

## 213 HENING, WILLIAM WALLER

**Publisher**

**Richmond**

Editor and publisher in Richmond (1795-1826) of numerous legal imprints using the offices of twelve different Virginia printers, as well as four other presses in Philadelphia and New York; brother-in-law of Gerard Banks (019) and uncle of William Waller Gray (193).

Hening was a central character in the production of the printed legal record of colonial and early-Republic Virginia. As a result, he has also become an iconic figure in our time for the striking number of textual resources his meticulous labors left for modern-day historians, legal scholars, and genealogists to employ in their work.

A native of Albemarle County, Hening was the eldest child of David Hening (1731-98) and Mary Waller (1739-1806). His father arrived in Virginia as an adolescent from County Down, Ireland, settling in Culpeper County with his parents before 1755. Both of William's parents lived in nearby Stafford and Spotsylvania before his birth in 1767, so his earliest days were ones filled with family and business associations in the piedmont counties found between Charlottesville and Fredericksburg.

### **Foundations**

Hening's early adulthood matched that geography; he received a solid classical education in Albemarle, before studying for the bar at Fredericksburg, where he was licensed to practice in 1789, then in neighboring Stafford in 1790, and finally in Albemarle in 1791. In 1786, he married Agatha Banks (1766-1828), daughter of Gerard Banks Sr. (1725-1787), a justice in Stafford County and formerly coroner and sheriff there. The Banks family was a politically active one in the Rappahannock River Valley above Fredericksburg. Agatha's older brother, Henry Banks (1761-1833), represented Culpeper, Greenbrier, and then Kanawha counties in the House of Delegates, becoming a leading Republican pamphleteer in Virginia and then Kentucky; he also became Hening's principal political ally, promoting him in the Assembly when necessary. Her younger brother, Gerard Jr., was the first of her siblings involved with Hening via his administration of their father's estate; in its 1790 settlement, Hening agreed to serve as guardian for the two youngest Banks brothers, William and George; later, Gerard published essays written by Hening in the partisan journals he published after 1800. And her cousin, Linn Banks of Culpeper County (1784-1842), served as Speaker of the House of Delegates from 1817 to 1838, aiding Hening's legal publications from that elevated post.

In returning to Albemarle in 1791, Hening had set out to build a legal practice focused on real estate and probate law – typical issues for a small-town lawyer in an agrarian society. That practice brought him an early acquaintance with the county's most illustrious resident, Thomas Jefferson; though a lawyer himself, Jefferson employed local attorneys to represent him in suits over property and business transactions; Hening was one such local who served both as an advocate for and an adversary of Jefferson in these matters. One result of this proximity was that Hening was influenced by Jefferson's attitudes toward the preservation of Virginia's legal record and the consistent application of the law – concerns that became his as well, shaping the course of his professional life. Those topics also led to a thirty-year-

long correspondence with Jefferson as he advised and assisted Hening's publishing work.

The first concern that Hening addressed was the lack of a reliable manual for conducting the county court system. The most recent manual – Richard Starke's *The Office and Authority of a Justice of Peace* – had been published in 1774, supplanting a like-titled manual by George Webb published in 1736. Starke died before the work was published however, so he was unable to correct the many transcription and composition errors found in work. Moreover, Starke's manual did not reflect the changes in law and practice wrought by the Revolution. By 1792, Hening had decided to publish a new manual that corrected those errors, as well as including the alterations bred by the new state constitution and the laws enacted by that government. Yet he did not announce his intentions until early 1794, as others suggested that he defer the project until the General Assembly completed one of its irregular revisals of the state's laws (i.e. a compilation of those laws still in effect) begun in late 1792. In May 1794, Hening began circulating subscription papers for his *New Virginia Justice: Comprising the Office and Authority of a Justice of the Peace*, while he sought the best terms for its publication; his first choice was Mathew Carey, the entrepreneurial Philadelphia publisher who had access to that city's best presses; but Carey's terms were unacceptable to Hening, forcing him to turn to Richmond's printing offices; he agreed to terms offered by Thomas Nicolson (315), who then issued the new manual in mid-1795.

In his approach to this initial publication, Hening reflected a common practice of the 1790s. A risk-averse state government did not commission such advisory works, but did purchase suitable titles from publishers who accepted the risk involved in their production, as Hening had. He also evinced his preferred publishing practice with this project; he contracted a job-printing firm, and not the public printer, to produce just that one imprint on terms that he thought best rewarded him for the effort. Thus, Nicolson's 1795 printing of the *New Virginia Justice* was his only one of the manual; in 1799, Hening contracted Augustine Davis (119) to produce a second printing, evincing both the popularity of the first printing and the limited print-run that reduced Hening's financial risk initially. Unfortunately, Hening over-estimated the salability of this second printing; in early 1803, he looked to Carey to buy the remaining copies, still unbound, in order to settle his debts; Carey took just 100. It is also possible that Hening saw the eventual need for a revision of his manual, as the 1803 Assembly authorized a supplement to their 1794 Revisal, with Hening being hired to assist in its compilation.

### **Legal Scholar**

That assignment marks Hening's growing reputation as a legal scholar in Virginia. In 1794, he was named to a committee in Albemarle County charged with reconstructing "such records as had been lost or destroyed" by the British incursion there in 1781. Thus he began to acquire colonial-era legal tracts and statutes, especially those in manuscript, with an eye toward eventually publishing a comprehensive collection of the state's pre-Revolutionary laws. Such was also the goal of others, Jefferson in particular, as these laws embodied the foundations for contemporaneous legal practice. Yet his meticulous nature in pursuit of that goal set him apart from his peers, resulting in his participation in the 1803 supplement.

Hening then lived in a sizable house in Charlottesville with a practice that extended into the

surrounding counties, bringing him social and well as legal prominence. In mid-1804, Hening was elected as one of Albemarle's two delegates to the General Assembly session for the ensuing winter, serving on a committee that had oversight of the state penitentiary. He was re-elected in 1805 for the following session, but served only briefly, if at all. As that second session opened, Hening was elected to the Council of State, the advisory body that also acted on behalf of the governor, now William H. Cabell (1772-1853) of Amherst County. His election to that open-ended assignment required his regular presence in Richmond, obliging him to move his family to the state capital in mid-1806. Consequently, Hening became part of both the daily conduct of the government and the daily events in the city.

Once in Richmond, Hening began attending the sessions of the Supreme Court of Appeals of Virginia, systematically recording their decisions; in early 1807, he published a report on the cases decided in the fall of 1806 that had been appealed from Richmond's Chancery Court; his focus in doing so was on procedural issues before the court, ones that would probably alter the content of his *New Virginia Justice*. Yet that new work opened the door to a plan to publish regular reports of the appellate court's decisions, an undertaking that had been in abeyance since Daniel Call (1765-1840) abandoned his efforts in 1803. Hening had found a partner for the project in fellow councilor William Munford (1775-1825) and the pair issued their 1807 report from the Richmond press of Samuel Pleasants (331). But for the ensuing volumes, they engaged "law printers" in Philadelphia and New York, evidently dissatisfied with the quality and speed of the Pleasants volume – even as his press was then the largest such operation in Virginia. In 1808, they had the 1807 report reprinted in Philadelphia by T. Smith & J. Maxwell; but thereafter they engaged the state-of-the-art job-press of Isaac Riley (1770-1824) in Flatbush, New York, today in the Brooklyn borough of New York City; Riley issued a second edition of the original volume in 1808, then new volumes in the series in 1809, 1810, and 1811. Hening was obligated to leave the work to Munford alone after the court's 1810 sessions, as his other employments claimed more of his time; Munford issued six more volumes through 1820, when the Assembly brought an end to private publication of law reports by allowing the courts to hire full-time reporters.

In early 1807, Hening alone issued a law report on a U.S. Supreme Court decision voiding the arrest of two of Aaron Burr's co-conspirators (*Ex Parte Bollman* and *Ex Parte Swartwout* [8 U.S. 75]) in a jurisdictional ruling that presaged the procedural decisions in Burr's trial in Richmond later that year. Hening was obviously aware of partisan and professional interest in such a report. Nevertheless, Hening chose to distance himself from partisan journalism, and remained devoted to the law.

### **Legal Historian**

Hening had continued collecting colonial-era legal tracts and statutes over the preceding decade; but now his presence in Richmond allowed him to lobby delegates and councilors alike for public support for publishing them for the use of state's courts; by the end of 1806, he was telling Jefferson that he had been able to rekindle interest in such a project after two earlier attempts – ones by George Wythe in 1795 and by James Madison in 1800 – had foundered, and that he would present a petition to the Assembly at its next meeting in December 1807 seeking monetary support. Jefferson now implored his allies in the

Assembly to back Hening's plan. The legislature responded by drafting, debating, and then passing an act authorizing Hening to produce such a collection; he would provide the governor with 150 copies of each large octavo volume, not to exceed 600 pages length or \$5.00 cost per volume, at a pace of one volume per year, while retaining the right to sell further copies. Each volume would be considered the state's correct and official record once certified by at least two of the three examiners appointed by the act: Creed Taylor, a justice of the Superior Court of Chancery for Richmond; William Wirt, the former Clerk of the House of Delegates and future U.S. Attorney General; and William Munford, Hening's partner in publishing the reports of the Supreme Court of Appeals. Thus Hening was set on a path that defined the rest of his life and his posterity in February 1808. Jefferson provided Hening with access to his substantial collection of colonial statutes and decisions, as did other Virginia legal scholars, such as St. George Tucker, the one-time professor of law at the College of William & Mary, then a justice of the Supreme Court of Appeals.

By the fall of 1809, the first volume of *The Statutes at Large; being a collection of all the laws of Virginia, from the first session of the legislature, in the year 1619* was ready for the press. Hening departed from his earlier practice of contracting with one printer at a time, engaging Samuel Pleasants, the public printer, on a continuing basis; the first four volumes of the *Statutes at Large* issued from his press, though not with the speed or quality that Hening had hoped for originally. The first volume was delayed initially by a lack of suitable paper, resulting in its printing during the meeting of the Assembly in December 1809, which demanded Pleasants's immediate attention; once printed, the volume was again delayed by slow bindery work. Hening did not receive his promised compensation until April 1810; that date meant that the second volume could not be issued until 1811, which it was, if he was to receive similar compensation for it. The third volume was ready for printing in late 1812, but was not issued until February 1813, after Pleasants lost the certification document required by law, leaving Hening without compensation for 1812 and now needing to hold off publishing the fourth volume until 1814. That number would prove to be the most problematic of the Pleasants-produced volumes. The public printer died in the midst of its printing in October 1814; the press work was not completed until spring 1815, a result of settling his estate; the completed pages were shipped to Petersburg for binding, where they were destroyed in the devastating fire that leveled that port town that July; thus the fourth volume was not finally issued until after being reprinted and bound in 1816, leaving Hening uncompensated for the preceding three years.

Over this period of delay and disappointment, Hening was compelled to pursue other work that paid more regularly. With the furor generated by the Chesapeake/Leopold affair in 1807, he was detailed by Gov. Cabell to assist the office of the state's Adjutant General in mobilizing the militia; in doing so, he contracted Thomas Nicolson to publish a pamphlet of the extant laws that governed the militia and its operation. That assignment led to Hening's service as a deputy in that office alongside Claiborne Gooch (182) during the War of 1812, the same period as his forced hiatus in publishing the *Statutes at Large*. He also returned to private publishing, issuing a second edition of his *New Virginia Justice* in 1810, as well as the first volume in an encyclopedic guide to civil legal practice in 1811: *The American Pleader and Lawyer's Guide, in Commencing, Prosecuting, and Defending Actions at Common Law,*

*and Suits in Equity*. Both works were printed outside of Virginia, with the *American Pleader* issuing from Isaac Riley's press in New York and the *Virginia Justice* from the Philadelphia presses of the multi-state concern of Jacob Johnson (237) and Benjamin Warner (429), who were then conducting a bookstore in Richmond as well.

Hening also proposed publishing an American edition of the *Maxims of Equity* of British jurist Richard Francis in 1810, but that project was shelved indefinitely in December. The Clerk of the Superior Court of Chancery for Richmond died and Hening was offered the post, apparently at the recommendation of Creed Taylor. The job obliged his withdrawal from the law-reports project with Munford, but provided the steady income he needed; however, it was not enough to settle the mounting debts associated with the *Statutes at Large*.

Still, by the end of 1816, the fifth volume of the *Statutes at Large* was ready for the press despite the distractions, but Hening now lacked a willing printer following Pleasants's death, and he would not contract another until 1818. In 1816, the Assembly authorized a project to codify Virginia's laws, so removing the need for the irregular revisals of the past; again, Hening was asked to assist the process. In combination with his clerical duties, he evidently found little time for additional work and set the *Statutes* aside temporarily; later that year, Jefferson suggested that Hening extend the scope of the *Statutes* project from a previously agreed ending with the 1789 Assembly to one that included the acts of the most recent session; Hening politely rebuffed his suggestion, citing the burden of his current work, the existence of printed session laws from 1789 onward, and the still-uncertain results of the codification effort. Nevertheless, by late 1817 Hening was feeling pressure to complete the *Statutes* project, which should have resulted in nine volumes by then, but which had seen only four published. He now turned to family to help move publication forward. In 1818 he engaged the Richmond press of William Waller Gray, the son of his only sister; yet the project was again delayed by a missing authentication certificate, lost among the papers of the Pleasants estate, forcing a second review of the printed text; thus volume five did not actually issue until 1819.

That same year, Hening's friends and supporters in the Assembly proposed legislation that increased the number of copies of each volume of the *Statutes* that the state bought from 150 to 800 and removed the original one-volume-per-year compensation restriction. As a result, the remaining eight volumes were published in the ensuing four years. However by increasing the state's purchasing count, legislators had created the probability of sets of the work lacking the first four volumes. So Hening presented an offer to the 1821-22 Assembly to provide an additional 650 copies of the missing volumes at a reduced per volume price; the Assembly promptly agreed, hoping to bring the project to an end.

To attain the needed pace, Hening engaged a variety of printers, both in Richmond and elsewhere. Gray was contracted to publish volumes five and six, as well as reprinting the ill-fated volume four; when Gray retired from printing in 1820, Hening gave George Cochran (096), a Richmond job-printer transplanted from Philadelphia, the following five volumes (eight through twelve); Cochran fulfilled the contract in just three years. To complete the project, Hening contracted two new printers in 1822. He assigned the reprinting of the first two volumes of the *Statutes* to the New York City firm of R. & W. & G. Bartow; one partner

in that firm was William A. Bartow (026), who had conducted a bookstore in Richmond from 1816 to 1821 as a branch of the family concern, and so was someone well-known to Hening. The last part of the project went to Thomas DeSilver of Philadelphia, who produced volume thirteen, the last volume of the *Statutes*, as well as the reprinting of the third volume, in about six months in 1823. In the end, Hening's endeavor lasted just two years longer than was initially anticipated, though that completion required the influx of revenue generated by the revised agreements with the Assembly.

### **Master of Procedure**

The rapid conclusion of publication of the *Statutes at Large* shows just how much the one-volume-per-year restriction had slowed production. Hening was working far ahead of the volume currently in press throughout the life of the project. So by 1820, he could consider other publishing projects, even as the printers now issued multiple volumes each year – six in the final year of 1823. In 1820, Hening published a heavily revised third edition of his *New Virginia Justice*, incorporating changes bred by the Revised Code of 1819. Then in 1821, he petitioned the Assembly for support of a new project that would reprint the journals of the Revolutionary-era Conventions and Assemblies as an addendum to the *Statutes at Large*; that petition went unanswered, as the cost of the unfinished *Statutes* grew; eventually, the Assembly would undertake such a project in the mid-1830s, after Hening's death.

With the final volumes of the *Statutes* in press in 1823, he returned to his long deferred plan to publish American editions of English standards on chancery and equity law. His new edition of the *Maxims of Equity* of Richard Francis issued from the Richmond press of Samuel Shepherd (379) and William Pollard (336); he followed that by publishing two other standards in 1824 – William Noy's *Principal Grounds and Maxims* and Thomas Branch's *Principia Legis Et Aequitatis (Principals of Law at Equity)* – from the job-press of Thomas Willis White (442), later publisher of the *Southern Literary Messenger*. But these three titles proved to be the last that brought Hening either profit or acclaim.

In 1825, he contracted Shepherd & Pollard to print a fourth edition of his popular county-court manual, now called simply *The Virginia Justice*; he then engaged Richmond bookseller Peter Cottom (107) as its primary distributor. Unfortunately for Hening, Cottom swindled him by keeping the proceeds of the manual's government sales for himself, rather than delivering them to Hening as previously agreed; when he objected, Hening found himself under attack from Thomas Ritchie in the *Enquirer* for claiming proceeds that were not his, reporting that Cottom had acquired all rights to Hening's work. Incensed, Hening published a pamphlet through White's press detailing the entire affair – *A View of the Conduct of the Executive of Virginia, in ... Execution of the Act ... "Making Provision for Furnishing the Magistrates of This Commonwealth with Hening's Virginia Justice"*; the demand for his diatribe required a second printing within a month. Ritchie was portrayed as the primary villain in the affair for presenting the governor a redacted copy of the agreement between Cottom and Hening that excluded the author from the proceeds of his work. As a result, Ritchie launched an ongoing campaign impugning Hening for the next two years. In June 1826, he went so far as filing a felony-theft complaint against Hening with a Richmond grand jury over a \$21 bookkeeping error in an outstanding account between the two men; the case

was dropped when Hening published the full record of their transactions in the *Richmond Whig* of John Hampden Pleasants (330), demonstrating the pettiness of Ritchie's complaint. In 1827, Ritchie attempted to force Hening's removal as the Chancery Court's clerk after having posted an insufficient bond for the post; that controversy passed quickly away as well, when the justices allowed their clerk to post proper security. However, Hening never received any compensation from Cottom for the appropriation of his rightful earnings.

Neither was Hening's financial situation improved by sales of the *Statutes at Large*; the 800 copy purchase commitment made by the Commonwealth more than filled the needs of the state's various courts, leaving the Executive with surplus copies; an attempt was made to sell those copies to fund a new state library (today the Library of Virginia), but no buyers could be found, nor could any bookseller be convinced to trade for them with more salable works. This saturation of the market for the *Statutes* meant that Hening could not sell his copies either, and so finally profit from the endeavor. So it is no surprise that he brought his long-delayed *American Pleader* project to an abrupt end in 1826 after just a second volume. After 1818, the financially distressed Hening sold off parcels of his Richmond property on G Street (today Marshall Street) to pay his debts before being finally compelled to move to a smaller house on H Street (today Broad Street) in 1826. Hening died in that house on April 1, 1828, while still serving as Clerk of the Chancery Court; remarkably, his cherished wife Agatha followed him to the grave just ten days later. Both were buried in the Shockoe Hill Cemetery that holds the mortal remains of so many of their contemporaries.

### **Legacy**

The *Statutes at Large* lived on after Hening. In 1834 and 1835, the Assembly commissioned Samuel Shepherd to compile and publish a three-volume continuation of the *Statutes* that brought the record of the laws of early Virginia up to 1806. Shepherd also published the law reports compiled by the noted court reporters Benjamin Watkins Leigh, Conway Robinson, and Peachey Ridgway Grattin, among others. Meanwhile, the Assembly hired Thomas Willis White to print new editions of the Revolutionary-era journals that Hening had proposed republishing in 1821. In both printers' subsequent work, Hening's legacy was consolidated, even as the man himself soon passed from memory, taking the complex story of his life and work with him.

**NB:** Dates covered by volumes of the *Statutes at Large* are: I (1619-1669); II (1660-1682); III (1682-1710); IV (1711-1736); V (1738-1748); VI (1748-1755); VII (1756-1763); VIII (1764-1773); IX (1775-1778); X (1779-1781); XI (1782-1785); XII (1785-1788); XIII (1789-1792).

### ***Personal Data***

Born:	In	1767	Albemarle County, Virginia.
Married:	In	1786	Agatha Banks @ Stafford County, Virginia
Died:	April 1	1828	Richmond, Virginia

Children: Maria (b. ca. 1788); William Henry (b. 1791); Anna Matilda (b. 1793);  
Martha Bruce (b. 1801); Virginia (b. 1803); Edmund Waller (b. 1810).

Sources: This entry based largely on an excellent, though still unpublished biography and publishing history of Hening provided by R. Neil Hening of Richmond, which also informs the entries on Banks and Gray; other data from Woods, *Albemarle County*; *William and Mary Quarterly* (1942); *Tyler's Quarterly* (1934); and many contemporaneous newspaper articles.

Thanks are due to Mr. Hening for the gracious loan of his genealogical notes and manuscript.