

The Establishment Of The Pennsylvania State Board Of Law Examiners, 1895-1902

By JOEL FISHMAN*

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INTRODUCTION

As the Commonwealth of Pennsylvania recently celebrated the one hundredth anniversary of the origins of the State Board of Law Examiners, it is useful to examine how the board came about in the early twentieth century. Pennsylvania had a long history of local county control over admission to the bar, and it was during the reform period that Pennsylvania joined with many other states to create a state board to oversee admission to its Supreme Court and tried to regulate admission to the local bars. This article will review chiefly the eighteenth and nineteenth century background to admission to the bar. It will then examine how the Pennsylvania Bar Association in its first meetings in 1895 created a committee on legal education to raise the standards for admission to the bar, and how it took seven years before it could obtain approval of its goals from the Supreme Court of Pennsylvania.

EARLY ORIGINS OF ADMISSIONS TO THE BAR

Generally in Pennsylvania attorney registration was done on the local court level. As early as 1759, the Supreme Court required attorneys to be examined before admission to the court.¹

* Joel Fishman, Ph.D., University of Wisconsin-Madison; Assistant Director for Lawyer Services, Duquesne University Center for Legal Education/Allegheny County Law Library, Pittsburgh, PA.

¹ Rule 3. (April 10, 1759). Ordered by the Court, that for the future no persons be admitted attorneys

Various counties instituted court rules as judicial districts were created. In Allegheny County, local rules adopted in 1811 dealt with admittance to the bar and regulations for practice.² Among the requirements were the need to serve a clerkship under a practicing attorney for three years for a person under twenty-one and two years for over twenty-one.³ By section 3, no foreigner was admitted until he had become a citizen of the United States and resided four years before applying for admission.⁴

In Philadelphia, 1823 local rules called for an attorney to be a citizen of the United States, of lawful age.⁵ He had to serve a clerkship under a practicing attorney for three years, had to

or counsel of this court without being previously examined as to their qualifications to practice,—not without having taken the oaths or affirmations of allegiance to his majesty and subscribed the usual declaration.” Albert S. Faight, *Early Rules of Court in Pennsylvania*, 44 DICKINSON L. REV. 273, 279 (1940). A longer revised rule for admission followed in 1767: Rule 7 (Sept. 24, 1767). This is a long rule as to admission of attorneys:

A regular apprenticeship to some gentleman of known abilities in the profession for the term of four years” and practice for one year in a county court, is required (or 3 years apprenticeship and 2 years practice), and certificate by two examiners appointed by the Court that “such person appears to be well grounded in the principles of the law and acquainted with the practice.” Two exceptions are recognized: (a) Those who take up the study of the law after reaching 21 years and are persons “of fair character and certified to be well qualified” need study only two years and practice one year; and (b) “Gentlemen of character and standing from any of the neighboring colonies or elsewhere” or “having studied in any of the inns of court in England” may be admitted “as if the above rule had not been made.”

² Rule 1. RULES FOR REGULATING THE PRACTICE IN THE COURTS OF COMMON PLEAS AND OTHER COURTS OF ALLEGHENY COUNTY, PENNSYLVANIA 120-21 (Pittsburgh: Johnston & Stockton, 1830).

³ *Id.* Rule 1, section 1.

⁴ *Id.*

⁵ 1 FRANCIS J. TROUBAT AND WILLIAM W. HALY, THE PRACTICE IN CIVIL ACTIONS AND PROCEEDINGS, IN THE SUPREME COURT OF PENNSYLVANIA, AND IN THE DISTRICT COURT AND COURT OF COMMON PLEAS FOR THE CITY AND

register with the prothonotary at least three months before his admission that had to be made by the court upon motion of a practicing lawyer.⁶ The attorney also had to take an examination before the local board of examiners (at first seven and later nine members) who had to sign a certificate attesting to his qualifications to be admitted to the bar and evidence in writing of his good moral character.⁷

Later rules provided for a ten-member board of examiners, six members for a quorum to provide testing of a student. The student had to register with the prothonotary from which time the clerkship is officially listed to begin. All students had to be examined "in all of the branches of a good English education," had a certificate signed by all members of the examining committee of his qualifications to commence the study of law. The applicant had to give twenty days notice in writing to the secretary of the board of his desire to register before he came for the examination.⁸

The rules also provided the following course of study for applicants. The materials were divided into obligatory and recommended readings. Obligatory works included *Blackstone's Commentaries* (Sharswood ed.)⁹, *Kent's Commentaries*,¹⁰ Constitution of the United States, Acts of Congress relating to the judiciary, the bankruptcy law, Constitution of Pennsylvania, Rules of Equity Practice, *Troubat and*

*Haly's Practice*¹¹ and 38 topics in *Purdon's Digest*.¹² Recommended works were based on American editions of English works on contracts,¹³ real property,¹⁴ evidence,¹⁵ *Wharton's Criminal Law*,¹⁶ plus fifteen topics in *Purdon's Digest*.¹⁷

¹¹ For the full title, see *supra*, note 5.

¹² John Purdon, A DIGEST OF THE LAWS OF PENNSYLVANIA. FROM THE YEAR ONE THOUSAND SEVEN HUNDRED, TO THE SIXTEENTH DAY OF JUNE, ONE THOUSAND EIGHT HUNDRED AND THIRTY-SIX. (5th ed., George M. Stroud, ed.) (Philadelphia: M'Carthy & Davis, 1837) and A DIGEST OF THE LAWS OF PENNSYLVANIA. FROM THE YEAR ONE THOUSAND SEVEN HUNDRED, TO THE THIRTEENTH DAY OF OCTOBER, ONE THOUSAND EIGHT HUNDRED AND FORTY. (6th ed., George M. Stroud, ed.) (Philadelphia, M'Carthy & Davis, 1841). For the history of statutory law in Pennsylvania, see Joel Fishman, *The History of Statutory Law in Pennsylvania*, 86 L. LIBR. J. 559-96 (1994).

The 38 topics were: Actions personal, Actions real, Amendments, Assignments, Bills of exchange, Bonds, Contracts of decedents, Crimes, Decedents' estates, Deeds and mortgages, Defalcation, District court, Dower, Ejectment, Equity, Estates-tail, Execution, Factors, Foreign attachment, Frauds and perjuries, Ground-rents, Habeas Corpus, Intestates, Joint-tenancy, Judgments, Landlord and tenant, Liens, Limitation of actions, Marriage, Orphans' court, Partition, Promissory notes, Real estate, Register and register's court, Replevin, Trespass, Trustees, and Wills.

¹³ JOHN WILLIAM SMITH, THE LAW OF CONTRACTS: IN A COURSE OF LECTURES DELIVERED AT THE LAW INSTITUTION (Jelinger C. Symons, ed., Philadelphia: T. & J. W. Johnson, 1847). The work was originally published in 1842 and reprinted with notes in 1847 as part of the *Law Library*, v. 56, April/June 1847. A second edition appeared in 1850; a third edition in 1853 edited by William Henry Rawle, and a fourth edition in 1856, edited by George Sharswood. For bibliographic information, see 1 MORRIS COHEN, BIBLIOGRAPHY OF EARLY AMERICAN LAW 793 (1998).

¹⁴ JOSHUA WILLIAMS, PRINCIPLES OF THE LAW OF REAL PROPERTY, INTENDED AS A FIRST BOOK FOR THE USE OF STUDENTS IN CONVEYANCING. . . (London, Harrisburg, M'Kinley and Lescure, 1845). A second American edition from the 4th English edition appeared in 1857 edited by William Henry Rawle, and James T. Mitchell. See 3 COHEN, *supra* note 13, at 472.

¹⁵ SIMON GREENLEAF, A TREATISE ON THE LAW OF EVIDENCE (3 vols., 1842, 1846 and 1853) went through 16 editions by 1899.

¹⁶ FRANCIS WHARTON, A TREATISE ON THE CRIMINAL LAW OF THE UNITED STATES: COMPRISING A DIGEST OF THE PENAL STATUTES OF THE GENERAL GOVERNMENT, AND OF MASSACHUSETTS, NEW YORK, PENNSYLVANIA AND VIRGINIA; WITH THE DECISIONS OF CASES ARISING UPON THOSE STATUTES; TOGETHER WITH THE ENGLISH AND AMERICAN AUTHORITIES UPON CRIMINAL LAW IN GENERAL. (Pittsburgh, C. H. Kay, 1846). Three more editions appeared in the 1850s. See 1 Cohen, *supra* note 13, at 828.

COUNTY OF PHILADELPHIA; AND ALSO IN THE COURTS OF THE UNITED STATES 148 (Philadelphia, R. H. Small, 1837).

⁶ *Id.*

⁷ *Id.*

⁸ 1 *Id.* at 118 (5th ed., Frederick C. Brightly, ed., 1880).

⁹ WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND (George Sharswood, ed., 1859). Sharswood (1810-1883) was the Chief Justice of the Supreme Court from 1879 to 1882. He was a leader of the Philadelphia bar, provost of the Law Academy of Philadelphia, professor of law at the University of Pennsylvania; author of several books including the first work on ethics, *Essay on Professional Ethics* (1854), which became the basis of the Canons of Professional Responsibility of the American Bar Association in 1908. For a biographical sketch of Sharswood, see GEORGE W. BIDDLE, A SKETCH OF THE PROFESSIONAL AND JUDICIAL CHARACTER OF THE LATE GEORGE SHARSWOOD, CHIEF JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA. AN ADDRESS DELIVERED BEFORE THE LAW ASSOCIATION OF PHILADELPHIA, NOV. 20, 1883. (Philadelphia: The Association, 1883), reprinted in 102 Pa. 601-630; see also, Samuel Dickson, *George Sharswood—Teacher and Friend*, 55 AM. L. REG. 401-429 (1907).

¹⁰ JAMES KENT, COMMENTARIES ON AMERICAN LAW (4th ed.) (New York, the author, 1840). For Kent's influence, see John Langbein, *Chancellor Kent and the History of Legal Literature*, 93 COLUMBIA L. REV. 547 (1993).

In nineteenth-century Pennsylvania, section 68 of the act of 1834 provided for the judges to admit a "competent number of persons of an honest disposition, and learned in the law, to practice as attorneys in their respective courts."¹⁸ Supreme Court rules provided for the serving of a regular clerkship to some practicing lawyer within the state for four years and then practiced in a common pleas court for one year, or served a clerkship for three years and practiced for two years. A further restriction provided for a clerkship for two years after reaching 21 years of age and afterwards practicing for two years in a law office.¹⁹

Because many of the local bars were quite small in size, the judges and attorneys knew each other and served as sponsors for new admittees. In Pittsburgh, for instance, there were only 38 members of the local bar in 1837²⁰ and approximately 300 in 1870 when the Allegheny County Bar Association was created.²¹ Throughout the state a minority of attorneys attended law schools before admission, but most preferred to read the law and serve a preceptorship in a law office for two years before being admitted to the bar.

For educational purposes the leaders of the Philadelphia bar began the Law Academy of Philadelphia in 1821 to provide moots for students and beginning lawyers as well as presentation of an annual address by a major legal figure.²² These founding members included Peter Du Ponceau, John Sergeant, and William Rawle; later leaders included George Sharswood and Peter McCall, for instance. By the 1890's, the University of Pennsylvania Department of Law and Dickinson Law School had begun to offer degrees in law that entitled their

graduates to be directly admitted to the practice of law before the state Supreme Court. Such practice ran counter to prevailing practices in other states, where even in Massachusetts, Harvard Law School graduates had to take an exam by a board of examiners.²³

The local bar exam, either written or oral was given usually by three members of the local bar. For instance, in the 1870's the Allegheny County Bar Association, offered a written examination of twenty-four questions dealing with various topics under statutory and common law in the areas of torts, crimes, corporations.²⁴

In 1889, the conflict over competing county bar associations' admittance practices reached the Pennsylvania Supreme Court in the *Petition of Splane*.²⁵ Joseph Splane was a member of the Cambria bar and of the Supreme Court and upon certificates of admission to those courts he presented them to the Common Pleas Court of Allegheny County for admission to Courts 1 and 2. The court turned down his admission and he appealed to the Supreme Court. There the court had to determine if he could be admitted under the act of May 12, 1887.²⁶

The court reviewed that Splane had been admitted to its bar in the last term in the Western District based on a certificate of admissions from the Court of Appeals and Errors of New York under which comity, he was permitted admittance to the Supreme Court. However, further examination of the certificate showed it was the Supreme Court, not the Court of Appeals and Errors, that had certified his admission to the Court of Errors and Appeals. Since his admission to the Supreme Court in New York did not give him certification to another court, the judge viewed his admission to the Pennsylvania court "as having been improvidently given."²⁷ The chief question was whether a person who failed two ex-

¹⁷ The topics were: Aliens, Attorneys-at-law, Charities, Collateral inheritances, Criminal procedure, Divorce, Equitable plaintiffs, Evidence, Feme sole traders, Interest, Limited partnership, Lunatics and habitual drunkards, Mechanics' liens, Practice, and Verdict.

¹⁸ 1834 PA. LAWS 333, §68.

¹⁹ 1 TROUBAT AND HALY, *supra* note 5, at 149.

²⁰ See Joel Fishman, *The Pittsburgh Law Library Association: An Unpublished Minute Book*, 63 WEST. PA. HIST. MAG. 189-201 (1981).

²¹ According to John Kerr, a founding member, there were 41 charter members of the Pittsburgh Law Association in 1870. Josiah Cohen, *Half a Century of the Allegheny County Bar Association*, 4 WEST. PA. HIST. MAG. 125, 132 (1921). He also stated that there were approximately 300 members of the bar in 1867 (p.135).

²² GEORGE SHARSWOOD, THE ORIGIN, HISTORY, AND OBJECTS OF THE LAW ACADEMY OF PHILADELPHIA. AN ADDRESS DELIVERED BEFORE THE ACADEMY, MARCH 13, 1883 (Philadelphia, Kay & Bro., 1883); Joel Fishman, *The Law Academy of Philadelphia 1821-1940*, unpublished paper.

²³ 7 REPORTS OF THE PA. B. ASS'N. 116-17 (1902). [Hereafter REPORTS]

²⁴ Exam of Prothonotary Attorney Docket 1.

²⁵ *Petition of Splane*, 123 Pa. 527, 16 A. 481 (1889).

²⁶ 1887 PA. LAWS 131, §1 read as follows:

That from and after the passage of this act, any attorney or counsellor-at-law, who shall have been duly admitted to practice in any court of common pleas and in the Supreme Court of this Commonwealth, shall be admitted to practice in any other court of this Commonwealth upon motion simply, by exhibiting to the court a certificate of admission to the Supreme Court and filing a certificate of the presiding judge of the county or district, from which he came, setting forth that he is of reputable professional standing and of unobjectionable character. Upon such admission, the clerk of the court shall keep a record thereof on the minutes of such court.

²⁷ *Splane's Petition*, 123 Pa. at 538.

aminations can be procured by his admission in another county, aided by the act of assembly, compel admission to the court where he had been rejected for incompetency.²⁸ The court stated: "If he can, we have fallen upon evil times for the legal profession." Spaine's actions were seen as "fraud upon the court." The court was not willing to concede the full effect of the 1887 act. As long ago as 1814 in *Brackenridge's Case* (1 S. & R. 187), the supreme court recognized admission of an attorney to the bar to be a judicial, not ministerial, act and the court refused to issue a mandamus at that time.²⁹ The court did not recognize the legislature having the right to interfere with judicial powers. It recognized the checks and balances system—"in our beautiful system of government"³⁰—might have some encroachments may sometimes occur through inadvertence, but the judiciary could correct them: "It is our duty to see that the checks and balances provided by the constitution are preserved."³¹ The court also did want to admit someone who was not properly qualified or of bad moral character.³² The court therefore discharged the rule for a writ of mandamus.

On the national level, the creation of the American Bar Association in 1878 was followed by the movement for legal reform which continued into the early twentieth century. The ABA has been portrayed as an elitist organization whose membership consisted mainly of Anglo-Saxon, white, Protestant lawyers coming chiefly from the large corporate law firms in the large cities.³³ These men felt challenged by the country lawyers, the immigrants and non-Protestant men who sought to become lawyers. "The ostensible issues [surrounding the controversy over qualifications for admission to the bar]—the sufficiency of high school, college, or even law school training for entry to the profession—were of negligible importance compared with questions of mobility, stratification, and structure that un-

derlay the dispute."³⁴ During the early 1890's the American Bar Association in order to regularize the admission to the bar first raised the question of how the Bar could implement a licensing program for local bars. On the state level New York, Ohio, and Massachusetts were in the forefront of revising state laws concerning admission. The reform movement in these other states affected the movement in Pennsylvania.

THE EARLY YEARS 1895-1899

The Pennsylvania state bar association organized and had its first meeting in 1895³⁵ brought together as a result of proposed legislative proposals in the General Assembly to reform laws governing forms of action, service of process, and practice before the courts.³⁶ A letter, dated November 1, 1894, invited lawyers state-wide to attend a meeting in Harrisburg in January 1895. Five hundred and ninety-two members signed the original charter setting up the Bar Association. It is from the publication of the proceedings of the annual meetings that we can trace the history of the movement for a state board of law examiners. At that meeting Chief Justice James T. Mitchell,³⁷ and George Wharton Pepper,³⁸ a

³⁴ JEROLD S. AUERBACH, *UNEQUAL JUSTICE* 94 (1978). Gerard Gawalt contradicts this theme in his article, *The Impact of Industrialization on the Legal Profession in Massachusetts, 1870-1900*, in *THE NEW HIGH PRIESTS*, *supra* note 33, at 97-123, especially his conclusion accompanying note 38.

³⁵ 1 REPORTS 41-88 (1895).

³⁶ Henry Dolan Thomas, *The Diamond Anniversary of the Pennsylvania Bar Association*, 42 PA. B. ASS'N. Q. 130, 131 (1972).

³⁷ James T. Mitchell (1834-1915) served as Assistant City Solicitor (1859-62), was editor-in-chief of the *American Law Register* (1862-87), elected to the District Court of Philadelphia County (1871), transferred to Common Pleas Court No. 2 under the reorganization plan of 1873, and was re-elected in 1881. He was elected to the Pennsylvania Supreme Court, serving twenty-one year term from January 7, 1889 to December 1911. He also served as president of the Historical Society of Pennsylvania (1911 to 1915). HAMPTON L. CARSON, JAMES T. MITCHELL, CHIEF JUSTICE (1916); 1 PROMINENT AND PROGRESSIVE PENNSYLVANIANS OF THE NINETEENTH CENTURY 44-46 (1898).

³⁸ George Wharton Pepper (1867-1961) received an LL.B. from the University of Pennsylvania Law School in 1889, was a teaching fellow at the Law School from 1889 to 1893 and Biddle Professor of Law from 1893 to 1910. Chair of the Pennsylvania Council of National Defense during World War I, he was a leading opponent of the Versailles Treaty and the League of Nations. He served as U.S. Senator from 1922 to 1926. He represented defendants in *U.S. v. Butler*, 297 U.S. 1 (1936), which resulted in

²⁸ *Id.*

²⁹ *Id.* at 539-40.

³⁰ *Id.* at 540.

³¹ *Id.* Recently, the Pennsylvania Supreme Court (divided 3-3) upheld the its authority under Article V, §10 of the Constitution of 1968 to be the only body that can regulate attorneys' practice of law by rejecting a provision of the new State Lobbying Law of 1999 that dealt with the State Ethics Commission regulating lawyers who acted as lobbyists; see *Gmerek v. State Ethics Commission*, 569 Pa. 579, 807 A.2d 812 (2002).

³² 129 Pa. 540.

³³ John A. Matzko, "The Best Men of the Bar": the Founding of the American Bar Association, in *THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA* 75-96 (ed. Gerard W. Gawalt, 1984).

leader of the Philadelphia bar, spoke in favor of additional requirements for admission to the bar in order to protect the bar from undesirable persons and in accordance with the ABA recommendations. On the first evening establishing the Bar Association, Pepper recommended establishing a curriculum or course of study and standard examinations to be used throughout the state. He went on to state:

It will be observed that my suggestion does not contemplate any such radical change in our system as the delegation of the power to examine for the Bar to our Supreme Court, nor does it contemplate the appointment of such a commission as has been recommended by the Committee of the American Bar Association and actually created in New York. The suggestion contains no feature that threatens the right of the several counties to decide for themselves to what extent they will recognize local traditions in matters of practice and procedure. It is nothing more nor less than a suggestion that this Bar Association will do well to turn its attention to the problems of the legal education and admission to the Bar, and begin a campaign of education in this commonwealth by supplying our local examining boards with the results of all that is latest and best in legal education science. In this way, the local board will be enabled without expenditure of time and labor which it is impossible for them to make, to lay before their students a comprehensive and graded course of studies, and finally to subject their students to a fair but searching examination of such a character as will.³⁹

Pepper's paper on legal education and admission standards were at the forefront of discussion of the members on the second day. The rules of the Pennsylvania Supreme Court admitting attorneys to practice began early in the century. The need to make reforms by implementing a standard system of admission reflects the ongoing movement at this time by the American Bar Association and various state bars to reform education and admissions to the bar. This desire for standardization was the result of a growing concern in a continuing struggle between elitism and democracy the part of the practicing bar that admissions to the

bar had to be more carefully monitored.⁴⁰ The movement can be divided into three stages: first, from 1895 to 1897, the committee on legal education met to determine the standards necessary for a statewide education system. From mid-1897 to 1899, the committee worked on getting the local courts to adopt the reforms locally. Finally, from mid-1899 to 1902, a new committee worked on passing a statutory law and/or adopting of a standard by the Supreme Court of Pennsylvania. This article will tell the story of the adoption of standards over the seven-year period until the Supreme Court adopted a memorial from the State Bar to implement rules of admission to the Supreme Court bar through a state board of law examiners.

A standing Committee of Legal Education was created chaired by Robert Snodgrass⁴¹ of Harrisburg.⁴² It first met in Philadelphia in December 1895 with 65 judges and 63 lawyers from the local bar associations and examining boards.

The committee was organized to examine the standards of admission to the local bars. Admitted members to local bars could also be admitted to practice before the state Supreme Court. Because there was no formal test of admission to the highest court, some members of the committee felt that in some judicial districts the local judges were not giving adequate attention to legal education, and secondly, they wished to do away with the diversity of local practices that occurred in the fifty-four judicial districts in the state.⁴³ Such practice had obviously been frowned upon by practitioners outside of Pennsylvania because the

⁴⁰ AUERBACH, *supra* note 34, at 96; for other more recent articles on the history of admission to the state bar, see Allison Marston, *Guiding the Profession: The 1887 Code of Ethics of the Alabama State Bar Association*, 49 ALABAMA L. REV. 471, 486-493 (1997); J Gordon Hylton, *The Bar Association Movement in Nineteenth Century Wisconsin*, 81 MARQUETTE L. REV. 1029, 1038-43 (1998).

⁴¹ Robert Snodgrass (1836-1913) served as United States Commissioner from January 1867 to November 1870 and then as prothonotary of the middle district of the Supreme Court of Pennsylvania from November 1870 to January 1882. From 1882 to 1887, he served as Attorney General of Pennsylvania. He was a charter member of the Dauphin County and Pennsylvania State Bar Associations. He later became one of the first members of the State Board of Law Examiners after his service as chairman of the Committee on Legal Education. 4 FRANK EASTMAN, COURTS AND LAWYERS OF PENNSYLVANIA 102-104 (1923); 2 TWENTIETH CENTURY BENCH AND BAR OF PENNSYLVANIA 774 (1903). [Hereafter TWENTIETH CENTURY BENCH AND BAR.]

⁴² 1 REPORTS 153-55 (1895).

⁴³ *Id.* at 114-15.

the invalidation of the Agricultural Adjustment Act. He was co-author with William Draper Lewis, *A Digest of Decisions and Encyclopaedia of Pennsylvania Law, 1754-1898*. DICTIONARY OF AMERICAN BIOGRAPHY SUPP. 7 (1961-1965), at 606-07 (1981); Leonard Schlup, "Pepper, George Wharton"; <http://www.anb.org/articles/06/06-00512.html>; *American National Biography Online* Feb. 2000.

³⁹ George Wharton Pepper, *Legal Education and Admission to the Bar*, 1 REPORTS 105, 124 (1895).

system “seriously affects the standing of the Pennsylvania Bar” in regard to the respect of its members.⁴⁴ Two committees came out of this meeting: a committee on curriculum assigned to determine standards for preliminary and final examinations for registration and a committee on uniformity that would take the curriculum committee’s recommendations and work to get them approved by the local boards of examiners and local judiciary.⁴⁵

Sometime between 1895 and 1896, Alexander Simpson, Jr. compiled a universal set of county court rules arranged by topic and published as *County Court Rules* in the second volume of the *Reports*.⁴⁶ Under the topic of Attorneys was a summary of educational requirements for the fifty-one judicial districts.⁴⁷ Some results of this survey were later discussed when educational requirements were reviewed by various members of the Committee on Legal Education.

On November 21, 1896, the Committee on Legal Education first met in Pittsburgh. Mr. Snodgrass appointed a seven-member subcommittee on uniformity to draw up standards and present them to the county courts and board of examiners by June 1, 1897. However, the committee did not meet when it was decided shortly after the meeting to hold the December convention in Philadelphia.⁴⁸ In order to obtain judicial support in each county for rule revision, the Committee on Law Reform and Committee on Legal Education joined together to call a one-day judicial conference to meet on December 29, 1896 at Congress Hall in Philadelphia.⁴⁹ Judge Edward Biddle⁵⁰ and Robert Snodgrass, chairs of the law reform and legal education committees respectively, sent out a letter and requested a response sent to Edward Allinson,⁵¹ Secretary of

the Association, to know how many members of local boards would attend.⁵² The morning session was to deal with state-wide court rule reform and the afternoon meeting with legal education reform. Sixty-seven judges and sixty-three lawyers attended the meeting.⁵³ As the first statewide judicial conference, it preceded by thirty-two years the first officially called state judicial conference of 1928.⁵⁴

In his opening statement, Philander Knox,⁵⁵ president of the Pennsylvania Bar Association for 1896, stressed the importance of the Committee on Legal Education’s desire for uniformity of legal education throughout the state. He also discussed the Committee on Legal Reform’s report on the resolution to adopt uniform rules of practice in Pennsylvania.⁵⁶ Chief Justice James T. Mitchell called the meeting “a court of courts” or “*curia judiciorum*.” He supported a general movement “towards the accommodation of small differences, the elimination of localism, and the gradual trends towards uniformity.”⁵⁷ Samuel Pennypacker⁵⁸

worked hard and long to create a state bar association in a memorial service. 7 REPORTS at 125-37 (1901);

⁵² 3 REPORTS at 194-96.

⁵³ *Id.* at 197-201.

⁵⁴ Robert von Moschzisker, *The Pennsylvania Judicial Conference*, 2 PA. B. ASS’N. Q. 2-8 (December 1929).

⁵⁵ Philander Chase Knox (1853-1921) served as Attorney General of the United States from 1901 to 1904, U. S. Senator (1904-09) and then was Secretary of State under President Taft. He formed the firm of Knox and Reed, the forerunner of the present Pennsylvania firm of Reed Smith Shaw & McClay (just recently changed again to Reed Smith). 2 TWENTIETH CENTURY BENCH AND BAR, *supra* note 41, at 926; Lewis L. Gould. “Knox, Philander Chase”; <http://www.anb.org/articles/06/06-00347.html>; *American National Biography Online* Feb. 2000.

⁵⁶ 3 REPORTS at 201-2.

⁵⁷ *Id.* at 202-3.

⁵⁸ Samuel Pennypacker (1843-1916) was one of the leaders of the national bar in the early twentieth century. He held various offices including judge of Philadelphia Court of Common Pleas No. 2, from 1889-1902, governor (1903-06); Vice Provost, Law Academy (1898-1916), president of the Historical Society of Pennsylvania (1900-1916); and trustee of University of Pennsylvania (1886-1916). He wrote a large number of books and articles, including his autobiography, *The Autobiography of a Pennsylvanian* (1918) (see his bibliography of works, pp. 545-49). Among his leading works were his *Pennsylvania Colonial Cases* (1892); *Pennsylvania in American History* (1910); *Digest of English Common Law Reports*; as a staff reporter on *Weekly Notes of Cases*; Congress Hall, Philadelphia; 2 PA. B. ASS’N. REP. (1896). 4 EASTMAN, COURTS AND LAWYERS OF PENNSYLVANIA, *supra* note, at 214-16; 14 DICTIONARY OF AMERICAN BIOGRAPHY 447-48 (1937); 23 PA. B. ASS’N.

⁴⁴ *Id.* at 117.

⁴⁵ 2 *Id.* at 129.

⁴⁶ It is called *Compilation of the Rules of the Courts of Common Pleas of the State of Pennsylvania*, 2 *Id.* 281-690 (1896).

⁴⁷ *Id.* at 351-80.

⁴⁸ 1 *Id.* at 117.

⁴⁹ 3 *Id.* at 194-270. The editors of the *Legal Intelligencer* felt the conference was important enough to reprint the text of the convention in its January 8, 1897 issue. 54 NO. 2, LEGAL INT. 14-19 (1897).

⁵⁰ Edward Biddle of Carlisle was elected President Judge of Cumberland County in 1894. He was a member of the American and Pennsylvania Bar Associations. 1 TWENTIETH CENTURY BENCH AND BAR, *supra* note 41, at 37.

⁵¹ Edward P. Allinson (1852-1901). He was the first secretary of the Pennsylvania Bar Association and was the first reporter of the Superior Court of Pennsylvania (1895-1901). His colleagues praised him as one of the original members of the bar who

felt that the meeting would lead to the betterment of the administration of justice.⁵⁹ Following these introductory remarks, Charles E. Rice,⁶⁰ President-Judge of the Superior Court, and Edward P. Allinson, Associate Judge of the Superior Court, were unanimously chosen chairman and secretary of the convention, respectively.⁶¹

Following the morning session on law reform, the afternoon session dealt with reform of legal education. Robert Snodgrass, as chair of the Committee on Legal Education, led the session. He gave the necessary background information concerning the earlier meetings and now suggested that it might be "wise and proper" of this convention to appoint a committee composed of members of the judiciary, local examining boards, and members of the Committee on Legal Education to draw up a proposal to the judges of the state.⁶²

Mr. Walter George of Philadelphia opened the session with a long statement supporting legal education reform, believing that everyone was for it and that even with discussion, reform would be adopted by the convention. He therefore moved to adopt the rules as published in a pamphlet distributed that morning to each participant.⁶³ Judge Robert Archbald,⁶⁴ of Lackawanna County, however, complained that everyone had not reviewed the pamphlet completely enough to understand all of the requirements and how it was to be carried out.⁶⁵ He thought the requirements too high, doubt-

ing even he could pass the exam. He supported the idea of uniformity, but wanted the report discussed section by section.⁶⁶ Edward Fox⁶⁷ of Northampton suggested Walter Smith rescind his resolution, which he did, and was replaced by Fox's resolution "[t]hat is the sense of this Convention, that it is desirable to secure a uniform system governing the admission of attorneys throughout the Commonwealth of Pennsylvania."⁶⁸

Judge Morgan Greer⁶⁹ of Butler, spoke against the report's recommendations for study, believing "it would have ruled out Abraham Lincoln or Ben Wade from practicing law in Pennsylvania."⁷⁰ He felt that the makeup of a man might not be always tested by a committee and further remarked that "[s]ome of the ablest judges of the Supreme Court were men of limited education."⁷¹ Although he recognized that county boards disagreed sometimes over admittance to the bar, he felt that a state board was necessary, similar to one for physicians, that could be created through legislation.⁷² Judge White of Indiana supported Fox's resolution, but took issue with Judge Butler's suggestion that the legislature should create a state board. As a previous member of the legislature, he had "little respect for that class of legislation," e.g., boards of admission for pharmacists and druggists, and "would seriously question the constitutionality of that board, the creature of an Act of Assembly, to compel me, as the Presiding Judge of my district to admit anybody that came with a certificate from that board."⁷³ Wilson of Clearfield, calling for a high standard, felt that it was unfair to require a college equivalent education when "the great mass of boys in this Commonwealth are unable to go to college."⁷⁴ Judge Thomas Ewing⁷⁵

REP. 118-20 (1917); 2 HAMPTON L. CARSON, A HISTORY OF THE HISTORICAL SOCIETY OF PENNSYLVANIA 150-57 (1940); Hampton L. Carson, *The Life and Services of Samuel Whitaker Pennypacker*, 41 PA. MAG. HIST. & BIOG. 22-24 (1916).

⁵⁹ 3 REPORTS at 204.

⁶⁰ Charles E. Rice (1846-1919), elected district Attorney for Luzerne County in 1876 and served his full term until his election to Judge of Luzerne County Court in 1879. He was reelected in 1889, serving as President until July 1, 1895 when Governor Hastings appointed him the first President Judge of the Superior Court; reelected in 1896 and 1906 for two ten-year terms. 1 PROMINENT AND PROGRESSIVE PENNSYLVANIANS OF THE NINETEENTH CENTURY 53-54 (Philadelphia, The Record Publishing Co., 1898); 25 REPORTS 138-39 (1919).

⁶¹ 3 REPORTS at 205.

⁶² *Id.* at 236.

⁶³ *Id.* at 236-41.

⁶⁴ Robert W. Archbald (1848-1926) became a judge of Lackawanna County in 1885 and succeeded as President Judge on August 1, 1888 until March 29, 1901. President McKinley appointed him to the United States District Court for the Middle District of Pennsylvania until 1911 when he became a judge of the United States Commerce Court until 1913. 1 TWENTIETH CENTURY BENCH AND BAR, *supra* note 41, at 212; JUDGES OF THE UNITED STATES 12 (2d ed. (1983).

⁶⁵ 3 REPORTS at 241-42.

⁶⁶ *Id.* at 243.

⁶⁷ Edward J. Fox was from Eaton, Pennsylvania, where he was a very successful corporation lawyer, serving as counsel to a number of different railroads. He served as counsel to the Easton Trust Co., trustee of Lafayette College, president of the Y.M.C.A., and director of several utility companies. 2 1 TWENTIETH CENTURY BENCH AND BAR, *supra* note 41, at 732-33.

⁶⁸ 3 REPORTS at 244.

⁶⁹ Morgan Greer of the Washington bar, served as district attorney of Washington County (1869 to 1871), state senator (1877-1884), and judge of the Butler County court (1892 to January 1, 1903). 1 TWENTIETH CENTURY BENCH AND BAR, *supra* note 41, at 473-74.

⁷⁰ 3 REPORTS at 245.

⁷¹ *Id.*

⁷² *Id.* at 246-7.

⁷³ *Id.* at 248.

⁷⁴ *Id.* at 250.

⁷⁵ Thomas Ewing (1827-1897) served on the Constitutional Convention of 1873 and was elected

of Allegheny County, alluding to the experience of a "Philadelphia lawyer," believed the standard should be the same throughout the state regardless of location, so that all lawyers were properly educated.⁷⁶ He recommended adoption of the resolution, "and if he does not hold his own after that, it is because he has not the natural capacity and capability of making practical application of the knowledge which he has; and for that no man but himself must be responsible."⁷⁷ With this concluding remark, the convention approved Fox's resolution.⁷⁸

Following some comments concerning provisions of the report (use of Latin, preliminary education requirements, the types of lawyers already practicing, need for a college education,⁷⁹ and a three-year legal education program⁸⁰), Judge Lyons recommended that George Wharton Pepper speak about the report, since the report "is very largely the production of [him]."⁸¹

Pepper spent some time explaining the report.⁸² He discussed the two types of reform possible to be adopted by the bar. First, the New York model in which a state board of law examiners was created by statute, that everyone had to take regardless if they graduated from law school, and which was given at a set time and place.⁸³ There was a question of constitutionality of such an act in light of *Splane's Petition*, and a second question if the state is ready for such an act. There was however a strong feeling for autonomy and no judge, following Judge White's view, wanted to be compelled to accept a certificate from the state board. The second approach would be for individual courts and examining committees to adopt rules that were first submitted to a group such as this and then to the judges of each district. He felt that this second approach would work and would answer an earlier question of how to make uniformity work?⁸⁴ Although questions arose over content of the exams, there was a general agreement that a prelimi-

nary education, about what a man should know before he begins the study of law, that resulted in the equivalent of graduation from high school or entrance level for freshman for college.⁸⁵ He agreed with Mr. Wilson about the possibility that students unfamiliar with Latin would have a problem with exams; but he was willing to substitute another language like French or German: "that when a student comes to the study of law as a profession, he has had the discipline involved in learning some other language other than his own, and it may be Latin or German or French. That suggestion was not a blind attempt to put up a standard for registration at the Bar, without reference to the educational facilities offered by the schools of this Commonwealth. Those educational statistics are within the reach of any committee who wishes to obtain them; . . ."⁸⁶ He felt even if the standards were doubled, "the Lincolns would be found big enough to come even those requirements."⁸⁷ The committee felt the standard was fair based on standard developed by the University Council for all of the universities in the Commonwealth.

The committee then came up with a three-year course of study with testing done annually in order to not "cramming up" on subjects at the end of the three years or answering "haphazard way" answer questions.⁸⁸ The committee wanted written exams so that the applicant would be admitted because of his knowledge displayed in written exams rather than have oral exams in which applicants get "through before different Boards of Examiners because their woe-begone appearance appeals to the examiners, who never ought to get through, and never would get through, if it were a mere question to taking up the written paper."⁸⁹

The third problem was with diplomas received by the students for preliminary examinations and law school graduates with diplomas in lieu of final examinations. Both types of diplomas might be recognized in some counties but not in others. Pepper proposed a central committee, he called them "a council of censors," who would determine what diplomas from what schools would be worthy of accepting by law examiners. The schools selected could issue certificates that would be in lieu of written examinations.⁹⁰ Also a board did not have to approve a petitioner, regardless of his diploma, if he could not complete or

to the District Court of Allegheny County in December 1873, which became the Court of Common Pleas No. 2 in 1875. He succeeded Judge Hampton as President Judge and served until his death in office. JOEL FISHMAN, JUDGES OF ALLEGHENY COUNTY, FIFTH JUDICIAL DISTRICT, PENNSYLVANIA (1788-1988) 42 (1989).

⁷⁶ 3 REPORTS at 252-53.

⁷⁷ *Id.* at 253-54.

⁷⁸ *Id.*

⁷⁹ *Id.* 254-56.

⁸⁰ *Id.* at 257.

⁸¹ *Id.*

⁸² *Id.* at 257-65, with several comments from other speakers in between his discourse.

⁸³ *Id.* at 257-58.

⁸⁴ *Id.*

⁸⁵ *Id.* at 259

⁸⁶ *Id.* at 260.

⁸⁷ *Id.* at 261.

⁸⁸ *Id.*

⁸⁹ *Id.* at 262.

⁹⁰ *Id.* at 261-262.

pass his practice examination.⁹¹ Judge Willson of Philadelphia raised the question of adopting this report when individuals did not have the time to consider the depth of the report. He questioned how an examining board would test students each year.⁹² Pepper responded that he thought the committee did not want a general approval but more detailed plan because "there is always the danger of an ultimate defeat of anything in the direction of uniformity. If you let the judges become separated without the spirit of unity that comes from concerted action, they may not look upon as favorable after they get back to their separate districts."⁹³ Although other suggestions were made, the convention went on then to adopt the following resolution:

Resolved, That it be recommended to the Courts of the several districts of the Commonwealth, that the rules for the education and admission of attorneys as prescribed by the committee, be submitted to the Board of Examiners in each county, with the request that a written report with suggestions be presented thereon in time to enable the Committee on Legal Education of the State Bar Association to examine and digest the said reports for the next annual meeting of said Association, in order that the opinion of the Bar of the State may be ascertained prior to any definite action on the subject of the Courts.⁹⁴

With the passage of this resolution, and a short resolution to meet again at the next state bar association meeting at Cresson on June 30, 1897, the convention ended.

The judges held their next conference on July 1, 1897 at Cresson on the second day of the state bar association meeting with Judge Noyes of Warren County selected as president and Edward Allinson for secretary.⁹⁵ Members from 24 judicial districts met including 27 judges and 19 members of examining boards.⁹⁶

The judges' suggestion that both judges and local examiners should respond to the proposed curriculum plans slowed down the committee's plan to obtain passage of the curriculum at the annual meeting of July 1897. The Committee on Legal Education sent out letters and reports concerning the curriculum changes to all of the county judges who were then asked to work with the local boards of examiners to respond to the changes. Some of the judges did not forward copies of their reports to the boards, and some boards did not know

how to respond to the committee's suggestions. As a result, the local groups however were slow in responding and the committee sent out a followup letter dated April 1897, to the judges and boards.⁹⁷ The committee chairman asked all of his members to contact both judges and law examiners so that their reports could be obtained. The slowness of the returns prompted the committee to delay the preparation of its report for the annual meeting until the last week in June. This was only two weeks before the annual meeting was to occur.

The committee eventually received thirty-two reports from the local counties mostly in favor of uniformity. The Lancaster County board were opposed because they believed that both the proposed standards for admission were too high and that the local board did not want to give up its authority in judging the qualifications of each applicant. The Schuylkill board of examiners rejected Latin as a requirement for admittance and wanted students to study all four, rather than the first two books, of *Blackstone's Commentaries* and *Kent's Commentaries*. It was felt, however, that the Schuylkill's board had misunderstood the rules for there was nothing that excluded the two works.⁹⁸

The committee on uniformity did not put forward a system contemplated by the suggested rules but rather listed the rules with individual commentary from local districts. The committee felt that a distinction had to be made between those rules which deal with legal education and those with admission from other districts.⁹⁹

Rule 1 stated that "no person shall be admitted to the bar unless he is of the age of 21 years or older, is a citizen of the United States, is of good moral character and has satisfied the educational requirements set forth."¹⁰⁰ The formal statement met with general approval.

There was a long debate over the educational provisions of the rule. The educational requirements of rule two were divided into three divisions. The general preamble stated

⁹⁷ *Id.*

⁹⁸ *Id.* at 56-57. These two works, of course, were the leading treatises in American law; the former went through multiple editions by 1890's and was even issued in 1898 by William Draper Lewis, dean of the University of Pennsylvania Law Department. *Kent's Commentaries* went through 14 editions by the 1890's with the 12th edition of 1873 by Oliver Wendell Holmes, Jr. considered the most preeminent edition. For the influence of treatise literature, see A. W. B. Simpson, *The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature*, 48 U. OF CHICAGO L. REV. 632-79 (1981).

⁹⁹ 3 REPORTS at 57.

¹⁰⁰ *Id.* at 58.

⁹¹ *Id.* at 264.

⁹² *Id.* at 264-265.

⁹³ *Id.* at 265.

⁹⁴ *Id.* at 54, 270.

⁹⁵ *Id.* at 271-293.

⁹⁶ *Id.* at 272-274.

that every applicant for admission had to pass an examination preliminary to registration, pursue the course of study for a term of not less than three full academic years of eight months each, and pass exams in course of each of the subjects studied.¹⁰¹

The preliminary exam consisted of courses for graduation from high school and for admission to the freshman class of college. Subsection b stated that if a student presented a diploma in arts or science from an accredited college or a certificate of admission to freshman class, or a certificate of graduation from a high school of which admits to a freshman class then he could register without the preliminary exam. The section also asked for a list of approved colleges, high schools and preparatory schools which until the list was forthcoming school selection was left up to the local board to determine.¹⁰² This section met with general approval with four counties agreeing to dispense with the exam if the applicant was a college graduate.¹⁰³

Subsection c stated that preliminary exams shall be held in the first week of June and last week in September. Students had to apply for the exam with the secretary of the local examining committee. If the student failed no more than two branches on the exam, he could re-take those sections over in the next exam. If he failed more than two sections, there was a one year time limit before he could reapply and then take the entire exam over.¹⁰⁴ In the commentary, little opposition occurred with some boards favoring the time left to local convenience but most felt uniformity important enough to give the exam on the same days throughout the commonwealth.¹⁰⁵

Section two, entitled term of study, called for three academic years study either in a law office or law school or partly in one and partly in the other. Applicants who passed the preliminary exam or were admitted without examination could be registered in the Prothonotary's office and Orphans' Court. The starting three year date began with registration and not before and applied to those studying not only in the district but also in approved law school outside of the district.¹⁰⁶

The course of study for legal education as set out by section three included in the first year: elementary law, a general survey of the common law as provided in the first two books of *Blackstone's Commentaries*, contracts, torts, crimes and common law pleading. Second

year courses included property, equity, evidence, sales, partnership, quasi-contracts, and agency. Third year courses included property, constitutional law, corporations, bills and notes, domestic relations, Pennsylvania practice, Pennsylvania statutes on practice, and the organization and jurisdiction of the courts, decedents' estates, including wills, executors and administrators and Pennsylvania cases on replevin, ejectment and assumpsit.¹⁰⁷ The committee left it up to the local boards to determine whether Blackstone and/or Kent's works needed to be studied either in whole or in part and even limiting one's study just to them.¹⁰⁸

The requirements concerning examinations were subdivided into five parts including eligibility based on passage of the exams,¹⁰⁹ scheduling exams were given in June and December (for those who had failed in June only) of each year¹¹⁰; only a written exam of no more than three subjects in one day and for successive days students had a three to five hours per exam¹¹¹ requiring a passing was 60 out of a scale of 100¹¹²; fourth, local boards could obtain a copy of exams from the State Bar once they were graded,¹¹³ and fifth, a student that presented a certificate of graduation from a law school having three years of study would be entitled to be admitted to the bar without examination upon topics studied.¹¹⁴

If no list were prepared, then it was left to the Examination Committee to investigate schools both within and outside of Pennsylvania in order to announce at the beginning of each calendar year a list of schools that would be accepted by the Committee. Holders of diplomas could make application for admission in June or December.¹¹⁵ The committee comments remarked that "[w]here law school diplomas are rejected, the rule is unnecessary."¹¹⁶ But even where the diplomas are accepted, the committee still had the right to determine the value of the diploma and reject those not found worthy.¹¹⁷

The committee completed its report with a statement that it felt the report was representative of the views of the various areas of the state, and though it had missed the recommended date of June 1, 1897 to implement the

¹⁰¹ *Id.*

¹⁰² *Id.* at 59-60.

¹⁰³ *Id.* at 60.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 61.

¹⁰⁷ *Id.* at 62.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* 62-63.

¹¹⁰ *Id.* at 63-64.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 65.

¹¹⁴ *Id.* at 66.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

rules, it recommended adoption by June 1, 1898.¹¹⁸

At the 1897 meeting, Robert Snodgrass reviewed the history of the committees' work and asked that the recommendations on preliminary and final examinations be approved but did not recommend admittance from other districts. He wanted the Association to approve the written report so it could then be sent to the individual judges throughout the state for their approval.¹¹⁹

Mr. Reading motioned to accept the rules and urged bar members to bring the rules to the attention of the local judges and bar examiners.¹²⁰ Judge White of Indiana County raised the question of legislative enactment on the proposed rules in light of *Splane's Case*,¹²¹ as did another lawyer. There was controversy over the proposed rules and an attempt to postpone the report, but the committee finally adopted rule one.¹²²

The long debate on rule one led Reading to reconsider his original motion to vote on all rules at one time.¹²³ Several other proposals were voted down (changing test dates, adding the subject of surveying),¹²⁴ but German was accepted along with Latin as a language requirement.¹²⁵ However, important discussion occurred when Hayes, of Northumberland County, who supported a uniform system of study and term of law, motioned to have exams left up to the local bar examiners, since attorneys did not have enough time to prepare and grade written exams.¹²⁶

George Pepper gave a lengthy and effective response to his colleague's proposal. First, he objected to the "hurried way" in which local oral examiners made up questions on the spur of the moment and were accompanied by inadequate oral answers by the students.¹²⁷ Secondly, student response was often hasty, not well thought out, and questions were modified to assist a student if he could not answer it which resulted in a less than effective exam.¹²⁸ Thirdly, he felt local boards had expressed themselves in favor of written exams, since only one examiner had to proctor the exam with the whole board reviewing exams perhaps up to ten days later at their own leisure.¹²⁹ Finally, written exams provided stu-

dents with a record of their answers. If any question arose concerning fairness of the exams or the propriety of answers given, the written record would solve any problem.¹³⁰ With this elaborate rebuttal in favor of written exams, it is no wonder that the committee rejected Hayes's motion to leave exams to the local boards.¹³¹ Immediately, thereafter the whole subcommittee's report on the course of study was approved.¹³²

Following the July 1897 meeting, the Committee on Legal Education worked on securing the adoption of the rules as rules of court, regulating the registration of students seeking admission to the bar, a proper course of study, and a system of preliminary and course examinations.¹³³ The committee met at Lancaster on December 29, 1897, when it was resolved that the chairman write to the members of the committee throughout the state requesting the judges of the court or courts of that district to adopt the proposed rules. It was also resolved to create a seven-man subcommittee to draw up an authoritative list of high schools, secondary schools, colleges, and preparatory schools and law schools and the degrees or diplomas that will be accepted in lieu of preliminary or final examinations.¹³⁴

Snodgrass drew up a circular letter dated April 1, 1898,¹³⁵ informing the committee members of the actions of the July 1897 annual meeting and its adoption of rules printed in volume 3 of the *Reports* and December 1897 urging adoption of the rules. He recognized that there were differences among members concerning details, but discussions brought about general agreement for the need for uniformity: "Probably no one who voted for the adoption of the report was entirely satisfied with all of the details, but every one recognized that he must to some extent sink his individual preferences for the sake of securing much needed harmony."¹³⁶ He asked everyone to familiarize themselves with the proposed rules and then go to the judges requesting their adoption of the rules. For those districts where board of examiners might be against the rules, he urged them not to let them "control your actions, since necessarily individual preferences

¹¹⁸ *Id.* at 68-69.

¹¹⁹ *Id.* at 87-88.

¹²⁰ *Id.* at 88.

¹²¹ See above notes 25-32 and accompanying text.

¹²² 4 REPORTS at 95-99.

¹²³ *Id.* at 99.

¹²⁴ *Id.* at 102-03.

¹²⁵ *Id.* at 103.

¹²⁶ *Id.* at 110.

¹²⁷ *Id.* at 111.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 111-12.

¹³¹ *Id.* at 114. The rejected amendment read "that in lieu of the examination suggested in the rules of court by the committee, all examinations, preliminary, in the course, and at the end of the course, be left for determination by the several Boards of Examiners of the respective counties."

¹³² *Id.*

¹³³ 4 *Id.* at 81.

¹³⁴ *Id.*

¹³⁵ *Id.* at 23-24.

¹³⁶ *Id.* at 23.

must give way to the interest of the general result."¹³⁷ He thought the examining boards would put aside individual feelings to accept the measure. He concluded that the work of the committee was important and "we will be doing a great service to the profession and to the Commonwealth."¹³⁸

In a second circular letter, dated June 6, 1898, Snodgrass sent letters asking for reports from all members as to their progress in order to make a report at the annual meeting. If any district had adopted the rules with modifications, he desired a copy of what had been adopted.¹³⁹ The report of the committee showed only a few districts adopting the rules, but more adopted the important features of the rules. Those opposed to the rules appear to do so for certain reasons and not for "prejudice."¹⁴⁰ Some courts appear passive, while boards have begun to implement the rules. Philadelphia was the main example of this type of reform. Washington County court was willing to adopt the rules for examinations, although their regulations had just as high standards. Dauphin County adopted the rules for students registering after May 11, 1898 and applicants for admission to the bar after July 1, 1898. Center County had adopted the rules, and Jefferson County would shortly. Eight counties had adopted parts of the rules: Allegheny, Chester, Carbon, Green, Montgomery, Lackawanna, Westmoreland and Armstrong. Fayette has discussed the rules, but no action has been taken six counties (Wayne, Crawford, Wyoming, Sullivan, Franklin, and Lebanon) and three definitely oppose them (York, Schuylkill, and Clinton).¹⁴¹

The committee also reported it did not feel it expedient at this time to draw up the lists of schools as decided at the December meeting.¹⁴²

The 1898 meeting was held at Delaware Water Gap on July 7 and 8, 1898.¹⁴³ Nineteen members of the Committee on Legal Reform met with Snodgrass as chairman and Edwin Smith of Allegheny County serving as Secretary pro tem.¹⁴⁴ The committee's report, as summarized just above, led Snodgrass to suggest they refer to the committee on uniformity and requested how the rules regulating admission to the Bar, as approved by the Bar Association, was to be put in force throughout

the state.¹⁴⁵ This was followed by a letter from George Wharton Pepper suggesting the work of the committee, but no information concerning his letter is given in the report. Paul Gaither first suggested appointing a subcommittee to continue the work of the committee on uniformity; but it was replaced by Judge John Reed's recommendation that Snodgrass write to every member of the committee to encourage each district to continue to have the courts of each district approve the rules.¹⁴⁶ Contrary to the report, two further motions approved by the committee recommended that a subcommittee of seven to investigate the list of high schools, colleges, and preparatory schools acceptable under Rule II b and a list of law schools under Rule II f and determine the advisability of creating such lists.¹⁴⁷

As a result of the 1898 meeting, there was another continued push to have the districts approve the recommendations of the 1897 meeting. Again, in June 1899, Snodgrass wrote to each member of the Committee on Legal Reform to obtain his report for the annual meeting.¹⁴⁸ He acknowledged in the letter that some counties have adopted the rules substantially as a whole, others adopted them with modifications, and some counties rejected the recommendations. He also brought up the two subjects asking for consideration of drawing up the list of colleges, high schools, and other preparatory schools which certificates would be accepted in lieu of preliminary examinations for registration and for the preparation of standard questions for the preliminary and final exams.¹⁴⁹ He concluded by calling a meeting to be held at Wilkes-Barre on July 5, 1899 (the evening before the first day of the annual convention) on the topic of preliminary and final examinations.¹⁵⁰

The report was presented to the Committee on Legal Education on July 6, 1899. From the answers given there were, fourteen counties that had adopted the rules, with board of examiners in other counties applying them to their work. Discontent was expressed over the extent and scope that the exams should take. Some of the difficulties encountered included the indifference of local boards of examiners, laziness on the part of the local bar associations, and the fear that the exams would discriminate between poor and rich. Others noticed a higher standard by examining boards through either formal or informal accep-

¹³⁷ *Id.* at 24.

¹³⁸ *Id.*

¹³⁹ *Id.* at 24-25.

¹⁴⁰ *Id.* at 21.

¹⁴¹ *Id.* at 22.

¹⁴² *Id.*

¹⁴³ For the discussions of the committee, see 4 REPORTS 16-18 (1898); for the report, see *Id.* at 20-27.

¹⁴⁴ *Id.* at 16.

¹⁴⁵ *Id.* at 17.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ 5 *Id.* 85-87 (1899).

¹⁴⁹ *Id.* at 86.

¹⁵⁰ *Id.* at 84-86.

tance.¹⁵¹ The problem of having examining boards in 67 counties and 54 judicial districts clearly posed a problem to those who sought uniformity. One commentator thought reciprocity between so many organizations difficult and wished for a uniform law, similar to the one created in New York State at "one splendid stroke."¹⁵² Another writer did not want the legislature to provide for the admission of attorneys, but felt that legislative enactment in support of a commission or a State Board of Examiners appointed by the Supreme Court and providing a certificate for practice similar to the recent Ohio law would be accepted.¹⁵³ Robert Snodgrass, in his report, spoke for the committee in saying that the two suggestions just cited were not up to the committee to accept. The committee submitted the following resolution to the bar:

"Resolved, That it is the sense of this committee, that the State Bar Association, at its present meeting, be asked to instruct the Committee on Legal Education, to be appointed, to draft an act, to be presented to the next meeting of the legislature, looking to the establishment of a uniform system of legal education and admission to the bar, throughout the State; such act to be submitted to the association for its consideration at the next meeting."¹⁵⁴

The committee after three years failed to have the local courts adopt the measure of reform of legal education. The following two years the committee of legal education turned to a new smaller committee to carry on the reform movement.

THE LATER YEARS 1899-1902

Snodgrass's report was filed at the annual meeting, but no further action was taken.¹⁵⁵ After the passage of the resolution calling for the drawing up of an act to be presented to the legislature, the committee fully discussed the proposal in Pittsburgh in December 1899. Snodgrass and John M. Harris¹⁵⁶ of the Lackawanna bar were appointed a subcommittee with instructions to draft an act on the basis of the resolution. The two men first obtained information concerning the workings of other states that had adopted similar systems and

then prepared their own bill. This bill was then forwarded to every member of the Committee on Legal Education and to the justices of the Supreme Court. All were asked to criticize and make amendments. Some amendments were then incorporated in the proposed act when submitted to the Association meeting on June 28, 1900.¹⁵⁷

The proposed act contained six sections. Section one called for "The State Board of Law Examiners" which consisted of five members of the bar with ten years experience. No two examiners would come from the same district. They would be appointed by the Supreme Court with the first members selected with varying terms of office from one to five years, with five year offices for those after the initial period. The appointments were to begin on January 1, 1902. The members were to be compensated for their services and expenses (no sum mentioned) with the proviso that such pay would not come from the state treasury. The Supreme Court had the authority to remove for cause any member of the board and fill any vacancies that may occur. The officers of the board consisted of the president, who was a member of the board, and a secretary and treasurer who would be elected by the board. The board was to organize and meet within sixty days of their appointments and subscribe to an oath before qualified officials to perform impartially the duties of their offices that would be filed in the office of the prothonotary of the Supreme Court in Philadelphia.¹⁵⁸

Section two required the court to submit a uniform code of rules for the regulation of preliminary and final examinations for admission to the bar that would govern the board of law examiners in the performance of their duties. The exams were to be held twice a year in the cities of Philadelphia, Pittsburgh, Williamsport, Harrisburg, Scranton, and Erie and at other times or places determined by the board.¹⁵⁹

Section three stated that all applications for preliminary examinations or for examinations for admission to the bar of any county were to be made by petition to the board. The person had to satisfy the board of his good moral character and he had to pay not more than \$50 to the treasurer of the board, the monies to be used for salaries for the board members and officers as fixed by the Supreme Court for discharge of their duties. The board had to render an annual report to the court. A further amendment called for the account to be subject to the supervision and approval of the court. Any

¹⁵¹ *Id.* at 82-83.

¹⁵² *Id.* at 84.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 85.

¹⁵⁵ 5 *Id.* at 87; 6 *Id.* at 76.

¹⁵⁶ John Morgan Harris of the Lackawanna bar, served as an assistant district attorney in Scranton and was appointed to the State Board of Law Examiners. 1 TWENTIETH CENTURY BENCH AND BAR, *supra* note 41, at 214-15.

¹⁵⁷ 6 REPORTS at 146.

¹⁵⁸ *Id.* at 77-78.

¹⁵⁹ *Id.* at 78.

balances left in the hands of the treasurer were to be applied in the administration of this act as the board desired.¹⁶⁰

Section four provided that the board had to hold, regulate, and control all preliminary and final examinations for admission to the bar and grant certificates to all those who passed the exams. The certificates served as proof of the educational qualifications and legal requirements of the applicant to commence the study or practice of law. A proviso stated that every applicant for admission to the bar upon such certificate had to satisfy the court, to which application was submitted, of his good moral character and had to possess such other qualifications as required by the rules of that court. It was further provided that the act did not apply to any person who had already been registered as a law student or entered upon a study of law prior to January 1, 1902.¹⁶¹

By section five the board of examiners was to establish and promulgate a course of legal study preparatory to the commencement of the study of law, and also the term and course of legal study to be pursued by candidates for admission to the bar. The Supreme Court had to approve the requirements before they went into effect.¹⁶²

By section six all acts or parts of acts inconsistent with the act were repealed.¹⁶³

In presenting the proposed act, Snodgrass provided the background to the act. It followed similar legislation enacted in other states, notably Massachusetts and New York. He pointed out that thirty states now had adopted either a state board of law examiners or had an exam sponsored by the highest court of the state. He felt that the committee had attempted to eliminate the problem associated with *Splane's Case* in which the Supreme Court ruled that the admission of an attorney was a judicial and not a ministerial act, and that the legislature could not fix a hard and fast rule under which attorneys should be admitted. *Splane* had tried to apply for admission to the Supreme Court.¹⁶⁴

The proviso in section four left "the ultimate judgment to the local court, making the certificate of the board of examiners conclusive only as to educational requirements."¹⁶⁵ Snodgrass did not know if they had solved the problem or not. He expressed his belief that a different bill could be offered and that changes had to be made through a state system rather than

through court rules. Furthermore, Pennsylvania's present system was so different from the other states that he feared local attorneys applying for "admission in other states are not received with as high consideration as they would be if a state system prevailed here."¹⁶⁶

Lucian Alexander proposed two resolutions. The first called for a memorial to be presented from the Association to the Supreme Court concerning the present unsatisfactory conditions and lack of uniformity with reference to admissions to the bar and the need for a state board of law examiners and uniform system for admission to the bar.¹⁶⁷ The second resolution empowered the committee to submit an act to the legislature if the Supreme Court believed that legislative enactment was necessary for the establishment of the new system.¹⁶⁸

Although seconded, Frederick Drake¹⁶⁹ of Philadelphia immediately proposed, and was seconded, to lay the two resolutions on the table.¹⁷⁰ Another Philadelphian, Walter Smith, suggested that the Association obtain the advice of the Supreme Court before any bill be formulated and submitted to the legislature. It would be left to the executive committee of the bar association to submit the committee's bill or draw up a similar one.¹⁷¹ George Pepper, supporting Smith's position, attempted to mediate the differences between speakers. He feared that the constitutionality of the bill in reference to admission to the bar was a problem. He suggested that it would be better to bring the Supreme Court into our counsels rather than pass an act that the judges may eventually "antagonize . . . when the act comes before them [and] it will be brushed aside and declared of none effect under *Splane's Petition*."¹⁷² The president of the Association gave his support to Pepper's position and asked for a withdrawal of the substitute resolutions, which Drake and his second agreed to do.¹⁷³

Sheldon Potter, also of Philadelphia, put forward two amended versions of Alexander's original resolutions.¹⁷⁴ Following his criticism of the format of the bill that may lead to be de-

¹⁶⁶ *Id.* 148.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 149-50.

¹⁶⁹ Frederick S. Drake (1869-1918) served in the office of John Marshall Gest. He was a conspicuous figure in independent politics in Philadelphia and was a former president of the Law Academy of Philadelphia. 24 *Id.* 107 (1919).

¹⁷⁰ 6 *Id.* at 150.

¹⁷¹ *Id.*

¹⁷² *Id.* at 151.

¹⁷³ *Id.* at 151-52.

¹⁷⁴ *Id.* at 152.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 78-79.

¹⁶² *Id.*

¹⁶³ *Id.* at 77-79.

¹⁶⁴ *Id.* at 146-47.

¹⁶⁵ *Id.* at 147.

clared unconstitutional by the court, he suggested further revisions in the bill and send it back to the committee.¹⁷⁵ Snodgrass, however, did not wish the bill to go back to the committee because the committee's large size (fifty-four men) would hinder any resolution of the question under consideration. He suggested instead that the problem should be referred to a new committee of five members, which may or may not include members of the Committee on Legal Education, as a means to settle the problem.¹⁷⁶ John Colahan of Philadelphia supported Potter by favoring a subcommittee that would originate from the Committee on Legal Education.¹⁷⁷ Alexander, the original maker of the motion, was willing to accept Potter's amendment. He felt that the act dealt with nonessentials and should leave the essentials up to the Supreme Court or the discretion of the board. He urged the submission of the matter to the Supreme Court, since *Splane's Case* made admission a judicial rather than legislative concern. Alexander had been in touch with a Supreme Court justice who had approved these resolutions.¹⁷⁸

John Weaver¹⁷⁹ of Philadelphia worried that acceptance of the two resolutions would leave the Committee in the dark as to what policy should be implemented.¹⁸⁰ Henry Budd of Philadelphia felt there was some risk in going to the Supreme Court to get its view upon this matter but thought it worthwhile.¹⁸¹ Pepper again served as the voice of moderation putting forth his own resolution that recognized the work of the subcommittee of the Committee on Legal Education and the need to approach the Supreme Court over the matter.¹⁸² The resolution first called for the creation of a State Board of Examiners and for a uniform standard of examination for registration and admission to the bar. A special committee of five one of whom was to be the chairman of the Committee on Legal Education, was to take the responsibility of presenting a memorial the Supreme Court. The second part of the resolution offered the choice of either submitting a bill immediately to the legislature or first approaching the Supreme Court for vol-

untary action rather than coercive action.¹⁸³ Recognizing that some constitutional problems may arise, Pepper suggested that the Supreme Court may not have a right to appoint a committee or pass upon the qualifications of admission to county bars, but he did believe that they could appoint a committee to consider admission to the state bar. He therefore suggested the formation of a committee to determine the court's reaction and if agreeable, then present the suggested bill to the legislature.¹⁸⁴ The proposal was seconded and accepted as a substitute resolution by Alexander. Alexander felt that the two resolutions were similar in nature, since both proposed that the Supreme Court could appoint a board of law examiners without the need of going to the legislature. Furthermore, the Supreme Court already admitted law students graduating from the University of Pennsylvania to its bar without prior approval of the local county bar. Alexander hoped that the memorial would lead to the court's expanding of the class so as to admit all men to examinations as was the practice in other states.¹⁸⁵ By suggesting that the court could act under the equity rules of 1836,¹⁸⁶ Alexander felt that "it is eminently proper that the question should first go to the Supreme Court, with a view to appealing to that court to take jurisdiction" in recognizing the problem as a strictly judicial, not legislative, question.¹⁸⁷ Frank Gunnison¹⁸⁸ of Erie

¹⁸³ *Id.* at 159. The resolution read as follows:

That it is the sense of this Association that a State Board of Examiners should be created in Pennsylvania, and a uniform standard of admission be established for registration and admission to the Bar; and that a special committee of five members, of which the Chairman of the Committee on Legal Education shall be one, be appointed to bring about this result, first, by memorializing the Supreme Court of Pennsylvania to appoint a State Board before whom all applicants for admission to the Bar of the Supreme Court shall present themselves for preliminary and final examination, and to formulate rules for the government of said Board; and, second, in case legislative action shall seem desirable, then to submit at the next session of the Legislature the bill supported by said sub-committee, or such other bill as shall provide for the establishment of a State Board, and a complete system of registration and admission.

¹⁸⁴ *Id.* at 159-60.

¹⁸⁵ *Id.* at 161.

¹⁸⁶ *Id.* at 162. The section of the equity rules read:

It shall be the duty of the Supreme Court at their session in banc, from time to time, to devise and establish by rules of court such new writs and forms of proceedings as to their opinion shall be necessary or convenient to the full, direct and uniform execution of the powers and jurisdiction possessed by the said Court or by the Courts of Common Pleas, District Court, Orphans' Court or Register's Courts.

¹⁸⁷ *Id.* at 161-62.

¹⁸⁸ Frank Gunnison served as a member of Erie city council and in 1886 was elected president judge of the Sixth Judicial District and served a full ten-

¹⁷⁵ *Id.* at 153-54.

¹⁷⁶ *Id.* at 155.

¹⁷⁷ *Id.* at 155-56.

¹⁷⁸ *Id.* at 156-57.

¹⁷⁹ John Weaver (1861-1928). served first as district attorney of Philadelphia from 1901 to 1902 and then as Mayor of Philadelphia from 1902 to 1906. 34 *Id.* 145-47 (1928).

¹⁸⁰ 6 *Id.* at 157.

¹⁸¹ *Id.*

¹⁸² *Id.* at 158-59.

also suggested that the memorial be submitted to the Superior Court as well as to the Supreme Court and it was accepted.¹⁸⁹

The resolution as finally accepted resolved that a state board of law examiners be created and a uniform standard examination be established of nine to memorialize the Supreme and Superior Courts to appoint a state board before whom all applicants should present themselves for preliminary and final examinations, and to formulate rules for the government of said board. Furthermore, in case legislative action was acceptable, then a bill should be drawn up for the next session of the legislature for the establishment of a state board and a complete system of registration and admission.¹⁹⁰

In the afternoon session, Judge McPherson requested that because of the importance in drawing up the memorial to the Supreme and Superior Courts that the five-man committee be increased to nine men. It was carried.¹⁹¹

Samuel Dickson¹⁹² of Philadelphia became the chairman of a nine-man Committee on Memorial in re Admissions to the Bar that drew up the memorial for presentation to the appellate courts. Besides Dickson, other members included Knox, Snodgrass, Pepper, Harris, Alexander, W. Hensel and S. Wolverton.¹⁹³

year term. He declined to run again and returned to private practice. 1 TWENTIETH CENTURY BENCH AND BAR, *supra* n.41, at 272-73.

¹⁸⁹ 6 REPORTS at 162-63.

¹⁹⁰ *Id.* at 163.

Resolved. That it is the sense of the Association that a State Board of Examiners should be created in Pennsylvania, and a uniform standard of admission be established for registration and admission to the Bar; and that a special committee of five members, of which the Chairman of the Committee on Legal Education shall be one, be appointed to bring about this result, first, by memorializing the Supreme Court and Superior Court of Pennsylvania to appoint a State Board before whom all applicants for admission to the Bar of the Supreme and Superior Courts shall present themselves for preliminary and final examination, and to formulate rules for the government of said Board; and, second, in case legislative action shall seem desirable, then to prepare and submit at the next session of the Legislature such bill or bills as shall provide for the establishment of a State Board and a complete system of registration and admission.

¹⁹¹ *Id.* at 181.

¹⁹² Samuel Dickson (1837-1915) was a specialist in corporation laws and represented several railroads. He served as president of the Pennsylvania State Bar Association (1895-96), Chancellor of the Philadelphia Law Association (1899-1909), and chairman of the State Board of Law Examiners (1902-15). President Cleveland chose Melville Fuller over him as Chief Justice of the Supreme Court in 1888. 21 REPORTS 82-84 (1915).

¹⁹³ 6 REPORTS at 181-182. Dickson, Pepper, Alexander, and Thompson were from Philadelphia; Knox from Allegheny County; Hensel from Lancaster

At the 1901 meeting, Robert Snodgrass of the Committee on Legal Education reported that the appointment of the nine-man committee relieved his own committee of further action. He understood that no final action would be taken at present, but that the appellate courts appeared favorable to establishing a State Board, and so no further action of the committee was necessary at that time.¹⁹⁴

Samuel Dickson, as chair of the Committee on Memorial In re Admissions to the Bar, shortly thereafter presented his report. The committee met in Philadelphia on December 27, 1900 to determine the form of the memorial, agreeing to present it first to the Supreme Court, and if accepted, then to the Superior Court. The committee however was not able to meet with the justices of the Supreme Court on May 9, 1901. He reported that it was a "very full and frank discussion of the whole subject." The "court was seriously impressed by the recommendations of this Association," and the justices finally agreed to the Bar Association's recommendation.¹⁹⁵ Endorsements for the report came from the deans of four law schools (Penn, Dickinson, Harvard and Columbia) as well as letters from the chief justices of New York, Massachusetts, Ohio, Illinois, and Maryland in favor of the system.¹⁹⁶ The report was first received and later approved by the Association.¹⁹⁷

The attached memorial consisted of five detailed sections. Section one contained the resolution passed at the 1900 meeting of the Bar Association calling for the presentation of a memorial to the Supreme Court.¹⁹⁸ In section two, the history of the movement for the creation of a statewide system of admission from 1896 was reviewed.¹⁹⁹ A uniform standard for admission was felt to be an unattainable goal because first, in the populous judicial districts the judges had little interest to bring about reform, and secondly, even with identical rules in every court there would be a great diversity of application in the fifty-four districts.²⁰⁰ Since the judicial conference of 1896 supported uniformity in matters of admission, the Bar Association concluded that a central examining board was necessary for all applicants to appear. The creation of a board however would in no way encroach upon the preroga-

County, Wolverton from Northumberland County, Snodgrass from Dauphin County, and Harris from Lackawanna County.

¹⁹⁴ 7 *Id.* at 111.

¹⁹⁵ *Id.* at 112.

¹⁹⁶ *Id.* at 111-12.

¹⁹⁷ *Id.* at 114.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 114-16.

²⁰⁰ *Id.* at 115.

tives of the lower courts to determine the qualifications of its own members.²⁰¹

Section three acknowledged that thirty-five other states had already endorsed a similar system, with Pennsylvania standing entirely alone by adhering to the system of original county admissions and in basing admission to the appellate courts upon law school diplomas or proof of nominal practice in lower courts.²⁰² It was pointed out that there could be no uniformity with fifty-four jurisdictions determining admissions. Moreover, states with major law schools, Massachusetts with Harvard, no longer admitted students based solely on diploma but also required examinations by a state board of examiners. Requirements for reciprocity between jurisdictions generally depended upon admission to the bar of its highest appellate court.²⁰³ Several of the counties required this prerequisite for admission to their local bars. However, the memorial pointed out that any attorney who had the requisite clerkship and two years practice in a lower court or any student graduating from Penn and Dickinson law schools who had passed a Latin examination could be directed into the Supreme Court. Such practice was looked down upon by those outside of the state and reform would restore respect to those who practice in the state.²⁰⁴

Paragraph four dealt with the central examination process. The memorial suggested two methods. By the first method the appointed state board of law examiners had jurisdiction over all applicants for admission to the bar and formulated the rules for the government of the board.²⁰⁵ The alternative was an act of the legislature providing for a state board to be appointed by the Supreme Court with jurisdiction over the applicants for admission to the bar of all courts of the state. The memorial supported the second method as "a most effective one" in admitting persons, since it took away the lower court's right to admit to the bar.²⁰⁶ Such a plan would, however, agree with the similar principle adopted in England and the other states that "the profession of the law is a calling so affecting the public interest that the people, speaking through the Legislature, have a right to regulate the calling and prescribe the qualifications for admission."²⁰⁷ Although the dictum in *Splane's Case* was against legislative interference, the committee felt it advisable to urge action by the court. It was also felt that the

profession would be safer "if left entirely in the hands of those who, by their character and attainments, have reached high judicial office."²⁰⁸

The bar therefore asked for a board of examiners. Also, if the judges of the Superior Court admitted those accepted to the Supreme Court, the committee suggested, that it would be "conclusive evidence" of the acquisition by the candidate of legal knowledge and no local judge would require a student in his district to take two examinations. Also, if a student were given a choice between local and higher court exams, he would most likely take the Supreme Court exam as a necessity.²⁰⁹

Paragraph five concerned the registration and taking of the examinations. A rule of court could provide for a complete system of registration and examinations. Exams would occur at least twice a year, in at least three different places, with the provision that if five or more candidates petitioned the court for semi-annual exam at the county seat of the judicial district, the board would offer the test through the use of proctors.²¹⁰

The memorial held that the new system would not alter the status of attorneys applying for admissions from other states, while a grandfather clause protected any attorney already practicing in the state. The new rule provided for registration upon proof of character and general educational qualifications as the court would determine with the applicant applying for examination after a three-year clerkship in a law office from the time of his registration. A proviso for law students credited their time spent in school for a proportionate amount of the regular clerkship. The memorialists proposed to place the system in effect immediately through the suggest on that an order be placed authorizing any student, under current rules in the judicial district, to apply to the state board for examination for admission to the Supreme Court at such date as he would be entitled to apply to the local bar for admission.²¹¹

In order to secure members of a state board an examination fee was suggested. The proposed act called for a fee not exceeding \$50, but the memorialist suggested only \$25 as being sufficient to cover expenses but not too burdensome upon the candidate. It was similar to the medical profession fee, but in England, an applicant for solicitor had to pay an eighty pound stamp to his preliminary examination. The memorialists felt that the fee should not act a "pecuniary barrier," but some fee may be proper due to the time taken by the

²⁰¹ *Id.* at 114-16.

²⁰² *Id.* at 116.

²⁰³ *Id.* at 116-17.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 117-18.

²⁰⁶ *Id.* at 118.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 118-19.

²¹⁰ *Id.* at 119.

²¹¹ *Id.* at 119-20.

examiners and consistent with the dignity of the profession and the means of those who want to practice law.²¹²

The Supreme Court accepted the Memorial and created a board of law examiners by a *per curiam* order of May 26, 1902.²¹³ The court adopted ten rules pertaining to the admission of attorneys by the State Board of Law Examiners on November 11, 1902 to go into effect January 1, 1903.²¹⁴ By rule one no person was admitted to practice an attorney except upon the recommendation of the State Board.²¹⁵ By rule two any applicant for admission to the bar after January 1, 1903, who was a member of a county court for two years could be admitted to the bar without examination by presenting a certificate of the Board. The applicant and did not have to advertise or pay any fee for reporting upon his credentials.²¹⁶ By rule three any student who prior to January 1903, under the rules of the local district, could apply to the State Board of Law Examiners for examination

and admission to the Supreme Court bar, at such date as he would have been entitled to apply for admission in such judicial district. The certificate became the "conclusive evidence" of his eligibility to be admitted to the bar upon examination.²¹⁷

By rule four, the applicant had to show he was of good moral character and had to pass a preliminary examination on the English language and literature; outlines of universal history; history of England and United States; arithmetic, algebra through quadratics and plane geometry; modern geography; and the first four books of *Caesar's Commentaries*, the first six book of the *Aeneid*, and the first four orations of *Cicero against Cataline*.²¹⁸

The student was also required to pay a fee of \$10. Upon receiving a certificate recommending his registration and certifying that he was qualified to begin study of the law the applicant had to register with the prothonotary of the Supreme Court for the district to which county his county belonged. In registering he had to give his name, age, place of residence, and the name of his preceptor or the law school he planned to attend.²¹⁹

Rule five dealt with the admission of an applicant based on either attendance at a three year law school (having eight months in the year and an average of ten hours per week each year), or admission of an applicant who was partly in a law school and partly in a law office. (Or by a bona fide service of a regular clerkship in the office of a practicing attorney.) The admittee then had to comply with four requirements. First, he had to advertise his attention to apply for admission in a law periodical or newspaper published in the judicial district in which he resided as well as in the *Legal Intelligencer* (the local Philadelphia daily legal newspaper) once a week for four weeks preceding the date of filing his credentials with the State Board. Second, he must file the necessary credentials with the board twenty-one days before the date of the examination and a \$20 fee. Third, he had to file a certificate signed by at three members of the bar in good standing from the judicial district the admittee resided or expected to practice, that he was personally known to them, and that they believed him to be of good moral character. Fourth, he had to present a certificate from the dean of the law school or preceptor that he had been a good attendance record and pursued his studies diligently from the time of his registration.²²⁰

Rule six listed the subjects of the examination the admittee had to take which included

²¹² *Id.* at 120-21.

²¹³ 8 REPORTS 219; the text is given 59 Legal Int. 225 (May 30, 1902):

Order of court creating a Board of Examiners:

And now, to wit, May 26, 1902, it is ordered.

1. That there is hereby established a Board of Law Examiners, to whom all applications for admission to the Bar of this Court shall be referred for examination and report before action by the Court.

2. Samuel Dickson, Philadelphia, William Scott, Allegheny, Simon P. Wolverton, Northumberland, Robert Snodgrass, Dauphin, are appointed a Board of Examiners, with authority to report and recommend to the Court for adoption a plan of operations, including The Term and conditions of studentship. A course of study for the preliminary and final examinations. The conditions and requirements of application to the Board. Rules for the meetings and action of the Board, including the appointment of a secretary, treasurer, clerk or clerks, provision for expenses and compensation, etc. Such modifications of the present rules of court as may be necessary to put the new conditions into operation. Such further suggestions or recommendations as they may deem desirable at this time.

3. The present rules and practice shall remain in force until changed by order of the court upon the recommendation of the Board.

²¹⁴ The rules were printed as "State Board of Law Examiners. New Rules of Admission Promulgated by the Supreme Court, November 11, 1902," in 59 LEGAL INT. 446 (November 14, 1902); PERCIVAL G. DIGBY, RULES REGULATING THE PRACTICE OF THE STATE AND FEDERAL COURTS SITTING AT PITTSBURGH, AND OF THE COURTS HAVING JURISDICTION OF APPEALS THEREFROM AND OF THE DEPARTMENTS OF THE STATE AND FEDERAL GOVERNMENTS TOGETHER WITH AN INDEX TO THE SPECIAL ACTS OF ASSEMBLY IN FORCE IN ALLEGHENY COUNTY, ETC. 434, 611 (1906). The first reference is to Supreme Court Rules and the second to the Rules concerning Admission to the Bar of the Supreme Court of Pennsylvania. [Hereafter Digby.]

²¹⁵ Digby, 434, 611.

²¹⁶ *Id.* at 434, 611.

²¹⁷ *Id.* at 435, 611.

²¹⁸ *Id.* at 435, 612.

²¹⁹ *Id.* at 436, 612.

Blackstone's Commentaries, federal and state constitutional law, equity, law of real and personal property, evidence, decedents' estates, landlord and tenant, contracts, partnership, corporations, crimes, torts, domestic relations, common law pleading and practice, Pennsylvania practice, Federal statutes relating to the judiciary and to bankruptcy, Pennsylvania statutes and decisions and the Rules of the Court.²²¹

Rule seven provided for a written examination, after due notice, to be held twice a year simultaneously in Philadelphia, Harrisburg, Pittsburgh, Williamsport, and Wilkes-Barre.²²²

Rule eight dealt with the makeup and responsibilities of the State Board of Law Examiners. The board consisted of five members appointed by the Supreme Court, serving for a term not exceeding five years on a revolving basis. The members served without compensation but were reimbursed for travel and other expenses. The board could appoint examiners to supervise the conduct of the exams and make a preliminary report of the candidates to the Examiners. The board were responsible to the Supreme Court for enforcement of the rules and ascertaining the results. No student could be rejected except by a majority of the board. The board could also appoint a secretary and a treasurer, or have a single person handle both positions, and pay both the assistant examiner and secretary/treasurer, "after deduction of necessary fees, a reasonable compensation."²²³ By rule nine the board had to prepare a paper for distribution among the intended applicants for registration or admission containing information about the examination.²²⁴

The successful order resulted in an immediate recognition of "profound congratulations" from the editors of the *Legal Intelligencer*, who declared, "The creation of this Board marks an epoch in the history of the profession in Pennsylvania, and promises a uniform standard of admission to the Bar commensurate with the dignity and importance of the Commonwealth."²²⁵ The editors recognized that the action would not interfere with local judges conducting their own boards of inquiry, they still felt that in the long run conformity would result on a county level:

While the action of the Supreme Court just taken in granting the prayer of the Memorial will not interfere with the power of the

county Judges to control admissions to the Bars of their own Courts, it is believed it will result in county Judges, in the interests of the profession, admitting to the Bar only upon certificate of the Board appointed by the Supreme Court. As the certificate of this Board will be necessary to qualify applicants to practice in the Supreme Court, all candidates will eventually be compelled to take the examination required by that Court, and it is not be presumed that local Judges will insist upon candidates submitting themselves, in addition, to a county examination, and the new system will thus incidentally secure the enforcement of a uniform standard by a board of representative lawyers. This system of admission has proved eminently successful in every state which has tried it, and now the certificate of the Board appointed by the Court of last resort is accepted as evidence of the candidate's qualifications to practice in the local courts, in New York, Illinois, Massachusetts, New Jersey, Maryland, Ohio, Virginia, California, Maine, Michigan, Minnesota, Nebraska and many other states of the union. Pennsylvania has stood almost alone, and entirely alone among the larger states, in adhering to the system of original county admissions.²²⁶

A number of questions arose quickly over the establishment of the Board. As early as June 13, 1902, the *Legal Intelligencer* reported the first meeting of the board on June 9th, but no immediate plan to change rules of admission except that graduates of law schools who have not practiced for two years might be place don the same footing as those who have studied law in a law office under a preceptor.²²⁷ The Philadelphia Court of Common Pleas actually changed their own admission rules on June 3, 1902, effective the first Monday of September 1902.²²⁸ The following week, Samuel Hines Thomas wrote a letter to the editor condemning the changes²²⁹ that resulted in a short debate with Lucian Alexander.²³⁰ The editors of the *Legal Intelligencer* also published editorials from thirteen state's newspapers²³¹ who were unanimous in their praise of the Supreme Court's action.

²²⁶ *Id.*

²²⁷ 59 LEGAL INT. 248 (June 13, 1902).

²²⁸ Rule VIII. 59 LEGAL INT. 238 (June 6, 1902).

²²⁹ Letter to the Editor: State Board of Examiners, June 12, 1902. 59 LEGAL INT. 256 (June 20, 1902).

²³⁰ *Id.* Thomas responded in a letter dated June 23, 1902. 59 LEGAL INT. 266 (June 27, 1902).

²³¹ *Id.* at 266-67. The newspapers were the *Philadelphia Ledger*, *Philadelphia Press*, *Philadelphia Record*, *Pittsburgh Gazette*, *Pittsburgh Chronicle Telegraph*, *Pittsburgh Post*, *Harrisburg Telegraph*, *York Dispatch*, *Pottsville Republican*, *Tamaqua Courier*, *Lancaster Examiner*, *Lebanon Report*, and *Wilkesbarre Record*.

²²⁰ *Id.* at 436-37, 612-13.

²²¹ *Id.* at 437, 613; 59 LEGAL INT. 446 (November 14, 1902).

²²² Digby, 437, 613-14.

²²³ *Id.* at 438, 614.

²²⁴ *Id.* at 438, 614.

²²⁵ 59 LEGAL INT. 230 (May 30, 1902).

Thus, only short discussions took place at the annual Bar Association meeting of June 30 to July 31, 1902. Snodgrass made a short report on the first day of the meeting, praising the Supreme Court for creating the State Board "that it is reasonable to assume, will be to induce the local courts to accept the certificate of the State Board as the standard for admission to the Bar throughout the State, and in the end to practically dispense with the local Boards of Examiners."²³² He felt that the committee on legal education would need to continue to work with the judicial districts to secure adoption of the rules necessary to implement the state board.²³³ Later on, Dickson's report for the Committee on the Memorial²³⁴ summarized the actions of the past two years resulting in the Supreme Court's passage of a state board. The report once adopted resulted in a resolution, proposed by Judge McPherson, that once the Superior Court accepted the proposal, the committee would confer with the Committee on Legal Education "to take such steps as may be deemed advisable or necessary to secure an acceptance by the courts in the various judicial districts of the admission standard of the Supreme Court as the sole test of the educational qualifications of candidates for admission to the local bars, proof of more character to be, as heretofore, in accordance with such regulations and requirements as the local courts shall prescribe."²³⁵

By November 1902, the Supreme Court had appointed the Board's first members who had played a major role in passage of the Board: Samuel Dickson served as chairman, along with S. P. Wolverton, Robert Snodgrass, Thomas Paterson, and W. U. Hensel.²³⁶

CONCLUSION

The establishment of the State Board of Law Examiners in 1902 proved to be compatible with other states initiating similar boards. The board proved to be an effective administrative organization that attempted to maintain a level of professionalism within Pennsylvania by standardizing the admission policy for the Supreme Court of Pennsylvania. The complete detail of the rules and instructions were published in the succeeding volumes of the rules of court.²³⁷ The rules were maintained with

some amendments for nearly three decades before another major revision was made in 1927 (effective January 1, 1928) again as a result of influence from the American Bar Association and other states' reforms.²³⁸

Under the new admission system, every student was required under Rule 8 to have a preceptor, who was a practicing member of the bar with five years of experience. The preceptor could have no more than three students at one time.²³⁹ Rule 9 provided for a series of questionnaires to be filled out by the applicant, his preceptor, two members of the local board of examiners, three reputable citizens acquainted with the applicant.²⁴⁰ Under Rule 10 the board would not issue a certification unless they were "satisfied that the applicant was of good character," had a college degree or passed the College Entrance Exams (Pennsylvania was the first to require this), and filed out an applicant's questionnaire sixty days before registration.²⁴¹ Rule 11 provided for a three-year law degree or served three-years in a law office or a mixture of the two.²⁴² Rule 12 provided for admittance to the bar upon completion of the Rule 11, passed the examination, and served the six-month clerkship in the law office.²⁴³ Rule 13 provided for admission of attorneys from out of state.²⁴⁴ Pennsylvania maintained its admission rules with amendments for another four decades until further changes were made in the 1960s. The history of the 1928 reforms and further amendments will be the topic of another article.

²³⁸ Robert von Moschzisker, *New Rules Promulgated by the Supreme Court of Pennsylvania as to Registration of Students, the Study of Law, and Admission to the Bar*, 2 TEMPLE L. Q. 3-28 (1927). See also, Walter C. Douglas, Jr. *Recent Changes in the Rules Regulating the Conduct of Preliminary Examination of Prospective Law Students in Pennsylvania*, 2 *Id.* 29-35 (1927); Francis Chapman, *The Power and Duty of the Courts to Prescribe Moral and Educational Standards for the Bar*, 2 *Id.* 143-58 (1928); Walter C. Douglas, Jr. *Pennsylvania's New Requirements for Bar Admission*, 14 ABA J. 669-674 (1928), also printed in 34 REPORTS 386-402 (1928). For further background, see also Auerbach, *supra* note 34, at 125-29. The chapter title is "Cleansing the Bar," although it is ironic that the Chief Justice Robert von Moschzisker of the Pennsylvania Supreme Court was Jewish himself.

²³⁹ Moschzisker, *supra* note 238, at 12-13.

²⁴⁰ *Id.* at 12-13.

²⁴¹ *Id.* at 13.

²⁴² *Id.* at 13-14.

²⁴³ *Id.* at 14

²⁴⁴ *Id.* at 14-15.

²³² 8 REPORTS 128-30, at 129 (1902).

²³³ *Id.*

²³⁴ *Id.* at 219-20.

²³⁵ *Id.* at 224.

²³⁶ Digby, Rules, at [609].

²³⁷ *Id.*; the edition was published in 1906.