

# Reforming the Judiciary

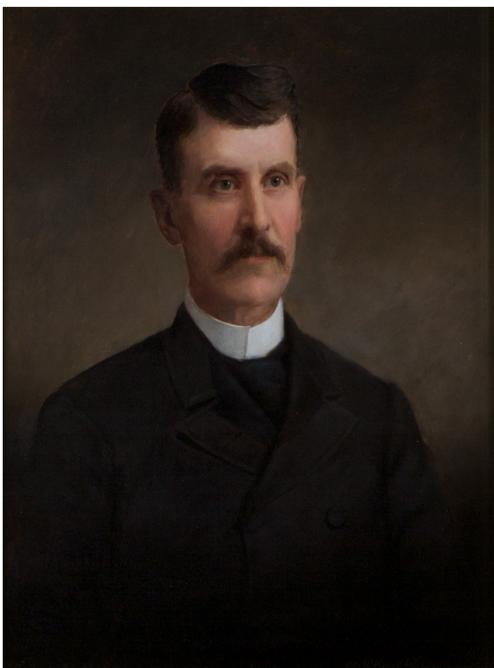
When members of the bar organized the first statewide bar organization in Virginia in 1888, they focused on raising standards for the judiciary as well as for the bar. President-elect R.G. H. Kean, speaking at the first annual meeting of the Virginia State Bar Association held at the Greenbrier Hotel in 1889, emphasized the deficiencies of the judiciary:

*“It is quite true that there are always plenty of men willing to accept a seat on the bench of the Supreme Court of Appeals; some ready to see and electioneer for it. The question, however, in which the public is really interested is, are they generally speaking such as are best fitted for it?”*

Kean’s pointed remarks, published in the first report of the Virginia State Bar Association, reflect the partisan political climate in the 1880s, a period of political realignment in Virginia. In 1879, the Readjusters, a coalition of Republicans, African Americans, and moderate Conservatives, won control of the legislature, and in 1881, the executive branch. Readjusters advocated adjusting the large public debt accumulated before the Civil War and using the money to fund public schools and other public programs.

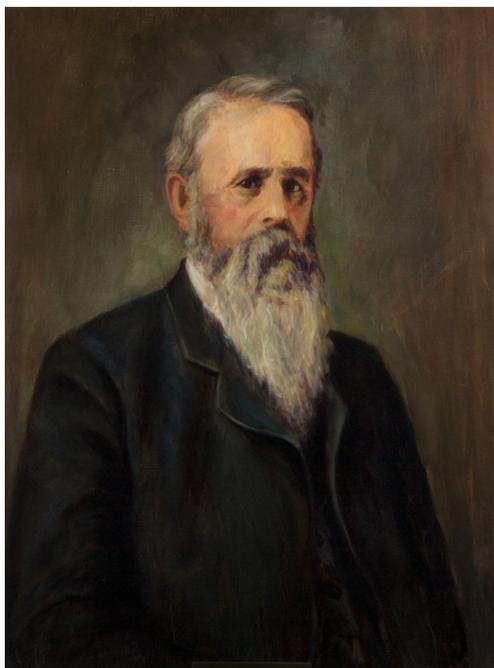
Readjusters appointed their supporters to most of the county and corporation judgeships in the state and, in 1882, to the Supreme Court of Appeals. Conservatives, who began calling themselves Conservative Democrats, accused Readjusters of “packing the courts with drunks, gamblers, political partisans, and men who were totally ignorant of the law.”

## The Five Judges of the Readjuster Court (1883-1895)



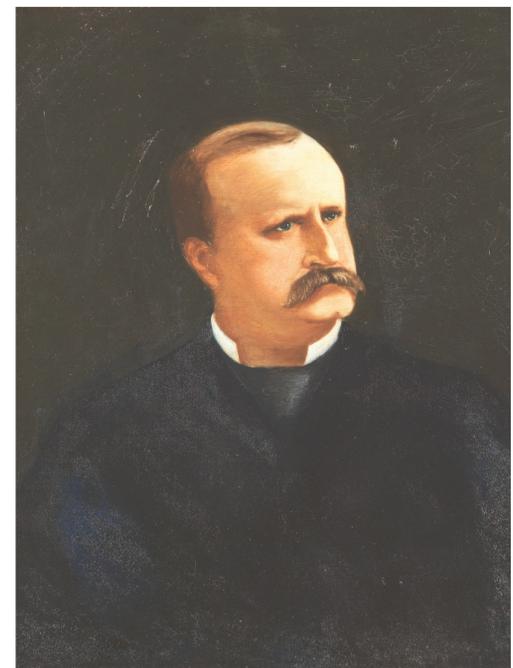
*Chief Judge Lunsford L. Lewis*  
*Artist: William G. Brown, 1892*

Lewis was the only judge on the court who remained loyal to the Union during the Civil War and Reconstruction. He was appointed U.S. Attorney in Culpeper in 1867. In 1880, President Grant appointed Lewis U.S. Attorney for the Eastern District of Virginia. In September 1882, Lewis fought one of the last recorded duels in the South in defense of his brother John F. Lewis, candidate for Lieutenant Governor on the Readjuster ticket.



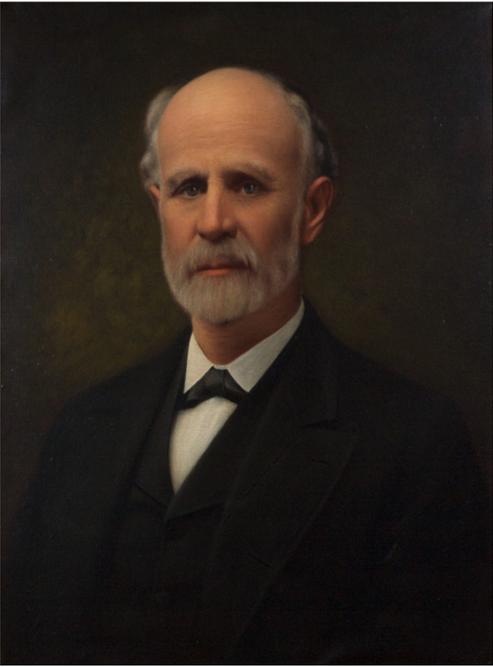
*Judge Robert A. Richardson*  
*Artist: Julia B. Mahood, 1940*

Richardson was a Colonel in the Confederate army. He also represented Mercer County in the General Assembly in 1861. Richardson briefly ran for state office on the Readjuster ticket in 1877, then campaigned for others on the ticket in southwestern Virginia. Richardson began his career as a teacher, then studied law while working as a clerk for the Court of Appeals in Lewisburg.



*Judge Benjamin W. Lacy*  
*Artist: unknown, undated*

Judge Lacy fought for the Confederacy and was wounded three times. He was the only judge on the Readjuster Court who had prior experience on the bench, serving as a county court judge from 1870 to 1873 and a circuit court judge in 1881 and 1882. Initially a Democrat, he aligned himself with the Readjusters and was elected Speaker of the House in 1879.



*Judge Thomas T. Fauntleroy*  
*Artist: unknown, undated*

As a sequestration agent for the Confederacy, Fauntleroy used his legal training and experience to seize property for use by the Confederate government. Fauntleroy was elected to the House of Delegates in 1857 and again in 1877, then served as Secretary of the Commonwealth under the Readjusters from 1879 to 1883.



*Judge Drury A. Hinton*  
*Artist: Sylvia M. Bremner, 1955*

Judge Hinton fought for the Confederacy and served with William Mahone, leader of the Readjuster party, in the Battle of the Crater. Hinton was elected Commonwealth's Attorney of Petersburg in 1874 and served until 1882. In 1881, he canvassed the state for the Readjuster party. After serving on the court, he maintained close ties with the Mahone family in Petersburg, where he practiced law.

## ... that Winchester pack of Dogs

Judge Thomas T. Fauntleroy, one of the five judges on the Readjuster Court, worried about criticisms of the court from members of the bar. In late July 1888, he expressed his frustrations in a private letter to the clerk of the court:

*“At the meeting of the lawyers, at Virginia Beach, Holmes Conrad took occasion to sneer at the ‘present’ Court of Appeals; . . . Conrad & Barton will die, yet, of their gangrened & discomfited malice towards me, for having emerged from village obscurity; and for doing so not only without their countenance & consent, but in open, contemptuous defiance and denunciation of their duplicity & despicable enmity. . . . I have been, from the beginning, & will be, to the end, hounded by cowardly malice of that Winchester pack of Dogs.”*

Conrad and Barton, like Fauntleroy, were lawyers from Winchester, Virginia. They were also Conservative Democrats and bitter political opponents of Fauntleroy. Conrad won Fauntleroy's old seat in the House of Delegates in 1881. Barton won the seat in 1883 in the election that restored the Conservatives' majority in the General Assembly.

As Chair of the Courts of Justice Committee, Barton led efforts to investigate alleged corruption among officials appointed by the Readjusters. The Committee brought impeachment charges against Attorney General Francis S. Blair in 1883, accusing him of financial improprieties. When that failed, the legislature passed a law denying him his salary. Blair sued, and the Supreme Court of Appeals ruled in his favor. Judge Fauntleroy wrote the opinion exonerating Blair and restoring his salary.

## Few of those who took office were welcome in the best homes...

C.C. Pearson, “The Readjuster Movement in Virginia,” 1916.

In January 1895, the Richmond Bar Association hosted a dinner honoring the new judges of the Supreme Court of Appeals. The inauguration of a new court marked the end of the Readjusters' influence in state politics and the beginning of eight decades of one-party rule in Virginia.

The Readjusters' majority in the legislature was short-lived, and they were vilified by many at the time. In recent years, however, historians have emphasized the successes of the Readjuster policies in reviving the economy and concluded that charges of corruption and incompetence were overblown. “On balance,” historian James Tice Moore concluded in a history of the party, “the insurgents harmed the judicial system very little, if at all.”

Historian Jane Dailey credits the Readjuster Court with breaking new ground in defining race as a social construct in the civil case *Scott v. Raub*, decided in 1892. The court also presided over the admission to the bar of Belva Lockwood, the first woman licensed to practice law in Virginia, in 1894. Her admission was overturned by the new Supreme Court of Appeals of Virginia in 1895, delaying the admission of women to the Virginia bar for another twenty-five years.

# Reforming the Bar

One of the first priorities of the Virginia State Bar Association was lobbying the General Assembly to raise standards for admission to the bar. "At present, the fences are all down," Richmond attorney Francis McGuire observed. The profession is a common and I must say some very strange cattle feed upon it."

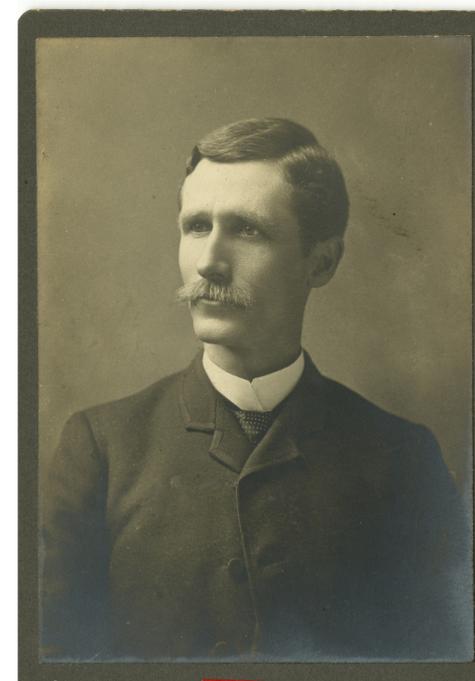
In 1895, the legislature passed by a narrow margin legislation giving the Supreme Court of Appeals authority to determine requirements for admission to the bar. Previously, candidates were given an informal oral exam by a judge, and very few candidates failed.

Opponents of the new law, many of them lawyers, argued regulation by the supreme court was unnecessary, as the marketplace would eliminate unqualified, incompetent, or dishonest lawyers.

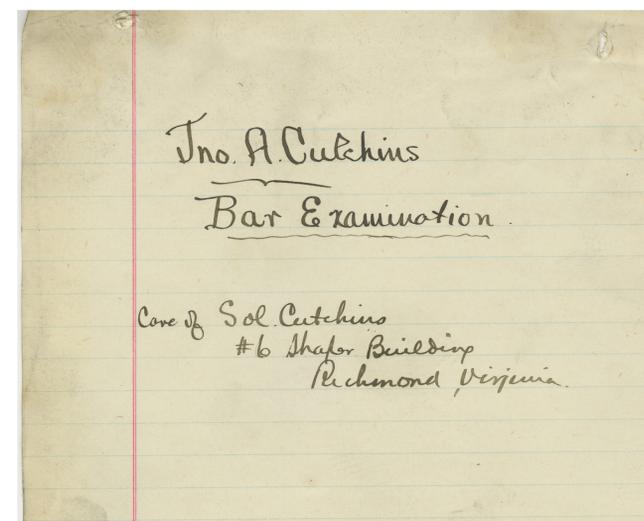
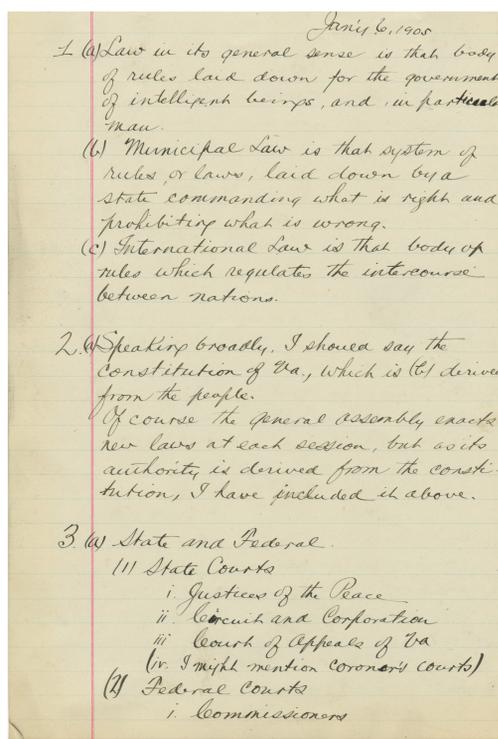
The court established rules providing for a written bar exam in 1896, and the first exam was given on January 8, 1897, in Richmond. Twenty-nine of 33 applicants who took the exam passed. Between 1897 and 1910, approximately 75% of those who took the bar exam passed.

## Notable Virginians among the first to pass the written bar exam, 1898-1908, include:

- **E. Lee Trinkle**, in 1898; Governor of Virginia from 1922-1926
- **Howard W. Smith**, in 1903; U.S. Congressman from Virginia from 1931 to 1967 and Chair of the House Rules Committee
- **C. Vernon Spratley**, in 1906; justice on the Supreme Court of Virginia from 1936 to 1967
- **Thomas Lomax Hunter**, in 1908; poet laureate of Virginia



Courtesy Virginia Historical Society  
Francis H. McGuire (1850-1894), a founder of the Richmond Bar Association and the Virginia State Bar Association.



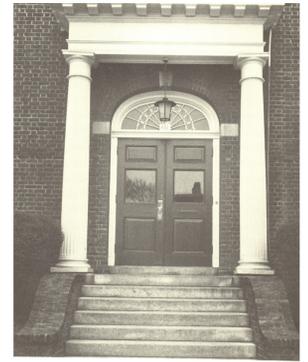
Courtesy The Library of Virginia  
Bar exam, 1905, Records of the Supreme Court of Appeals, 1871-1914

Courtesy Library of Congress  
Gov. Trinkle at the dedication of Kenmore in Fredericksburg, Va., 1925. Trinkle was admitted to the bar in 1898, shortly after graduating from the University of Virginia School of Law. He practiced law in Wytheville and served two terms in the state senate before he was elected governor.



# The Impact of the Written Bar Exam on the Growth of the Profession

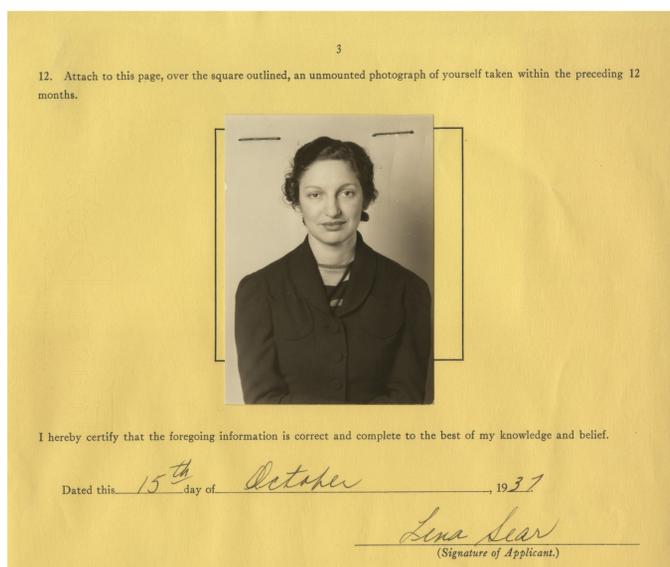
Between 1870 and 1900, the number of lawyers in Virginia grew by 22%. After the written bar exam was implemented in 1896, the trend was reversed, and the number of new lawyers began to decline (11% between 1900 and 1910). The decline was even greater among African American lawyers, in part due to their exclusion from law schools in Virginia. In Virginia and nationwide, the proportion of lawyers relative to the population was stable from 1910 to 1970.



The University of Richmond Law School, founded in 1870, began as a night school.

## Fewer Lawyers, More Law Schools

During the same period, enrollment in law schools in Virginia grew steadily, from 200 in 1890 to 496 in 1910, an increase of 148%, according to legal historian J. Gordon Hylton. Law schools at Washington and Lee, the University of Richmond, and the University of Virginia expanded during this period. Ninety percent of candidates who passed the written bar exam between 1897 and 1903 had studied at a law school, though not all earned a degree.



12. Attach to this page, over the square outlined, an unmounted photograph of yourself taken within the preceding 12 months.

I hereby certify that the foregoing information is correct and complete to the best of my knowledge and belief.

Dated this 15<sup>th</sup> day of October, 1937

Lena Sear  
(Signature of Applicant)

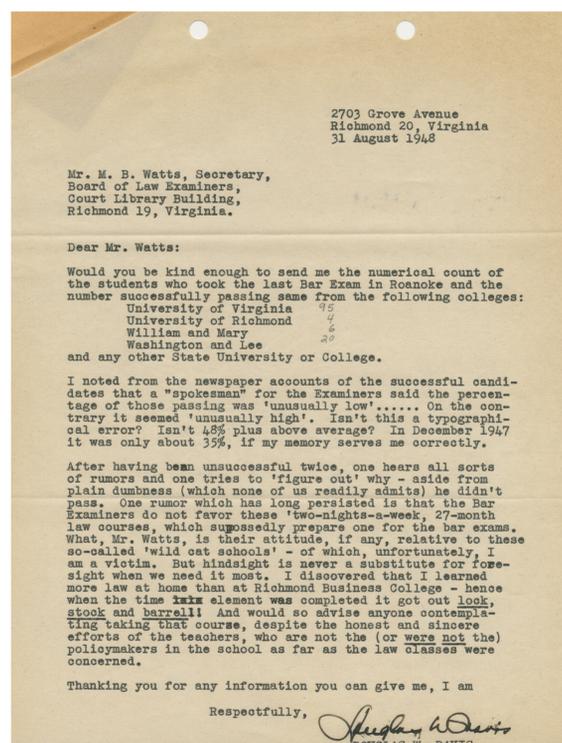
Lena Sear, a 1935 graduate of Duke University, was among the growing number of women who took the bar exam in the 1930s. She prepared by studying with both Lavinia Snell, one of the first generation of women granted the right to take the bar exam in Virginia in the 1920s, and her brother, a member of the bar in Hopewell.

Douglas Davis took the bar exam in 1947 and 1948 after taking a law course at Richmond Business College. After failing a second time, he wrote the Board of Bar Examiners seeking an explanation:

*“One hears all sorts of rumors and one tries to ‘figure out’ why -- aside from plain dumbness (which none of us readily admits) he didn’t pass. One rumor which has long persisted is that the Bar Examiners do not favor these ‘two-nights-a-week, 27-month’ law courses, which supposedly prepare one for the bar exams.”*

Courtesy The Library of Virginia  
Photograph submitted by Lena Sear with her application to take the bar exam in 1937. Virginia Board of Bar Examiners Records, 1910-1986.

Maury B. Watts, Secretary of the Board of Examiners, assured Davis the Board did not discriminate on that basis. Statistics showed law school graduates passed at a much higher rate, however, and in 1954 the law was changed to require study at an accredited law school, except for candidates who read law under the supervision of a licensed attorney. The tradition of preparing for the bar by reading law with a practicing lawyer endures, and today Virginia is one of four states that does not require candidates to attend an accredited law school before sitting for the bar exam.



2703 Grove Avenue  
Richmond 20, Virginia  
31 August 1948

Mr. M. B. Watts, Secretary,  
Board of Law Examiners,  
Court Library Building,  
Richmond 19, Virginia.

Dear Mr. Watts:

Would you be kind enough to send me the numerical count of the students who took the last Bar Exam in Roanoke and the number successfully passing same from the following colleges:

University of Virginia	45
University of Richmond	4
William and Mary	6
Washington and Lee	20

and any other State University or College.

I noted from the newspaper accounts of the successful candidates that a "spokesman" for the Examiners said the percentage of those passing was 'unusually low'..... On the contrary it seemed 'unusually high'. Isn't this a typographical error? Isn't 45% plus above average? In December 1947 it was only about 35%, if my memory serves me correctly.

After having been unsuccessful twice, one hears all sorts of rumors and one tries to 'figure out' why -- aside from plain dumbness (which none of us readily admits) he didn't pass. One rumor which has long persisted is that the Bar Examiners do not favor these 'two-nights-a-week, 27-month law courses, which supposedly prepare one for the bar exams. What, Mr. Watts, is their attitude, if any, relative to these so-called 'wild cat schools' - of which, unfortunately, I am a victim. But hindsight is never a substitute for foresight when we need it most. I discovered that I learned more law at home than at Richmond Business College - hence when the time ~~was~~ element was completed it got out ~~look~~, ~~stuck~~ and ~~barrrel!~~ And would so advise anyone contemplating taking that course, despite the honest and sincere efforts of the teachers who are not the (or were not the) policymakers in the school as far as the law classes were concerned.

Thanking you for any information you can give me, I am

Respectfully,

*Douglas W. Davis*  
DOUGLAS W. DAVIS

Courtesy The Library of Virginia  
Davis letter to Maury Watts, 1948,  
Virginia Board of Bar Examiners Records

# Regulating Lawyers and the Practice of Law

After more than a decade of lobbying by the voluntary bar, in 1938 the General Assembly authorized the Supreme Court of Appeals to draft rules for a mandatory, regulatory bar.

Norfolk lawyer Robert B. Tunstall advocated for bar integration when he was president of the Virginia State Bar Association in 1924 and is credited with being the individual most responsible for establishment of the Virginia State Bar.

The Supreme Court provided for the election of a Committee of 40, comprised of one lawyer elected from each circuit and six at-large members, to draft rules for the Virginia State Bar. This group was the predecessor of the Virginia Bar Council.

The most controversial issue before the committee was the state bar's authority to define the practice of law, and from what power the authority was derived -- the statute establishing the state bar or the inherent power of the judiciary. Ashton Dovell, an at-large member of the Committee of 40 who had been a legislator, emphasized that legislative support for establishment of the Virginia State Bar was dependent on the judiciary's willingness to take responsibility, through the bar, for the difficult task of defining the practice of law. "Whether you possess the inherent power," legislators were telling the court, according to Dovell, "or whether you are going to follow that statute, you define the practice of law."



Courtesy Virginia Historical Society  
Robert Tunstall, 1941. Tunstall led the Virginia State Bar Association's efforts to lobby the legislature for an integrated state bar.

## The Virginia State Bar and the Virginia Bar Association: an Evolving Partnership

Today Virginia is one of only three states with both mandatory and voluntary state bar associations. When the Virginia State Bar was created in 1938, many predicted the Virginia State Bar Association would become a social organization, but it continued to play an important role in legislative reform. In 1954, the two

groups adopted a plan of cooperation and created the Joint Committee on Legislation and Law Reform.

As a consequence of the passage of the Criminal Justice and Equal Opportunity Acts by Congress in 1964, in 1966 the Virginia State Bar and the Virginia State Bar Association organized a Joint Committee on Law and Poverty Programs to advise the bar on strategies for expanding legal services for underserved populations.



For both groups, professionalism and the public image of lawyers, the same issues that concerned founders of the bar in 1888, remain a priority.

## Speakers urge professionalism

Increasing commercialism is turning lawyers and journalists away from their crafts and has helped lead to the low public image of the two professions, Virginia Supreme Court Chief Justice Harry L. Carrico and *Los Angeles Herald Examiner* Editor Mary Anne Dolan told an overflow crowd of more than 300 Virginia State Bar members and their guests on June 16.

Carrico and Ms. Dolan were the featured speakers at the annual luncheon, which closed out formal activities at the 46th Annual Meeting of the Virginia State Bar in Virginia Beach.

The Annual Meeting was conducted from June 14-17 at the Cavalier and Holiday Inn hotels. A record 727 lawyers and judges



Chief Justice Carrico delivers his address on June 16.  
*Virginia Bar News, July 1984*

Beginning in the 1980s, when litigation across the country challenged the right of mandatory bar organizations to use compulsory dues for non-essential functions, the Virginia State Bar implemented a new policy on legislative activities. The Virginia Bar Association (the group dropped "state" from its name in 1972), in turn, began to focus more of its resources on lobbying, and in 1988 hired its first lobbyist.

"New labels mark old troubles," VBA president John Ryan noted in a column commemorating the centennial of the organization in 1988. "Ethics, standards, advertising, and greed -- are now confronted under the banner of professionalism." In 1984, the Virginia State Bar became the first in the nation to institute a mandatory course in professional ethics. In 1992, the Virginia Bar Association approved a statement of professional conduct, citing a need to recover a "lost sense of professionalism."

## Making Strides Toward a More Inclusive Bar

Between 1970 and 2000, the number of lawyers per capita in the U.S. doubled. Opportunities for women expanded exponentially during this period. By 2000, half of law school graduates were women and 4.5 percent were African American.

In the mid-1980s, the Virginia State Bar and the Virginia Bar Association began taking steps to reverse nearly a century of discrimination against African American and women lawyers. The Virginia Commission on Women and Minorities in the Legal System was organized in 1986 with the task of eliminating barriers preventing minority and women “from fully participating in all phases of the profession.” Diversity programs have continued to be a priority for both statewide bar organizations. In 2013, the Virginia State Bar voted to add the Diversity Conference to its governing body.

### Insurance administrator chosen, minorities commission gets VSB support

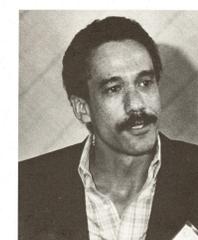
The Virginia State Bar (VSB) governing Council chose a new company to administer bar-sponsored insurance programs and agreed to participate as a co-founder of a commission geared toward women and minorities in the law at its June 12 meeting in Virginia Beach.

Johnson and Higgins/Kirke Van Orsdel, Inc. (J&H/KVI) has replaced Alsop and Elliott, effective July 1, 1986, as insurance administrator for the bar. J&H/KVI, based in Des Moines, Iowa, offers full-time representatives in Roanoke, Northern Virginia, Tidewater and Richmond prepared to assist lawyers in obtaining coverage and answering questions about premiums. The company's

and relocation. He commended his predecessor, William D. Dolan, III, for his work toward realizing the bar dues increase and acknowledged the dedication and hard work of the VSB staff members.

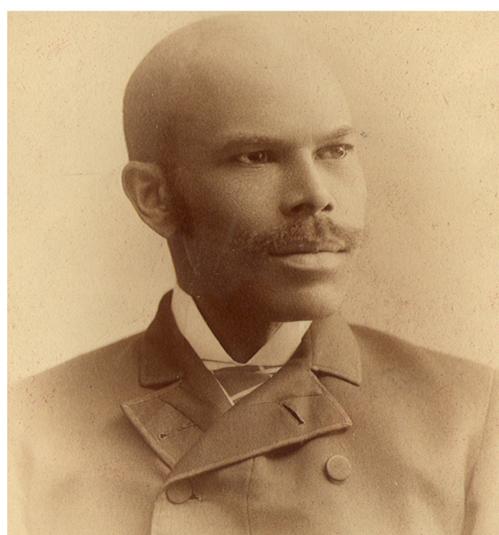
The Council adopted an amendment to DR 1-101, making a lawyer “subject to discipline if he has made a materially false statement in any certification required to be filed as a condition of maintaining or renewing his license to practice law.”

The issue of lawyers being summoned to testify concerning certain aspects of client matters was discussed, but the decision to adopt a rule was tabled until the October Council meeting. The VSB Litigation Section



Robert J. Grey, Jr.  
—“minorities commission”

*Virginia Bar News, July 1986*

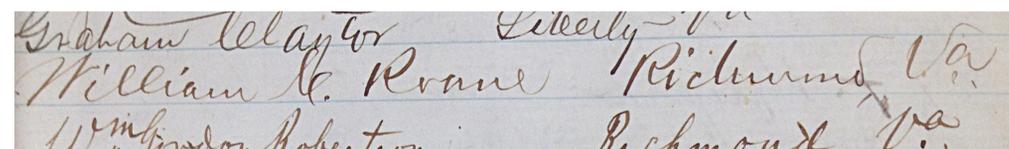


*Courtesy Cornell University Law Library*

George W. Fields practiced law in Hampton after graduating from Cornell law school in 1890.

African Americans began practicing law in Virginia shortly after the end of the Civil War. Withal Wynn was admitted to practice in the Richmond (City) Circuit and Hustings Court on March 9, 1871. He was among the first graduates of Howard

University School of Law, which opened in 1869. Robert Peel Brooks, Henry B. Fry, and William C. Roane, also law graduates of Howard, were admitted to practice in the Henrico County and Richmond Hustings Courts in 1876. Roane was likely the first African American lawyer to qualify to practice in the appellate court. The first Virginia law school open to African American students was founded at Virginia Union University in 1922. The Virginia State Bar Association did not vote to accept an African American member until 1967.



*Supreme Court of Virginia Archives*

Signature of William C. Roane of Richmond, 1878-1880, circa, List of Attorneys Qualifying to Practice in the Supreme Court of Appeals



*Courtesy Arthur J. Morris Law Library, University of Virginia*  
Elizabeth N. Tompkins, Class of 1923

Virginia was one of the last three states, along with Delaware and Rhode Island, to admit women to the bar. The Virginia General Assembly voted in 1920 to admit women to the practice of law, but against the 19th amendment giving women the right to vote.

Carrie M. Gregory and Rebecca Lovenstein were the first women to pass the written bar exam in June 1920. The first women to graduate from law school in Virginia were Elizabeth Tompkins, from the University of Virginia; and Jane Brown Ranson, from the University of Richmond, both in 1923. Mildred Callahan was the first woman admitted to practice in the Supreme Court of Virginia, on November 30, 1923.



*Courtesy Virginia Bar Association*  
The VBA annual summer meeting at the Homestead Resort in Hot Springs, Va., July 2013