

1984

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Recommended Citation

W. Hamilton Bryson & E. Lee Shepard, *The Virginia Bar, 1870-1900*, in *The New High Priests: Lawyers in Post-Civil War America*, 171-185 (1984).

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W. HAMILTON BRYSON AND E. LEE SHEPARD

The Virginia Bar, 1870-1900

An essay on the Virginia bar from 1870 to 1900 must begin with a definition of a Virginia attorney-at-law. In 1870 and for the next twenty-five years, a Virginia lawyer was "any person" over the age of twenty-one of "honest demeanor" who had been examined for fitness and licensed to practice law by any two judges of Virginia courts of record. Having been licensed, each attorney must have then "qualified" to practice in each court in which he wished to appear. This was done by swearing in that court to demean himself honestly in the practice of law and to support the Commonwealth.¹

No one could quarrel with the theory of licensing lawyers in nineteenth-century Virginia. In practice, however, there was a seriously weak link in the chain that was to ensure competent and moral legal advice to the general public. This weak link was the examination by the judges of the applicant for the license to practice law. Sometimes there was a serious questioning and probing of the applicant's knowledge of legal theory and doctrine, but as often as not the examination was less than superficial. There can not possibly have been any uniformity of procedures or standards from county to county. Some judges were easier than others. Some were reluctant to be strict with their neighbors' sons. Some believed that anyone who could get clients should have the right to practice law and would therefore sign licenses without any examination at all.² Moreover, judicial courtesy required the second judge to sign the license without any further examination. One attorney, B. B. Munford, recalled being examined by two judges, but the examination was not difficult.³ H. R. Pollard, who presented himself for examination in 1867, was not questioned at all when he produced his law school diploma.⁴

One of the original stated goals of the Virginia State Bar Association, which was founded in 1888, was to require higher qualifications for the admission to practice law in Virginia. The standing Committee on Legal Education and Admission to the Bar was erected at the first meeting of the association. It was

noted that "the tests prescribed for determining fitness for admission to the bar in Virginia are a mocking farce." The committee was therefore directed to draft an act making the examination for admission to the bar a meaningful experience.⁵

The draft act, which required a bar examination to be conducted by three attorneys who were to be appointed by the local circuit judge, was presented to the General Assembly, but it was defeated. The reason for the failure of the bill seems to have been a feeling that anyone who could get clients should have the right to practice law.⁶ This philosophy was directly counter to that of the association, which was trying to raise the level of professional excellence by excluding those who lacked knowledge or intelligence or integrity.

In 1895, the Committee on Legal Education and Admission to the Bar presented to the Virginia State Bar Association two proposed bills: The first would set up boards of bar examiners; the second would transfer the examination of applicants from the circuit judges to the justices of the Supreme Court of Appeals. Although the committee favored the first, the association voted to recommend the second.⁷ In 1896, the General Assembly finally acted and passed a bill requiring the Supreme Court of Appeals to license future members of the Virginia bar after an examination pursuant to regulations to be promulgated.⁸ Rules for a written bar examination were promptly published,⁹ and the first bar exam was given on January 8, 1897.¹⁰ In 1910, the Virginia Board of Bar Examiners was created to relieve the court of this time-consuming administrative responsibility.¹¹

This is enough on the subject of who could practice law. Let us now turn to the subject of who did practice in Virginia. In 1870, Virginia was restored to democratic and constitutional government when the new state constitution came into force and the military government was withdrawn. The subsequent moderation in Virginia politics can be explained by the fact that Virginia was relieved of radical misrule sooner than most of the southern states.

The bar of Virginia in 1870 was dominated by former Confederate officers.¹² These men used their military titles for the rest of their lives, which must have seemed strange to the northerners who considered themselves the victors in the struggle for national unity. It might seem strange also to mention this here, but it helps to explain the character of both the South in general and of the Virginia bar in particular. The Virginia bar in the 1870s, certainly its leaders, were men trained in leadership, taught courage on the battlefield, and matured by adversity. Defeat one day did not deter them from renewed battle the next, whether on the battlefield or in the courtroom. They had been reared before the war in a tradition of personal honesty and strict integrity. During the last third of the nineteenth century, Virginians were generally excluded from the national legal scene,¹³ but within the Commonwealth reputations were to be made.

That Virginia had suffered economic disaster by the defeat of the Confederacy has never been contested. The value of real and personal estates as reported in the 1870 United States Census had declined a significant 48.3 percent from 1860, and was down from that of 1850 as well, indicating the magnitude of Virginia's depression. The number of improved acres of land in farms dropped by more

than 3 million. Although the number of manufacturing establishments had increased by about 600 from 1860 (5,385 to 5,933), the amount of capital available for improvement and production had plummeted and the dollar value of products had likewise declined. The loss of the real and personal property and industry in the fifty counties now forming West Virginia had accounted for a percentage of this decline, but only for a part. In comparison with many northern states, which, despite the war, had continued to grow in wealth and productivity, Virginia's predicament stands out clearly. It did, however, fare better than some of the other Confederate states.¹⁴

Nonetheless, the bar was beginning to rebuild by 1870 and return to its former position of economic and professional ascendancy. The United States Census for that year listed 1,075 resident attorneys in Virginia, down substantially from the number listed in 1860, but still a respectable figure.¹⁵ Farmers, physicians, merchants, teachers, and even clergymen outranked attorneys in number, but not in either earning potential or community standing.

As Virginia gradually recovered from the effects of the Civil War, the Commonwealth began to grow and prosper. Virginia's overall population increased at ten-year increments of approximately 15 percent, from 1,225,163 in 1870 to 1,854,184 in 1900. During the same thirty years, capital available for investment and production rose by a respectable 244.8 percent (to nearly \$104 million), and the dollar value of industrial products grew by 155.2 percent (to over \$132 million). The number of acres of improved farmland in the Commonwealth multiplied, as did the average dollar value per acre of farmland, which climbed from \$13.56 in 1870 to \$16.25 by 1900. Virginia's economy remained, in comparison with that of many other states, primarily agricultural.¹⁶

By 1880, 1,355 lawyers resided in Virginia, the vast majority of whom were native-born and below the age of sixty. At that time, they represented 2.1 percent of the total number of practicing attorneys listed for the states and territories in the federal census.¹⁷ The 1890 census listed 1,649 males as resident attorneys, 38 of whom were nonwhite.¹⁸ By 1900, the profession in Virginia had grown to 2,032.¹⁹ Not surprisingly, the greatest number of attorneys were concentrated in the Commonwealth's urban centers: Richmond, Norfolk, Petersburg, and Lynchburg.²⁰

Virginia's first black attorney probably was Robert Peel Brooks, who was admitted to practice in Henrico County and Richmond in January 1876.²¹ He was joined the next year by Henry B. Fry and William C. Roane. Roane, a well-educated former schoolteacher, remained in practice for some years. In 1880, E. A. Randolph received his LL.B. from Yale Law School and commenced practice in Richmond.²² Other prominent black members of the Virginia bar in the nineteenth century were Giles B. Jackson, James H. Hayes, and Charles F. Whittle. By the last decade of the century, a number of blacks were successfully practicing in the Commonwealth; most were situated in the state's major urban centers.²³

Before 1920, there were no women licensed to practice in the state. Although

the statutes regulating admission to the bar before 1895 stated that "any person" could be licensed,²⁴ public sentiment in Virginia at that time opposed the idea of female lawyers.²⁵ In the early 1890s, Belva Lockwood, the nationally known feminist, attempted to join the Virginia bar, but her application was refused because she was a woman. The United States Supreme Court in 1894 upheld the Virginia court's ruling that construed the statute to exclude women, and the federal court declared that the right to practice law is not a privilege or immunity of a citizen of the United States.²⁶ The next year, the Virginia statute was amended to permit "any male citizen" to be licensed to practice law.²⁷

In 1920, the statute was changed to allow women to practice at the bar.²⁸ That same year, three women were admitted to the University of Virginia School of Law; two of them, Rosemary Davis of Norfolk and Elizabeth H. Tompkins of Richmond, passed the bar examination and were licensed in 1922.²⁹

The nature of legal practice began to change in the last third of the nineteenth century, and the divergence between "country lawyers" and those who practiced in Virginia's urban centers became more pronounced. In the immediate postwar years, most attorneys practicing in the county and circuit courts of the Old Dominion found, because of the economics of the times, that they had to supplement the income they derived from their law practices. A prominent King William County attorney spent nearly as much of his time in the fields as he did in the courtroom, and a Caroline County practitioner taught school until his financial picture brightened.³⁰ Likewise, lawyers found a need to accept all kinds of cases; specialization was not possible. "In those days," wrote John S. Wise, "the lawyer took whatever grist came to his mill." Equity or common law, civil litigation or criminal defense, debt collection or probate, the practitioner of necessity had "to enter upon the whole of his miscellaneous practice."³¹ Partnerships, too, offered aid. Based not on specialization but on the sharing of business, these arrangements provided an access to the law to hungry young attorneys. In one partnership in rural Pittsylvania County for which information survives, the senior member of the firm attended the circuit (superior) courts in his home and surrounding counties, and the Court of Appeals in Richmond, and the junior member practiced in the county (inferior) courts and staffed the office to accept and advise clients.³²

Of great assistance to Virginia attorneys were the opportunities offered to them by business and industry. A country lawyer would count himself fortunate, as did William R. Aylett of King William County, to receive retainers from the Southern Mutual Insurance Company or the Richmond banking and investment firm of Thomas Branch and Company.³³ But the most beneficial connection of all was that with one of the numerous companies involved in the burgeoning railroad development of the Upper South. With such patronage, a practitioner could quickly move up the economic ladder and secure his fortune.³⁴ For urban practitioners, the offers of positions as agents for or counsel to large corporations doing business in Virginia became more abundant as the century drew to a close. Along with the greater availability of lawyers in the cities, this allowed, in fact

encouraged, specialization among the urban bar, who, like their brothers in the country, had traditionally accepted a caseload of a wide variety of civil and criminal litigation.

In the period 1870 to 1900, most Virginia lawyers, both city and country attorneys, followed their calling as sole practitioners. Before 1870, and after, there were a few partnerships of two lawyers working together; more often than not, they would have resulted from a close family relationship. As the century drew to a close, however, the professional advantages of partnerships became more obvious; they afforded the opportunity to specialize, to acquire an expertise in some one branch of the law. In 1900, there were many two-man law firms, and there was one three-man firm in Richmond. The dawn of the present era broke in 1901 with the formation of the firm of Munford, Hunton, Williams, and Anderson (today known as Hunton and Williams). The four gentlemen were among the leading practitioners of the state, and they combined their efforts to form an organization that could offer expert legal services in all fields of the law along the lines of the large New York City law firms.³⁵

The bar of Virginia during the last third of the nineteenth century attracted many talented men, and several of them earned national reputations as legal advocates and scholars. Having discussed the Virginia bar as a group, we now pause to consider some of its more outstanding individual members.

The leader of the Virginia bar during the first ten years of the period under discussion, 1870 to 1880, was William Green. Green was an excellent practitioner and a deeply learned legal scholar. He was one of the three original law professors of the University of Richmond in 1870 and gave the opening address of the law school. He was prevailed upon to supply the lead article which initiated the *Virginia Law Journal* in 1877. In addition to serving as chairman of the executive committee of the Virginia Historical Society, William Green supplied much of the scholarship behind J. W. Wallace's *Reporters*, which was appropriately dedicated to Green. Green, who had established his reputation as a lawyer before the War Between the States, lived on until 1880 to inspire a younger generation with a love of legal scholarship.³⁶

Conway Robinson, who died in 1884, was of equal stature. He was admitted to the bar in Richmond in 1827 and rapidly rose in prominence as an advocate. In the 1830s he published a three-volume practice manual for Virginia lawyers; it was an excellent and much-needed work and assured his reputation. In this decade, he served as president and general counsel of the Richmond, Fredericksburg, and Potomac Railroad and was one of the founders of the Virginia Historical Society. His law practice and writing increased to the point that he moved in 1858 to Washington, D.C., in order to be closer to the United States Supreme Court and the Library of Congress. He maintained an office in Richmond, however, since he continued to appear before the Virginia Court of Appeals. His major work was his seven-volume *Practice in the Courts of Justice in England and the United States, 1854-1874*; this work was well received and used on both sides of the Atlantic Ocean.³⁷

John Randolph Tucker (1823–1897) achieved as much prominence in his lifetime as his father, Henry St. George Tucker (1780–1848), and his grandfather, St. George Tucker (1752–1827), had in theirs. Ran Tucker made his mark as a practicing attorney, attorney general of Virginia from 1857 to 1865, law professor and then dean at Washington and Lee University, member of Congress from 1875 to 1886, and a legal scholar. He was president of the American Bar Association in 1892.³⁸ He had a delightful sense of humor that, coupled with his legal erudition, made him a popular speaker at bar association meetings throughout the nation.³⁹

The most famous of all Virginia law professors was John B. Minor, who taught at the University of Virginia for fifty years before his death in 1895. Old John B., as he was affectionately referred to by his students, was single-minded in his devotion to legal education and scholarship. By the end of his career, his lecture notes had grown into a six volume encyclopedia of Virginia law, *Institutes of Common and Statute Law*.⁴⁰

One of Minor's most famous students was John W. Daniel (1842–1910), "the Lame Lion of Lynchburg." Daniel had received a crippling wound during the battle of the Wilderness. After the war he studied law at the University of Virginia and then commenced practice in his native Lynchburg. He was a hard worker and a brilliant orator, and he rapidly achieved recognition at the bar. In 1869 he wrote a book on attachments, and in 1876 he published his nationally known book on negotiable instruments. He was perhaps best known as an orator and as United States senator from Virginia from 1887 until his death in 1910.⁴¹

Thomas Nelson Page, though better known as a novelist, began as a lawyer. From 1874 until 1893 Page was a successful practitioner and one of the leaders of the Richmond bar. While pursuing his profession as a lawyer, he began writing short stories about Virginia and Virginians as they were before the war. The charm of his literary style captivated the nation, and, when his second marriage in 1893 brought financial independence, he gave up the practice of law and spent all of his time writing novels and stories. Page was also active in politics, and he served as Ambassador to Italy for six years during the First World War.⁴²

In 1870, the Virginia bar was an unorganized profession. There was a definite professional consciousness,⁴³ and generalizations were being made about the level of the competency and integrity of the bar. The only organized activities of the bar, however, were occasional meetings to commemorate deceased members.⁴⁴

It was not long before the advantages of an organized association of lawyers began to be apparent. In 1878, the editors of the *Virginia Law Journal* called for a bar association in Virginia.⁴⁵ The Bar Association of the City of Richmond was organized in 1885. The call for organization was issued in September 1885, signed by 107 attorneys, and the constitution and by-laws were adopted on October 29, 1885. The stated objects of the Richmond bar association were "to aid in maintaining the honor and dignity of the profession of the law; to promote legal science and the administration of justice; and to cultivate social intercourse

among its members." A grievance procedure was established,⁴⁶ and a law library was created. Although an earlier effort had failed, the Richmond bar association flourished from its beginning. In 1894 there were 118 members, and the law library had forty titles in it. In 1898 there were 129 members, and a code of ethics for lawyers was published. In the following year, a minimum fee schedule was adopted in order to prevent the "unseemly and unprofessional practice of cutting rates"; by 1899 the law library of the Richmond bar had grown to eighty titles.⁴⁷

It was hoped when the Richmond bar association was founded in 1885 that it would grow into a statewide organization.⁴⁸ Accordingly, in 1888, the Bar Association of the City of Richmond issued a call for the formation of a statewide bar association, and the Virginia State Bar Association was established in that year by 128 of the most prominent lawyers from every section of the state.⁴⁹ The organization was an instant success, and within five years there were more than 400 members. In 1895, the Virginia State Bar Association with 457 members was second in size only to the New York State Bar Association,⁵⁰ and two years later only the bar associations in the populous states of New York, Pennsylvania, and Michigan had more members.⁵¹

The original standing committees of the Virginia State Bar Association show the purposes and future activities of the association. These committees were admissions, legislation and law reform, judiciary, grievances, legal education and admission to the bar, library and legal literature, and the executive committee.

We have already commented upon the activities of the committees on admissions and on legal education and admission to the bar. The Committee on Grievances was to receive and investigate complaints against lawyers and anything "affecting the interests of the legal profession, the practice of law, and the administration of justice."⁵² This committee did very little in the first twelve years of its existence, before 1900.⁵³ A special committee, however, presented a code of professional ethics at the first meeting of the association that was adopted at the second meeting.⁵⁴

The Judiciary Committee was not very active, but it served a useful role in bringing together several strands of ideas. The General Assembly was pressed to give higher judicial salaries; Virginia had been characteristically stingy in this regard.⁵⁵ There were numerous and various private proposals to restructure the system of courts,⁵⁶ and in 1902 the county courts were severely reorganized.⁵⁷ In 1898, in an effort to increase the general respect for the courts, the bar association voted to recommend that the judges of the Supreme Court of Appeals wear judicial robes.⁵⁸

We have deliberately saved till last our discussion of the activities of the Committee on Legislation and Law Reform. These gentlemen in their first annual report, which was given to the second meeting of the Virginia State Bar Association, threw the fat into the fire.

The Virginia State Bar Association threw itself into the middle of the codification question. The first Presidential Address was delivered by William J.

Robertson on the subject of codification, which was then at the forefront of American legal thinking. Robertson had been a judge of the Virginia Supreme Court of Appeals and had served there with distinction during the war and until he was removed by the Reconstruction government for political reasons. He then practiced law with great success in Charlottesville and was honored by being elected the first president of the bar association.⁵⁹ In his address, Robertson advocated the adoption in Virginia of a code of pleading and practice similar to the Field Code of New York. Robertson specifically urged the abolition of the forms of action and the merger of law and equity procedure.⁶⁰

This address was clearly part of an organized discussion of the codification movement. The Annual Address at the same meeting was delivered by James C. Carter of New York, a nationally known scholar who opposed the idea of general codification. Carter argued against the general codification of private law and, in passing, criticized the New York Code of Civil Procedure.⁶¹ At the same meeting, the members of the Virginia State Bar Association debated the question whether Virginia should adopt the Field Code of New York.⁶²

This was the beginning of a lively debate throughout the state on the subject of law reform.⁶³ The idea of a wholesale adoption of the Field Code was quickly dropped, and the discussion centered on two related proposals: the abolition of the forms of action and the merger of law and equity procedure. In 1891, a special committee of the Virginia bar association recommended that both of these steps be taken.⁶⁴ In 1892, the bar association approved the recommendations of the committee.⁶⁵ When the committee presented its proposed draft bills to the bar association the next year, however, the general code of pleading, which included the abolition of the forms of action and the separation of common law and equity procedure, and several miscellaneous proposals were defeated.⁶⁶ The bar association did approve a draft bill which would have simplified the pleading of actions based on contracts and also a draft bill to allow equitable principles to be used at common law and common law injuries to be used in equity.⁶⁷ The draft bills were thereupon presented to the General Assembly, but none were enacted.⁶⁸

It should not be concluded that these efforts at law reform were useless failures. The seed was planted then that bore fruit later. In 1919, motion pleading was allowed generally in all civil actions,⁶⁹ and, although the ancient forms of action were not abolished, they quickly fell into disuse and were forgotten. Other less extensive improvements in pleading and practice have been made from time to time.⁷⁰

The merger of common law and equity procedures is a step that has not been taken in Virginia. In federal practice, this measure, which was promulgated in 1938, has created as many problems as it solved. As long as the civil jury remains in use at common law, the merger of law and equity cannot be complete. In England, civil juries have been generally abolished, and lawyers do not have to consider whether their lawsuits would have been at common law or in equity but for the merger of the courts and procedures.

In 1899, the Virginia State Bar Association turned its attentions to, among other things, the Torrens system of land registry. Land registration is quite different from the recordation of land title deeds, the system used in Virginia since colonial times to protect rights in real property. The purpose of both systems is the same. The enthusiastic proponent of the Torrens System in Virginia was Eugene C. Massie. On his motion, the association voted to study the matter.⁷¹ Massie then proceeded to educate the Virginia bar on the subject and to lobby for its statutory approval.⁷² The Torrens System was editorially supported.⁷³ Finally, in 1916, a comprehensive bill was enacted;⁷⁴ however, the Torrens System, though legal now, has never been put into operation.⁷⁵

We come now to the topic of the relationship between the Virginia bar and the corporate world. During the period 1870 to 1900, northern and European industrialists invested large amounts of money in Virginia, and this investment, which was much needed for the economic growth of the state, was encouraged by Virginians in every way they could. The other side of the coin was, of course, outside the control of Virginia commerce and industry, most notably the railroads. The major issue in Virginia politics during this period was the readjustment of the state debt. This was a part of the issue of industrialization and financial credit; even though lawyers were fighting on both sides, this issue was a political rather than a legal one and will not be discussed here.⁷⁶

However, the bar did become involved with the problems of the state control of corporations (many persons in the 1880s feared that the corporations controlled the state government) and the fellow-servant doctrine, which limited the liability of corporations to their employees. Although individual lawyers were very pleased to have railroads and other corporations for clients and represented them very well, nevertheless the bar as a whole took a healthy, independent stance; the Virginia bar as a whole was not in the pockets of the railroads.

In 1890, the subject of the Presidential Address of the Virginia State Bar Association was the economic and political abuses being perpetrated by huge corporations. The laxness of the General Assembly in failing to protect the general public was also noted.⁷⁷ Three years later, the bar association heard further criticisms of the corporations. J. Allen Watts pointed out the ease of obtaining corporate charters for undercapitalized companies and the lack of public control over corporations.⁷⁸ In order to remedy these problems, the duties of supervising corporations was taken from the General Assembly and given to a new body in 1902 by the new Constitution of Virginia. The newly created State Corporation Commission was erected as a fourth branch of the state government with legislative, executive, and judicial powers.⁷⁹ It has been very effective in regulating companies doing business in the Commonwealth.

The fellow-servant doctrine, simply stated, is that "there can be no recovery for an accident caused by the negligence of a fellow servant." The value of this rule is particularly great to corporations who must necessarily perform all their functions and acts by agents or servants. If the fellow-servant doctrine were liberally construed, corporations (and their shareholders) would be totally im-

mune from tort liability; such a result would be monstrous, and the trend since the nineteenth century has been to limit in various ways the operation of this doctrine.⁸⁰ In 1885, the editor of the *Virginia Law Journal* condemned the rule in general.⁸¹ Robert L. Parrish, however, expressed his approval of the general rule in an address to the Virginia State Bar Association in 1892.⁸² By 1902, public opinion had been marshalled against the railroads, and the new constitution of Virginia abolished the fellow-servant doctrine as a defense available to railway companies. This limitation of the doctrine remains in force today.⁸³

In conclusion, we can see that during the period 1870 to 1900 there was steady and continuous progress among the Virginia bar. The fifteen years, 1870 to 1885, was a time of economic and professional recovery from the devastations of the Civil War and Reconstruction. The leaders of the bar were older gentlemen of the ante-bellum era, and they constantly insisted on maintaining the high professional standards of the bar. In general, it was fifteen years of rebuilding, a time of conservatism rather than innovation.

The first bar association in the state was formed in 1885, and the most significant feature of the period 1885 to 1900 was the organized activities of the bar. Before about 1895, the Virginia State Bar Association was not very successful in having its proposals enacted by the General Assembly. After that date, however, the bar association's lobbying techniques were improved to the point that success was frequent. From its inception in 1888, the Virginia State Bar Association was a leader in the area of legal reform—the primary forum for public debate on these issues.

As already noted, the bar association movement was a great success in Virginia. There are several reasons for the instant popularity of the Virginia State Bar Association. To begin with, lawyers are a gregarious and convivial crew, and the meetings of the bar association were always held at popular and fashionable resorts during the summer. The second reason was the desire to improve the legal profession.

Nothing frustrates an attorney more than to argue a case against an incompetent lawyer, because the true issues become obscured by the irrelevant and ignorant points made by the uneducated or obtuse opposing counsel. Justice is served only by the debate of the true issues of the case. A good lawyer can deal with an ignorant one well enough if the judge is reasonably competent, but it offends his professional pride to have to argue against poor workmanship. To improve the level of practice in Virginia, the organized bar sought to increase the educational requirements for admission to practice law. Also, the organized bar began a program of continuing legal education for members of the bar by having lectures on legal subjects during their annual meetings; these papers were then printed and circulated to all members of the bar association.

Furthermore, the conscientious lawyer is deeply offended by dishonesty and laziness on the part of other members of the bar. Most lawyers are proud of their calling and very much resent it when the reputation of the legal profession is besmirched by unethical conduct of other attorneys. Justice was seen to be

one of the four cardinal virtues, and the bar had a vital role in the administration of justice. Immoral and dishonest conduct on the part of a lawyer very much offended most members of the Virginia bar, and one of the purposes of the bar association was to eliminate it by having the offender disbarred. Although the association did not have much success along these lines before 1900, the policy was forcefully stated, and in the twentieth century it was implemented.

In general, the history of the Virginia bar from 1870 to 1900 was not a matter of dramatic revolution, but rather, one of slow but steady and constant professional growth.

NOTES

1. *Virginia Code*, chap. 160, §§1, 3 (1873); *Virginia Code*, §§ 3191, 3193 (1887).
2. "Remarks of J. W. G. Blackstone," *Reports of the Virginia State Bar Association* 7 (1894):21 (hereafter cited as *VBA*); J. L. Anderson and W. M. Lile, "Report of the Committee on Legal Education and Admission to the Bar," *VBA* 7 (1894):49, 50; "Examination for Admission to the Bar in Virginia—The Past—The Future," *Virginia Law Regulations* 2 (1896):310, 312 (hereafter cited as *Va. Law Reg.*).
3. B. B. Munford, *Random Recollections* (New York, 1905), 74.
4. H. R. Pollard, *Memoirs and Sketches of the Life of Henry Robinson Pollard* (Richmond, 1923), 155.
5. *VBA* 1 (1888):6, 7, 12, 15 (remarks of Charles M. Blackford and Holmes Conrad); note also "Legal Education and Admission to the Bar," *Virginia Law Journal* 13 (1889):531 (hereafter cited as *Va. Law Jour.*).
6. "An Act to Regulate the Licensing of Persons to Practice Law in This State," *VBA* 2 (1889):52-54; "Remarks of J. Allen Watts," *ibid.*, 3 (1890):22-23. The bill was resubmitted to the General Assembly in 1894 and was again defeated; *ibid.*, 6 (1893):44-46, 273-75; *ibid.*, 7 (1894):16-22, 49.
7. J. L. Anderson, "Report of the Committee on Legal Education and Admission to the Bar," *ibid.*, 8 (1895):62-68 (see also 26-40).
8. *Virginia Acts of Assembly, 1895-1896*, chap. 41, 49.
9. 93 *Virginia* 5 (1897); "Rules and Regulations Prescribed by the Supreme Court of Appeals of Virginia for Licensing Persons to Practice Law," *Va. Law Reg.* 2 (1896):219-20; *ibid.* 2 (1897):910-11. They were applauded in "Examination for Admission to the Bar in Virginia—The Past—The Future," *ibid.*, 2 (1896):310-312; J. L. Anderson and C. R. Sands, "Report of Committee on Legal Education and Admission to the Bar," *VBA* 9 (1896):39-43; J. H. Corbitt, "Admission to the Bar in Virginia," *ibid.*, 40 (1928):286-318.
10. The examination was published: "Questions Propounded by the Court of Appeals to Applicants for License to Practice Law, January 8, 1897," *Va. Law Reg.* 2 (1897):774-77. Later bar exams were published in *ibid.*, 3 (1897-1898):315-17, 465-68; *ibid.*, 4 (1898-1899):270-76, 405-7, 707-9; *ibid.*, 5 (1899-1900):273-77, 422-24, 723-27.
11. *Virginia Acts of Assembly, 1910*, chap. 152, 238.
12. R. Page, *Thomas Nelson Page* (New York, 1923), 67.
13. *Response of Francis Rives Lassiter of Petersburg to a Toast Offered at the Virginia Bar Assn. Meeting . . . Aug. 8, 1895* (Richmond, 1895), 3. As late as 1887, former Con-

federates were being denounced as "traitors"; see "The Appointment of Mr. Lamar," *Va. Law Jour.* 12 (1888):62-63 referring to an editorial in the *Albany Law Journal*.

14. *Ninth Census—Vol. 3: The Statistics of the Wealth and Industry of the United States* (Washington, D.C., 1872), 10, 81, 86, 90, 392-93.

15. *Ninth Census—Vol. 1: The Statistics of the Population* (Washington, D.C., 1872), 674-75. For a comparison with 1860 figures, see J. C. Kennedy, comp., *Population of the United States in 1860* (Washington, D.C., 1864), 524-25, which lists 1,341 resident attorneys in Virginia. The decline in the number of practitioners may be attributed not only to the loss of life during the war, but also to the loss of the fifty counties that formed West Virginia. In 1870, West Virginia boasted 400 resident attorneys.

16. *Census Reports, Vol. 8: Twelfth Census of the United States Taken in the Year 1900; Manufacturers, Part 2: States and Territories* (Washington, D.C., 1902), 904; *ibid.*, Vol. 5: *Agriculture, Part 1: Farms, Live Stock, and Animal Products* (Washington, D.C., 1902), 688-89, 692-93, 695.

17. *Statistics of the Population of the United States at the Tenth Census* (Washington, D.C., 1883), 715-16. This compilation lists one female as a resident attorney, though it is unlikely she ever practiced due to legislative restrictions on entry to the bar. She may have been admitted and practiced in another jurisdiction and resided in Virginia.

18. *Report on the Population of the United States at the Eleventh Census: 1890, Part 2* (Washington, D.C., 1897), 618.

19. *Twelfth Census of the United States—Vol. 2: Population, Part 2* (Washington, D.C., 1902), 541.

20. Andrew Boyd & Co., *Virginia State Business Directory, 1871-1872* (Richmond, 1871); *Chataigne's Virginia Gazetteer and Classified Business Directory, 1890-1891* (Richmond, 1890), 286, 372, 517-20, 773.

21. *Richmond Daily Dispatch*, January 13, 1876, 1; January 14, 1876, 1.

22. E. R. Williams, "Edwin Archer Randolph, LL.B., Rediscovered," *Richmond Quarterly* 3 (1981):46-48; note also the autobiography of a black lawyer in Gloucester County, T. C. Walker, *The Honey-pod Tree* (New York, 1958).

23. *Sheriff's Richmond City Directory, 1877* (Richmond, 1877), 41, 84, 173, 247-49; *Chataigne's Virginia Gazetteer*, 372, 519-20, 773; *Hill Directory of Richmond and Manchester, Va., 1900* (Richmond, 1900), 1004-7. Unfortunately, very little is known about these early black attorneys; however, several are noted in L. J. Jackson, *Negro Office-Holders in Virginia 1865-1895* (Norfolk, 1945).

24. *Virginia Code* § 3191 (1887).

25. "Women as Lawyers," *Va. Law Jour.* 1 (1877):58.

26. *Ex parte Lockwood*, 154 U.S. 116 (1894); "Mrs. Belva A. Lockwood, Attorney at Law," *Va. Law Reg.* 1 (1895):151.

27. *Virginia Acts of Assembly, 1895-1896*, chap. 41, 49; *Virginia Code* § 3408 (1919) read "all male persons."

28. *Virginia Acts of Assembly, 1920*, chap. 77, 66.

29. J. Ritchie, *The First Hundred Years* (Charlottesville, 1978), 96-99.

30. Diary, 1867-1869, and account book, 1866-1872, of William R. Aylett, Aylett Family Papers, Virginia Historical Society; "Reminiscences of A. B. Chandler," in M. Wingfield, *History of Caroline County, Va.* (Richmond, 1924), 407.

31. J. S. Wise, *The Lion's Skin* (New York, 1905), 174; J. L. Peyton, *Memoir of John Howe Peyton* (Staunton, 1894), 161; F. N. Boney, *John Letcher* (University, Ala., 1966), 227, 230, 237.

"The Appointment of Mr. Lamar,"
 Editorial in the *Albany Law Journal*.

Wealth and Industry of the United States
 1892-93.

Population (Washington, D.C., 1872),
 C. Kennedy, comp., *Population of Virginia*,
 1854-25, which lists 1,341 resident
 practitioners may be attributed not
 loss of the fifty counties that formed
 resident attorneys.

The United States Taken in the Year
 1890 (Washington, D.C., 1902), 904;
and Animal Products (Washington,

is at the Tenth Census (Washington,
 female as a resident attorney, though
 restrictions on entry to the bar. She
 jurisdiction and resided in Virginia.

at the Eleventh Census: 1890, Part

Population, Part 2 (Washington,

Directory, 1871-1872 (Richmond,
and Business Directory, 1890-1891

1; January 14, 1876, 1.

L. B., Rediscovered," *Richmond*
 ny of a black lawyer in Gloucester
 (Richmond, 1958).

Richmond, 1877), 41, 84, 173, 247-
 3; *Hill Directory of Richmond and*
 Unfortunately, very little is known
 are noted in L. J. Jackson, *Negro*

77-58.

Mrs. Belva A. Lockwood, Attorney

1, 49; *Virginia Code* § 3408 (1919)

Richmond, 1978), 96-99.

1872, of William R. Aylett, Aylett
 papers of A. B. Chandler," in M.
 1924), 407.

1925), 174; J. L. Peyton, *Memoir of*
 John Letcher (University, Ala.,

32. Chiswell Dabney to Mrs. E. L. Dabney, February 24 and March 13, 1870, Saunders Papers, Virginia Historical Society. On partnerships, see also Pollard, *Memoirs and Sketches*, 152-53.

33. Account book, 1871-1887, of William R. Aylett, Aylett Family Papers, Virginia Historical Society, 16, 18, 22, 52. See also W. Larsen, *Montague of Virginia: The Making of a Southern Progressive* (Baton Rouge, 1965), 21.

34. J. P. Maddex, Jr., *The Virginia Conservatives, 1867-1879: A Study in Reconstruction Politics* (Chapel Hill, N.C., 1970), 61-62; Munford, *Random Collections*, 88; Larsen, *Montague of Virginia*, 22.

35. T. B. Gay, *The Hunton Williams Firm* (Richmond, 1971), 51-54; J. A. Cutchins, *Memories of Old Richmond* (Verona, Va., 1973), 136.

36. P. Slaughter, *Brief Sketch . . . of William Green* (Richmond, 1883); A. C. Gordon, "William Green," in W. D. Lewis, ed., *Great American Lawyers*, 8 vols. (Philadelphia, 1907-1909), 5:255-89; R. A. Brock, *Catalogue . . . of the Library of the Late Hon. William Green, LL.D.* (Richmond, 1880); *American Law Review* 14 (1880): 669.

37. R. A. Claybrook, "Conway Robinson," in W. H. Bryson, ed., *Virginia Law Reporters Before 1880* (Charlottesville, 1977), 57-64; E. B. Merrill, "Conway Robinson," *Albany Law Journal* 29 (1884):165-66; "A Virginian Author," *Va. Law Jour.* 1 (1877):60-61.

38. J. G. Rogers, *American Bar Leaders* (Chicago, 1932), 71-76. James Overton Broadhead and John White Stevenson were also presidents of the ABA during the period covered by this essay. Both were born and educated in Virginia, but Broadhead resided in Missouri and Stevenson lived in Kentucky when elected to that honor; *ibid.*, 1-8, 33-36. Ran Tucker's son, Harry Tucker (1853-1932), was president of the ABA in 1904; *ibid.*, 131-35.

39. J. W. Davis, "John Randolph Tucker," *Washington and Lee Law Review* 6 (1949):139-62; W. R. Vance, "John Randolph Tucker," in W. D. Lewis, ed., *Great American Lawyers*, 8 vols. (Philadelphia, 1907-1909), 7:323-54; R. T. Barton, "John Randolph Tucker," *Va. Law Reg.* 3 (1897):1-17.

40. "Minor, John Barbee," *Dictionary of American Biography* (New York, 1962), 7:26; J. C. Lamb, "John B. Minor," *Va. Law Reg.* 1 (1895): 473-84; W. H. Bryson "The History of Legal Education in Virginia," *University of Richmond Law Review* 14 (1979):155, 186-87, 189.

41. "Daniel, John Warwick," *Dictionary of American Biography* (New York, 1952), 3:68; G. L. Christian, "John Warwick Daniel," *VBA* 23 (1910):73-80.

42. R. Page, *Thomas Nelson Page* (New York, 1923); "Page, Thomas Nelson," *Dictionary of American Biography* (New York, 1962), 7:141; "Thomas Nelson Page," *VBA* 35 (1923):95-97.

43. E. L. Shepard, "Lawyers Look at Themselves: Professional Consciousness and the Virginia Bar 1770-1850," *American Journal of Legal History* 25 (1981):1-23.

44. For example: "The Late Peachy R. Grattan, Esq." *75 Virginia Reports* (1881) v-viii; "Proceedings of the Staunton Bar upon the Death of A. H. H. Stuart," *Va. Law Jour.* 15 (1891):157-60; the members of the Richmond bar walked as a group in George Wythe's funeral procession in 1806; *Wythe's Reports* (2d ed., 1852), x1. The author wishes to thank Mr. Hunter Martin, secretary, the Richmond Bar Association, for his kind assistance.

45. "Acknowledgment—Bar Association," *Va. Law Jour.* 2 (1878): 704.

46. The grievance committee prosecuted nonmembers as well as members; for an

anecdote in connection with a prosecution for running and capping, see R. Page, *Thomas Nelson Page* (New York, 1923), 80.

47. Bar Association of the City of Richmond, *Annual Reports*, for the years 1886, 1894, 1898, and 1899; "The Richmond Bar Association," *Va. Law Jour.* 9 (1885):754-56; "Code of Ethics," *Va. Law Jour.* 13 (1889):327-32; "Scale of Fees Adopted by Richmond Bar Association," *Va. Law Reg.* 4 (1899):783-84.

48. "The Richmond Bar Association," *Va. Law Jour.* 9 (1885):754-56.

49. "A State Bar Association," *Va. Law Jour.* 12 (1888):422-23; "The Virginia State Bar Association," *ibid.*, 12 (1888):550-51; "The State Bar Association Committees," *ibid.*, 12 (1888):742-43; *VBA* 1 (1888).

50. "The Virginia State Bar Association," *Va. Law Reg.* 1 (1895):73-74.

51. "Report of Secretary," *VBA* 10 (1897):11.

52. "By-Laws," *VBA* 1 (1888):40.

53. *Ibid.*, 12 (1899):18-29, 36-45.

54. *Ibid.*, 1 (1888):14, 25, 61-68; *ibid.*, 2 (1889):25, 179-86.

55. "The Pay of the Circuit Judges," *Va. Law Jour.* 11 (1887):319; "The Judicial System, Again," *ibid.*, 11 (1887):384; *VBA* 2 (1889):50, 149-53; J. P. Harrison, "Suggested Changes in Our Judicial System," *VBA* 12 (1899):233, 242-43.

56. "Report of J. C. Parker of the Special Committee on the Judiciary System of the State," *VBA* 10 (1897):113-126 (note also 24-47); Harrison, "Changes in Judicial System," 233, 244-46; "The Judicial System," *Va. Law Jour.* 10 (1886):61-62; "Jurisdiction of the County Courts," *ibid.*, 10 (1886):124-25; "The Judicial System, Again," *ibid.*, 11 (1887):384; "The Virginia Judicial System," *ibid.*, 12 (1888):65-69.

57. The history of the court was chronicled, and its demise was lamented in H. Conrad, "The Old County Court System in Virginia: Its Place in History," *VBA* 21 (1908):323-50.

58. *VBA* 11 (1898):21-24; for similar proposals, see "Judicial Gowns," *Va. Law Reg.* 3 (1898):660-81; "Judicial Robes," *ibid.*, 4 (1898):477-79; *ibid.*, 4 (1899):704-705; Harrison, "Changes in Judicial System," 233, 237 argued that "all judges should be required to wear the gown."

59. A. C. Gordon, "Judge William Joseph Robertson," in W. D. Lewis, ed., *Great American Lawyers*, 8 vols. (Philadelphia, 1907-1909), 7:129-59.

60. W. J. Robertson, "Presidential Address," *VBA* 2 (1889):85, 90.

61. J. C. Carter, "The Provinces of the Written and Unwritten Law," *ibid.*, 2 (1889):95-137 (esp. 128, 132).

62. *Ibid.*, 2 (1889):32-39. The abolition of the forms of action had been advocated two years earlier in "Suggested Changes in Civil Procedure in Virginia," *Va. Law Jour.* 11 (1887):69-70, and in "The Code Revision and Law Reform," *ibid.*, 11 (1887):124-25.

63. See S. S. P. Patteson, "Law Reform," *Va. Law Jour.* 13 (1889):461-70, 677-87; "Law Reform," 475; S. C. Graham, "Sacking the Temple," *ibid.* 13 (1889):809-14; F. H. McGuire, "Remarks on Pleadings in Virginia," *ibid.*, 14 (1890):21-25; S. S. P. Patteson, "Law Reform—A Rejoinder," *ibid.*, 14 (1890):65-70; "Remarks of S. S. P. Patteson," *VBA* 4 (1891):26-35; W. B. Pettit, "Law Reform—A Rejoinder," *Va. Law Jour.* 15 (1891):681-87; S. S. P. Patteson, "Law Reform—A Sur-Rejoinder," *ibid.*, 15 (1891):745-50; W. B. Pettit, "Law Reform—Reply to Sur-Rejoinder," *ibid.*, 16 (1892):1-8; J. R. Tucker, "Address," *VBA* 5 (1892):85-107.

64. *VBA* 4 (1891):26-36, 44-69. It is interesting to note that one of the members of

ning and capping, see R. Page, *Thomas*

1, *Annual Reports*, for the years 1886, Association," *Va. Law Jour.* 9 (1885):754-55); 327-32; "Scale of Fees Adopted by (1899):783-84.

Law Jour. 9 (1885):754-56.

12 (1888):422-23; "The Virginia State e State Bar Association Committees,"

i. *Law Reg.* 1 (1895):73-74.

1889):25, 179-86.

Law Jour. 11 (1887):319; "The Judicial (1889):50, 149-53; J. P. Harrison, "Sug- 2 (1899):233, 242-43.

Committee on the Judiciary System of the); Harrison, "Changes in Judicial Sys- i. *Law Jour.* 10 (1886):61-62; "Juris- 24-25; "The Judicial System, Again," tem," *ibid.*, 12 (1888):65-69.

its demise was lamented in H. Conrad, place in History," *VBA* 21 (1908):323-

als, see "Judicial Gowns," *Va. Law Jour.* 4 (1898): 477-79; *ibid.*, 4 (1899):704-83, 237 argued that "all judges should

bertson," in W. D. Lewis, ed., *Great Jour.* 9 (1909), 7:129-59.

VBA 2 (1889):85, 90.

and Unwritten Law," *ibid.*, 2 (1889):95-

the forms of action had been advocated Procedure in Virginia," *Va. Law Jour.* d Law Reform," *ibid.*, 11 (1887):124-

Va. Law Jour. 13 (1889):461-70, 677- ing the Temple," *ibid.* 13 (1889):809- Virginia," *ibid.*, 14 (1890):21-25; S. S.

14 (1890):65-70; "Remarks of S. S.

Law Reform—A Rejoinder," *Va. Law Reform—A Sur-Rejoinder," ibid.*,

Reply to Sur-Rejoinder," *ibid.*, 16 (1892):81-107.

to note that one of the members of

this committee, all of whom supported these far-reaching changes, was Thomas S. Martin, a man later considered to be an archconservative.

65. *VBA* 5 (1892):22-36.

66. *Ibid.*, 6 (1893):14-62, 72-104.

67. *Ibid.*, 6 (1893):99-100, 102-103.

68. *Ibid.*, 7 (1894):53-68.

69. *Virginia Code* § 6046 (1919).

70. For example: *VBA* 13 (1900):61-62.

71. *Ibid.*, 12 (1899):16. There was a discussion of some of the problems of it during the next meeting of the bar association; *ibid.*, 13 (1900):29-46.

72. E. C. Massie, "The Torrens System of Land Registration," *ibid.*, 13 (1900):299-336; E. C. Massie, "Virginia and the Torrens System," *ibid.*, 14 (1901):283-314; "The Torrens System," *Va. Law Reg.* 5 (1901):797-98; *VBA* 15 (1902):13-34; *ibid.*, 16 (1903):18-40, 351-80; E. C. Massie, "Reform of our Land Laws," *ibid.*, 18 (1905):213-30.

73. *Va. Law Reg.* 5 (1899):123-24, 319; *ibid.*, 9 (1903):58-60; *ibid.*, 10 (1904):918-19, 1001; *ibid.*, 11 (1905):420, 433-48; "The Torrens System: An Open Symposium," *ibid.*, 11 (1905):570-608, 649-63; *ibid.*, 12 (1906):707-43.

74. *Virginia Acts of Assembly, 1916*, chap. 62, 70-88; *Virginia Code* § 5225 (1919); *Virginia Code Annual* § 55-112 (Repl. Vol., 1981); E. C. Massie, *The Torrens System: A Manual* (Richmond, 1916); R. C. Walker, "The Torrens System," *Va. Law Reg.*, n.s. 2 (1916):1-6; E. C. Massie, "Perfection of the Torrens System," *ibid.*, n.s. 2 (1917):750-71.

75. J. V. Buonassissi, "Yes Virginia—There is a Torrens Act," *University of Richmond Law Review* 9 (1975):301-21; J. G. Cosby, "Closing the Closing Gap," *ibid.*, 12 (1978):607-25.

76. The subject is ably dealt with in C. C. Pearson, *The Readjuster Movement in Virginia* (New Haven, Conn., 1917); A. W. Moger, *Virginia: Bourbonism to Byrd, 1870-1925* (Charlottesville, 1968).

77. R. G. H. Kean, "The Tendency to Abuse of Corporate Franchises," *VBA* 3 (1890):79-91.

78. J. A. Watts, "Duty of the Legal Profession in Regard to Needed Changes in Legislation," *ibid.*, 6 (1893):215-45.

79. A. E. D. Howard, *Commentaries on the Constitution of Virginia* (Charlottesville, 1974), 2:967-70.

80. See generally *Michie's Jurisprudence*, vol. 12B (1978), "Master and Servant," §§ 65-78.

81. "Fellow-Servants," *Va. Law Jour.* 9 (1885):60.

82. R. L. Parrish, "Master and Servant," *VBA* 5 (1892):127-50.

83. *Virginia Constitution of 1902* § 162; *Virginia Acts of Assembly 1901-1902*, chap. 322, 335; *Virginia Code Annual* § 8.01-57 (Repl. Vol., 1977).