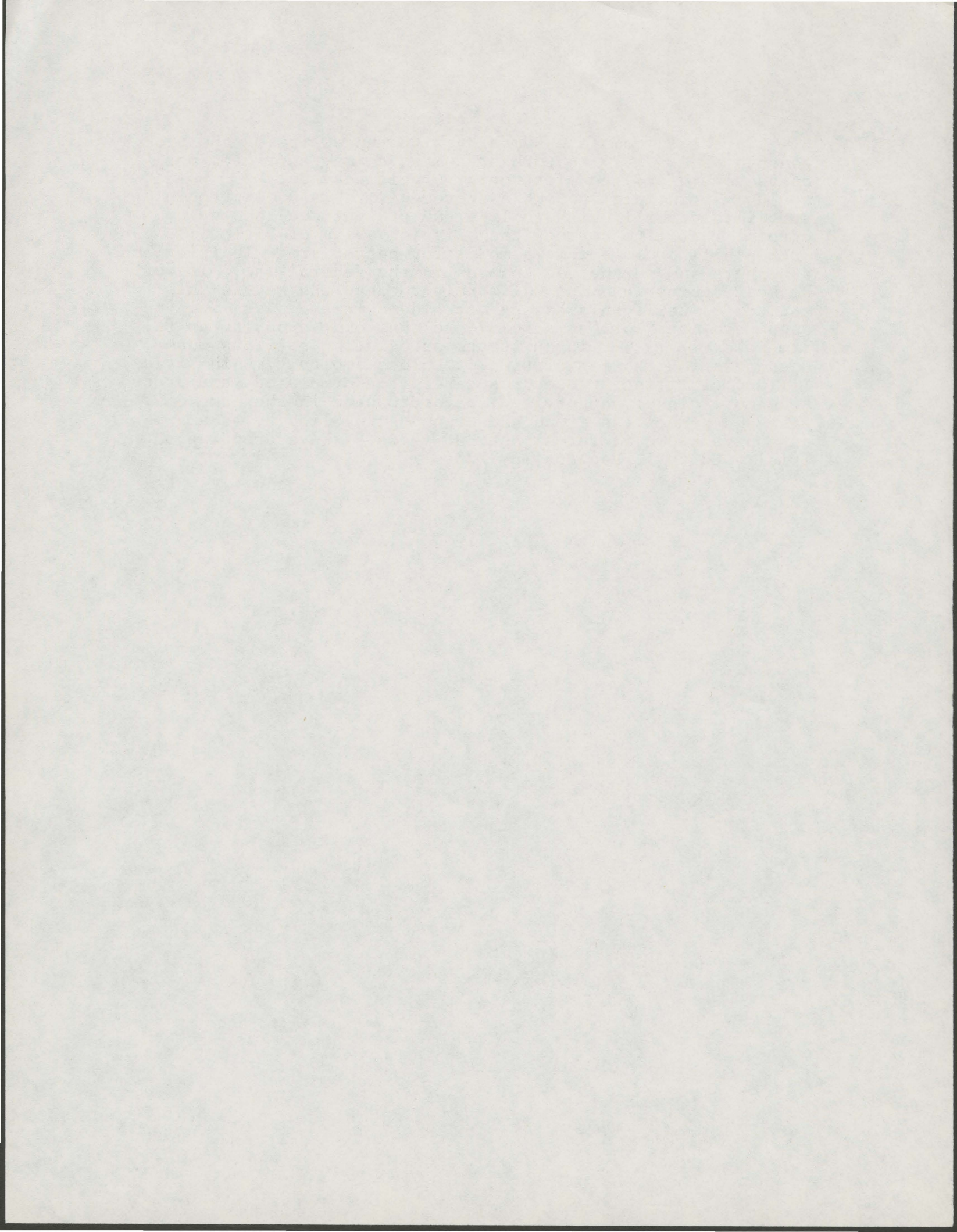
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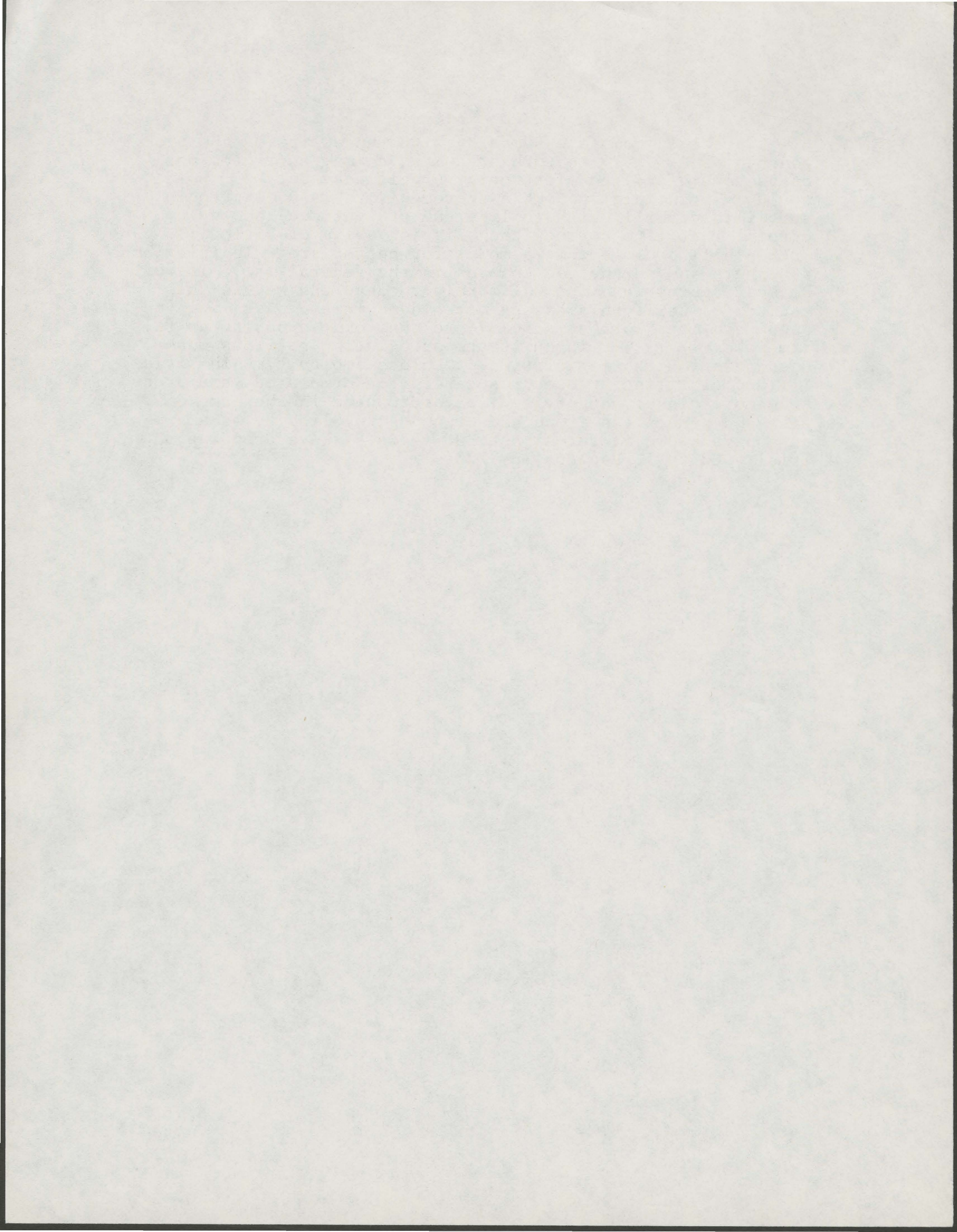
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